

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4845

To better prepare and develop the United States workforce for the global economy, and remove barriers that stifle innovation.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2006

Mr. GOODLATTE (for himself, Mr. SMITH of Texas, Mrs. JOHNSON of Connecticut, Mr. PUTNAM, Mr. SWEENEY, and Mr. TIAHRT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Science, Education and the Workforce, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To better prepare and develop the United States workforce for the global economy, and remove barriers that stifle innovation.

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

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Innovation and Competitiveness Act”.

6       (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—REDUCE RED TAPE AND CREATE OPPORTUNITIES FOR  
ECONOMIC GROWTH

Subtitle A—Business Activity Tax Simplification

- Sec. 101. Short title.  
 Sec. 102. Removal of certain limitations on the application of Public Law 86–272.  
 “Sec. 105. Removal of certain limitations on the application of Public Law 86–272.  
 Sec. 103. Jurisdictional standard for State and local net income taxes and other business activity taxes.  
 Sec. 104. Definitions.  
 Sec. 105. Effective date.

Subtitle B—Attorney Accountability

- Sec. 121. Short title.  
 Sec. 122. Attorney accountability.  
 Sec. 123. Applicability of Rule 11 to State cases affecting interstate commerce.  
 Sec. 124. Prevention of forum-shopping.  
 Sec. 125. Rule of construction.  
 Sec. 126. Three-strikes Rule for suspending attorneys who commit multiple Rule 11 violations.  
 Sec. 127. Presumption of Rule 11 violation for repeatedly relitigating same issue.  
 Sec. 128. Enhanced sanctions for document destruction in pending Federal court proceedings.  
 Sec. 129. Ban on concealment of unlawful conduct.

TITLE II—INCREASE AMERICA’S TALENT POOL

- Sec. 201. Innovation Scholarship Program.

“SUBPART 6—INNOVATION SCHOLARSHIP PROGRAM

- “Sec. 419A. Innovation mathematics and science honors scholarship program.  
 “Sec. 419B. Mathematics and science incentive program.  
 “Sec. 419C. Mathematics and science education coordinating council grants.  
 “Sec. 419D. Authorization of appropriations.

TITLE III—PROMOTION OF RESEARCH AND DEVELOPMENT

- Sec. 301. Short title.  
 Sec. 302. Findings.  
 Sec. 303. Permanent extension of research credit.  
 Sec. 304. Increase in rates of alternative incremental credit.  
 Sec. 305. Alternative simplified credit for qualified research expenses.

TITLE IV—INCREASE ACCESS TO AND EFFICIENCY OF HEALTH  
CARE

Subtitle A—Health Care Choice

- Sec. 401. Short title of subtitle.  
 Sec. 402. Specification of constitutional authority for enactment of law.

Sec. 403. Findings.

Sec. 404. Cooperative governing of individual health insurance coverage.

“PART D—COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE  
COVERAGE

“Sec. 2795. Definitions.

“Sec. 2796. Application of law.

“Sec. 2797. Primary State must meet Federal floor before issuer may sell  
into secondary States.

“Sec. 2798. Enforcement.

Sec. 405. Severability.

Subtitle B—Health Information Technology Promotion

Sec. 411. Short title of subtitle.

Sec. 412. Office of the National Coordinator for Health Information Tech-  
nology.

“PART D—HEALTH INFORMATION TECHNOLOGY

“Sec. 271. Office of the National Coordinator for Health Information  
Technology.

Sec. 413. Safe harbors for provision of health information technology and train-  
ing services to health care professionals.

Sec. 414. Uniform health information laws and regulations.

Sec. 415. Rulemaking to upgrade ASC X12 and NCPDP standards and ICD  
codes.

Sec. 416. Report on the American Health Information Community.

Sec. 417. Strategic plan for coordinating implementation of health information  
technology.

TITLE V—SEAMLESS MOBILITY

Sec. 501. Prohibition on impeding.

1 **TITLE I—REDUCE RED TAPE**  
2 **AND CREATE OPPORTUNITIES**  
3 **FOR ECONOMIC GROWTH**  
4 **Subtitle A—Business Activity Tax**  
5 **Simplification**

6 **SEC. 101. SHORT TITLE.**

7 This subtitle may be cited as the “Business Activity  
8 Tax Simplification Act of 2006”.

1 **SEC. 102. REMOVAL OF CERTAIN LIMITATIONS ON THE AP-**  
2 **PLICATION OF PUBLIC LAW 86-272.**

3 (a) SOLICITATIONS WITH RESPECT TO SALES AND  
4 TRANSACTIONS OF OTHER THAN TANGIBLE PERSONAL  
5 PROPERTY.—Section 101 of the Act entitled “An Act re-  
6 lating to the power of the States to impose net income  
7 taxes on income derived from interstate commerce, and  
8 authorizing studies by congressional committees of mat-  
9 ters pertaining thereto”, approved September 14, 1959  
10 (15 U.S.C. 381 et seq.), is amended—

11 (1) in subsection (a)(1) by striking “of tan-  
12 gible” and all that follows through “State; and” and  
13 inserting the following: “or transactions, which or-  
14 ders are sent outside the State for approval or rejec-  
15 tion and, if approved, are—

16 “(A) in the case of tangible personal prop-  
17 erty, filled by shipment or delivery from a point  
18 outside the State; and

19 “(B) in the case of all other forms of prop-  
20 erty, services, and other transactions, fulfilled  
21 from a point outside the State;

22 and”;

23 (2) in subsection (c)—

24 (A) by inserting “or fulfilling transactions”  
25 after “making sales”;

1 (B) by inserting “or transactions” after  
2 “sales” the other places it appears; and

3 (C) by striking “of tangible personal prop-  
4 erty” each place it appears; and

5 (3) in subsection (d)(1) by striking “the sale of,  
6 tangible personal property” and inserting “a sale or  
7 transaction,”.

8 (b) APPLICATION OF PROHIBITIONS TO OTHER BUSI-  
9 NESS ACTIVITY TAXES.—Title I of the Act entitled “An  
10 Act relating to the power of the States to impose net in-  
11 come taxes on income derived from interstate commerce,  
12 and authorizing studies by congressional committees of  
13 matters pertaining thereto”, approved September 14,  
14 1959 (15 U.S.C. 381 et seq.), is amended by adding at  
15 the end the following:

16 “SEC. 105. Beginning with taxable periods beginning  
17 on or after the first day of the first calendar year that  
18 begins after the date of the enactment of the Business  
19 Activity Tax Simplification Act of 2006, the prohibitions  
20 of section 101 that apply with respect to net income taxes  
21 shall also apply with respect to each other business activity  
22 tax, as defined in section 104 of the Business Activity Tax  
23 Simplification Act of 2006. A State or political subdivision  
24 thereof may not assess or collect any tax which by reason

1 of this section the State or political subdivision may not  
2 impose.”.

3 (c) EFFECTIVE DATE OF SUBSECTION (a) AMEND-  
4 MENTS.—The amendments made by subsection (a) shall  
5 apply with respect to the imposition, assessment, and col-  
6 lection of taxes for taxable periods beginning on or after  
7 the first day of the first calendar year that begins after  
8 the date of the enactment of the Business Activity Tax  
9 Simplification Act of 2006.

10 **SEC. 103. JURISDICTIONAL STANDARD FOR STATE AND**  
11 **LOCAL NET INCOME TAXES AND OTHER BUSI-**  
12 **NESS ACTIVITY TAXES.**

13 (a) IN GENERAL.—No taxing authority of a State  
14 shall have power to impose, assess, or collect a net income  
15 tax or other business activity tax on any person relating  
16 to such person’s activities in interstate commerce unless  
17 such person has a physical presence in the State during  
18 the taxable period with respect to which the tax is im-  
19 posed.

20 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—For  
21 the purposes of subsection (a), a person has a physical  
22 presence in a State only if such person’s business activities  
23 in the State include any of the following, collectively and  
24 on more than 21 days in the aggregate, during such per-  
25 son’s taxable year:

1           (1) Being an individual physically in the State,  
2           or assigning one or more employees to be in the  
3           State, except that the following shall be excluded in  
4           determining whether such 21-day limit has been ex-  
5           ceeded:

6                   (A) Activities in connection with a possible  
7                   or an actual purchase of goods or services, for  
8                   consumption by the person's business.

9                   (B) Gathering news and covering events  
10                  for print, broadcast, or other distribution  
11                  through the media.

12                  (C) Meeting government officials for pur-  
13                  poses other than selling goods or services, for  
14                  consumption by such government.

15                  (D) Merely attending educational or train-  
16                  ing conferences, seminars or other similar func-  
17                  tions.

18                  (E) Participating in charitable activities.

19           (2) Using the services of an agent (excluding an  
20           employee) to establish or maintain the market in the  
21           State, if such agent does not perform business serv-  
22           ices in the State for any other person during such  
23           taxable year.

24           (3) The leasing or owning of tangible personal  
25           property or of real property in the State, except that

1 the following shall be excluded in determining wheth-  
2 er such 21-day limit has been exceeded:

3 (A) Tangible personal property located in  
4 the State for purposes of being assembled, man-  
5 ufactured, processed, or tested by another per-  
6 son for the benefit of the owner or lessee, or  
7 used to furnish a service to the owner or lessee  
8 by another person.

9 (B) Marketing or promotional materials  
10 distributed in the State.

11 (C) Any property to the extent used ancil-  
12 lary to an activity excluded from the computa-  
13 tion of the 21-day period based on paragraph  
14 (1) or (2).

15 (c) TAXABLE PERIODS NOT CONSISTING OF A  
16 YEAR.—If the taxable period for which the tax is imposed  
17 is not a year, then any requirements expressed in days  
18 for establishing physical presence under this subtitle shall  
19 be adjusted pro rata accordingly.

20 (d) EXCEPTIONS.—

21 (1) DOMESTIC BUSINESS ENTITIES AND INDI-  
22 VIDUALS DOMICILED IN, OR RESIDENTS OF, THE  
23 STATE.—Subsection (a) does not apply with respect  
24 to—



1           (A) a person (other than an individual)  
2           that is incorporated or formed under the laws  
3           of the State (or domiciled in the State) in which  
4           the tax is imposed; or

5           (B) an individual who is domiciled in, or a  
6           resident of, the State in which the tax is im-  
7           posed.

8           (2) TAXATION OF PARTNERS AND SIMILAR PER-  
9           SONS.—This section shall not be construed to modify  
10          or affect any State business activity tax liability of  
11          an owner or beneficiary of an entity that is a part-  
12          nership, an S corporation (as defined in section  
13          1361 of the Internal Revenue Code of 1986 (26  
14          U.S.C. 1361)), a limited liability company, a trust,  
15          an estate, or any other similar entity, if the entity  
16          has a physical presence in the State in which the tax  
17          is imposed.

18          (3) PRESERVATION OF AUTHORITY.—This sec-  
19          tion shall not be construed to modify, affect, or su-  
20          persede the authority of a State to bring an enforce-  
21          ment action against a person or entity that may be  
22          engaged in an illegal activity, a sham transaction, or  
23          any perceived or actual abuse in its business activi-  
24          ties if such enforcement action—

1 (A) is of a kind customarily used by the  
2 State; and

3 (B) does not modify, affect, or supersede  
4 the operation of any provision of this subtitle or  
5 of any other Federal law.

6 (4) CERTAIN ACTIVITIES.—With respect to the  
7 following, subsection (b) shall be read by sub-  
8 stituting “at least one day” for “more than 21 days  
9 in the aggregate”:

10 (A) The sale within a State of tangible  
11 personal property, if delivery of the property  
12 originates and is completed within the State.

13 (B) The performance of services that phys-  
14 ically affect real property within a State.

15 (5) EXCEPTION RELATING TO CERTAIN PER-  
16 FORMANCES AND SPORTING EVENTS.—With respect  
17 to the taxation of the following, subsection (b) shall  
18 be read by substituting “at least one day” for “more  
19 than 21 days in the aggregate”:

20 (A) A live performance in a State, before  
21 a live audience of more than 100 individuals.

22 (B) A live sporting event in a State before  
23 more than 100 spectators present at the event.

24 (e) RULE OF CONSTRUCTION.—This section shall not  
25 be construed to modify, affect, or supersede the operation

1 of title I of the Act entitled “An Act relating to the power  
2 of the States to impose net income taxes on income derived  
3 from interstate commerce, and authorizing studies by con-  
4 gressional committees of matters pertaining thereto”, ap-  
5 proved September 14, 1959 (15 U.S.C. 381 et seq.).

6 **SEC. 104. DEFINITIONS.**

7 The following definitions apply in this subtitle:

8 (1) NET INCOME TAX.—The term “net income  
9 tax” has the meaning given that term for the pur-  
10 poses of the Act entitled “An Act relating to the  
11 power of the States to impose net income taxes on  
12 income derived from interstate commerce, and au-  
13 thorizing studies by congressional committees of  
14 matters pertaining thereto”, approved September  
15 14, 1959 (15 U.S.C. 381 et seq.).

16 (2) OTHER BUSINESS ACTIVITY TAX.—

17 (A) The term “other business activity tax”  
18 means—

19 (i) a tax imposed on or measured by  
20 gross receipts, gross income, or gross prof-  
21 its;

22 (ii) a business license tax;

23 (iii) a business and occupation tax;

24 (iv) a franchise tax;

1 (v) a single business tax or a capital  
2 stock tax; or

3 (vi) any other tax imposed by a State  
4 on a business for the right to do business  
5 in the State or measured by the amount  
6 of, or economic results of, business or re-  
7 lated activity conducted in the State.

8 (B) The term “other business activity tax”  
9 does not include a sales tax, a use tax, or a  
10 similar tax, imposed as the result of the sale or  
11 acquisition of goods or services, whether or not  
12 denominated a tax imposed on the privilege of  
13 doing business.

14 (3) STATE.—The term “State” means any of  
15 the several States, the District of Columbia, or any  
16 territory or possession of the United States, or any  
17 political subdivision of any of the foregoing.

18 (4) TANGIBLE PERSONAL PROPERTY.—The  
19 term “tangible personal property” does not include  
20 computer software that is owned and licensed by the  
21 owner to another person.

22 **SEC. 105. EFFECTIVE DATE.**

23 Except as provided otherwise in this subtitle, this  
24 subtitle applies with respect to taxable periods beginning

1 on and after the first day of the first year that begins  
2 after the date of enactment of this Act.

3 **Subtitle B—Attorney**  
4 **Accountability**

5 **SEC. 121. SHORT TITLE.**

6 This subtitle may be cited as the “Lawsuit Abuse Re-  
7 duction Act of 2006”.

8 **SEC. 122. ATTORNEY ACCOUNTABILITY.**

9 Rule 11(c) of the Federal Rules of Civil Procedure  
10 is amended—

11 (1) by amending the first sentence to read as  
12 follows: “If a pleading, motion, or other paper is  
13 signed in violation of this rule, the court, upon mo-  
14 tion or upon its own initiative, shall impose upon the  
15 attorney, law firm, or parties that have violated this  
16 subdivision or are responsible for the violation, an  
17 appropriate sanction, which may include an order to  
18 pay the other party or parties for the reasonable ex-  
19 penses incurred as a direct result of the filing of the  
20 pleading, motion, or other paper, that is the subject  
21 of the violation, including a reasonable attorney’s  
22 fee.”;

23 (2) in paragraph (1)(A)—

1 (A) by striking “Rule 5” and all that fol-  
2 lows through “corrected.” and inserting “Rule  
3 5.”; and

4 (B) by striking “the court may award”  
5 and inserting “the court shall award”; and

6 (3) in paragraph (2), by striking “shall be lim-  
7 ited to what is sufficient” and all that follows  
8 through the end of the paragraph (including sub-  
9 paragraphs (A) and (B)) and inserting “shall be suf-  
10 ficient to deter repetition of such conduct or com-  
11 parable conduct by others similarly situated, and to  
12 compensate the parties that were injured by such  
13 conduct. The sanction may consist of an order to  
14 pay to the party or parties the amount of the rea-  
15 sonable expenses incurred as a direct result of the  
16 filing of the pleading, motion, or other paper that is  
17 the subject of the violation, including a reasonable  
18 attorney’s fee.”.

19 **SEC. 123. APPLICABILITY OF RULE 11 TO STATE CASES AF-**  
20 **FFECTING INTERSTATE COMMERCE.**

21 In any civil action in State court, the court, upon mo-  
22 tion, shall determine within 30 days after the filing of such  
23 motion whether the action substantially affects interstate  
24 commerce. Such court shall make such determination  
25 based on an assessment of the costs to the interstate econ-

1 omy, including the loss of jobs, were the relief requested  
2 granted. If the court determines such action substantially  
3 affects interstate commerce, the provisions of Rule 11 of  
4 the Federal Rules of Civil Procedure shall apply to such  
5 action.

6 **SEC. 124. PREVENTION OF FORUM-SHOPPING.**

7 (a) IN GENERAL.—Subject to subsection (b), a per-  
8 sonal injury claim filed in State or Federal court may be  
9 filed only in the State and, within that State, in the county  
10 (or if there is no State court in the county, the nearest  
11 county where a court of general jurisdiction is located) or  
12 Federal district in which—

13 (1) the person bringing the claim, including an  
14 estate in the case of a decedent and a parent or  
15 guardian in the case of a minor or incompetent—

16 (A) resides at the time of filing; or

17 (B) resided at the time of the alleged in-  
18 jury;

19 (2) the alleged injury or circumstances giving  
20 rise to the personal injury claim allegedly occurred;

21 (3) the defendant's principal place of business  
22 is located, if the defendant is a corporation; or

23 (4) the defendant resides, if the defendant is an  
24 individual.

1           (b) DETERMINATION OF MOST APPROPRIATE  
2 FORUM.—If a person alleges that the injury or cir-  
3 cumstances giving rise to the personal injury claim oc-  
4 curred in more than one county (or Federal district), the  
5 trial court shall determine which State and county (or  
6 Federal district) is the most appropriate forum for the  
7 claim. If the court determines that another forum would  
8 be the most appropriate forum for a claim, the court shall  
9 dismiss the claim. Any otherwise applicable statute of limi-  
10 tations shall be tolled beginning on the date the claim was  
11 filed and ending on the date the claim is dismissed under  
12 this subsection.

13           (c) DEFINITIONS.—In this section:

14           (1) The term “personal injury claim”—

15                   (A) means a civil action brought under  
16 State law by any person to recover for a per-  
17 son’s personal injury, illness, disease, death,  
18 mental or emotional injury, risk of disease, or  
19 other injury, or the costs of medical monitoring  
20 or surveillance (to the extent such claims are  
21 recognized under State law), including any de-  
22 rivative action brought on behalf of any person  
23 on whose injury or risk of injury the action is  
24 based by any representative party, including a



1 spouse, parent, child, or other relative of such  
2 person, a guardian, or an estate;

3 (B) does not include a claim brought as a  
4 class action; and

5 (C) does not include a claim against a  
6 debtor in a case pending under title 11 of the  
7 United States Code that is a personal injury  
8 tort or wrongful death claim within the mean-  
9 ing of section 157(b)(5) of title 28, United  
10 States Code.

11 (2) The term “person” means any individual,  
12 corporation, company, association, firm, partnership,  
13 society, joint stock company, or any other entity, but  
14 not any governmental entity.

15 (3) The term “State” includes the District of  
16 Columbia, the Commonwealth of Puerto Rico, the  
17 United States Virgin Islands, Guam, and any other  
18 territory or possession of the United States.

19 (d) APPLICABILITY.—This section applies to any per-  
20 sonal injury claim filed in Federal or State court on or  
21 after the date of the enactment of this subtitle.

22 **SEC. 125. RULE OF CONSTRUCTION.**

23 Nothing in section 123 or in the amendments made  
24 by section 122 shall be construed to bar or impede the

1 assertion or development of new claims or remedies under  
2 Federal, State, or local civil rights law.

3 **SEC. 126. THREE-STRIKES RULE FOR SUSPENDING ATTOR-**  
4 **NEYS WHO COMMIT MULTIPLE RULE 11 VIO-**  
5 **LATIONS.**

6 (a) MANDATORY SUSPENSION.—Whenever a Federal  
7 district court determines that an attorney has violated  
8 Rule 11 of the Federal Rules of Civil Procedure, the court  
9 shall determine the number of times that the attorney has  
10 violated that rule in that Federal district court during that  
11 attorney’s career. If the court determines that the number  
12 is 3 or more, the Federal district court—

13 (1) shall suspend that attorney from the prac-  
14 tice of law in that Federal district court for 1 year;  
15 and

16 (2) may suspend that attorney from the prac-  
17 tice of law in that Federal district court for any ad-  
18 ditional period that the court considers appropriate.

19 (b) APPEAL; STAY.—An attorney has the right to ap-  
20 peal a suspension under subsection (a). While such an ap-  
21 peal is pending, the suspension shall be stayed.

22 (c) REINSTATEMENT.—To be reinstated to the prac-  
23 tice of law in a Federal district court after completion of  
24 a suspension under subsection (a), the attorney must first

1 petition the court for reinstatement under such procedures  
2 and conditions as the court may prescribe.

3 **SEC. 127. PRESUMPTION OF RULE 11 VIOLATION FOR RE-**  
4 **PEATEDLY RELITIGATING SAME ISSUE.**

5 Whenever a party presents to a Federal court a  
6 pleading, written motion, or other paper, that includes a  
7 claim or defense that the party has already litigated and  
8 lost on the merits in any forum in final decisions not sub-  
9 ject to appeal on 3 consecutive occasions, and the claim  
10 or defense involves the same plaintiff and the same de-  
11 fendant, there shall be a rebuttable presumption that the  
12 presentation of such paper is in violation of Rule 11 of  
13 the Federal Rules of Civil Procedure.

14 **SEC. 128. ENHANCED SANCTIONS FOR DOCUMENT DE-**  
15 **STRUCTION IN PENDING FEDERAL COURT**  
16 **PROCEEDINGS.**

17 Whoever willfully and intentionally influences, ob-  
18 structs, or impedes, or attempts to influence, or obstruct,  
19 or impede, a pending Federal court proceeding through  
20 the willful and intentional destruction of documents  
21 sought pursuant to the rules of such Federal court pro-  
22 ceeding and highly relevant to that proceeding—

23 (1) shall be punished with mandatory civil sanc-  
24 tions of a degree commensurate with the civil sanc-  
25 tions available under Rule 11 of the Federal Rules

1 of Civil Procedure, in addition to any other civil  
2 sanctions that otherwise apply; and

3 (2) shall be held in contempt of court and, if  
4 an attorney, referred to one or more appropriate  
5 State bar associations for disciplinary proceedings.

6 **SEC. 129. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.**

7 (a) IN GENERAL.—In any Rule 11 of the Federal  
8 Rules of Civil Procedure proceeding, a court may not order  
9 that a court record not be disclosed unless the court makes  
10 a finding of fact that identifies the interest that justifies  
11 the order and determines that that interest outweighs any  
12 interest in the public health and safety that the court de-  
13 termines would be served by disclosing the court record.

14 (b) APPLICABILITY.—This section applies to any  
15 record formally filed with the court, but shall not include  
16 any records subject to—

17 (1) the attorney-client privilege or any other  
18 privilege recognized under Federal or State law that  
19 grants the right to prevent disclosure of certain in-  
20 formation unless the privilege has been waived; or

21 (2) applicable State or Federal laws that pro-  
22 tect the confidentiality of crime victims, including  
23 victims of sexual abuse.

1 **TITLE II—INCREASE AMERICA’S**  
2 **TALENT POOL**

3 **SEC. 201. INNOVATION SCHOLARSHIP PROGRAM.**

4 Subpart 6 of part A of title IV is amended to read  
5 as follows:

6 **“Subpart 6—Innovation Scholarship Program**

7 **“SEC. 419A. INNOVATION MATHEMATICS AND SCIENCE**  
8 **HONORS SCHOLARSHIP PROGRAM.**

9 “(a) PURPOSE.—The purpose of this section is to  
10 award scholarships to students who are enrolled in studies  
11 leading to baccalaureate and advanced degrees in physical,  
12 life, or computer sciences, mathematics, and engineering.

13 “(b) DEFINITIONS.—As used in this section—

14 “(1) the term ‘computer science’ means the  
15 branch of knowledge or study of computers, includ-  
16 ing such fields of knowledge or study as computer  
17 hardware, computer software, computer engineering,  
18 information systems, and robotics;

19 “(2) the term ‘eligible student’ means a student  
20 who—

21 “(A) is a citizen of the United States;

22 “(B) is selected by the managing agent to  
23 receive a scholarship;

1           “(C) is enrolled full-time in an institution  
2           of higher education, other than a United States  
3           service academy; and

4           “(D) has shown a commitment to and is  
5           pursuing a major in studies leading to a bacca-  
6           laureate, masters, or doctoral degree (or a com-  
7           bination thereof) in physical, life, or computer  
8           sciences, mathematics, or engineering;

9           “(3) the term ‘engineering’ means the science  
10          by which the properties of matter and the sources of  
11          energy in nature are made useful to humanity in  
12          structures, machines, and products, as in the con-  
13          struction of engines, bridges, buildings, mines, and  
14          chemical plants, including such fields of knowledge  
15          or study as aeronautical engineering, chemical engi-  
16          neering, civil engineering, electrical engineering, in-  
17          dustrial engineering, materials engineering, manu-  
18          facturing engineering, and mechanical engineering;

19          “(4) the term ‘life sciences’ means the branch  
20          of knowledge or study of living things, including  
21          such fields of knowledge or study as biology, bio-  
22          chemistry, biophysics, microbiology, genetics, physi-  
23          ology, botany, zoology, ecology, and behavioral biol-  
24          ogy, except that the term does not encompass social  
25          psychology or the health professions;

1           “(5) the term ‘managing agent’ means an enti-  
2           ty to which an award is made under subsection (c)  
3           to manage a program of Mathematics and Science  
4           Honors Scholarships;

5           “(6) the term ‘mathematics’ means the branch  
6           of knowledge or study of numbers and the system-  
7           atic treatment of magnitude, relationships between  
8           figures and forms, and relations between quantities  
9           expressed symbolically, including such fields of  
10          knowledge or study as statistics, applied mathe-  
11          matics, and operations research; and

12          “(7) the term ‘physical sciences’ means the  
13          branch of knowledge or study of the material uni-  
14          verse, including such fields of knowledge or study as  
15          astronomy, atmospheric sciences, chemistry, earth  
16          sciences, ocean sciences, physics, and planetary  
17          sciences.

18          “(c) AWARD.—

19                 “(1)(A) From funds authorized under section  
20                 419D to carry out this section, the Secretary is au-  
21                 thorized, through a grant or cooperative agreement,  
22                 to make an award to a private, non-profit organiza-  
23                 tion, other than an institution of higher education or  
24                 system of institutions of higher education, to man-  
25                 age, through a public and private partnership, a pro-

1       gram of Mathematics and Science Honors Scholar-  
2       ships under this section.

3               “(B) The award under subparagraph (A) shall  
4       be for a five-year period.

5               “(2)(A) One hundred percent of the funds  
6       awarded under paragraph (1)(A) for any fiscal year  
7       shall be obligated and expended solely on scholar-  
8       ships to eligible students.

9               “(B) No Federal funds shall be used to provide  
10      more than 50 percent of the cost of any scholarship  
11      to an eligible student.

12              “(C) The maximum scholarship award shall be  
13      the difference between an eligible student’s cost of  
14      attendance minus any non-loan based aid such stu-  
15      dent receives.

16              “(3)(A) The secretary may establish—

17                      “(i) eligibility criteria for applicants for  
18                      managing agent, including criteria regarding fi-  
19                      nancial and administrative capability; and

20                      “(ii) operational standards for the man-  
21                      aging agent, including management and per-  
22                      formance requirements, such as audit, record-  
23                      keeping, record retention, and reporting proce-  
24                      dures and requirements.



1           “(B) The Secretary, as necessary, may review  
2           and revise any criteria, standards, and rules estab-  
3           lished under this paragraph and, through the agree-  
4           ment with the managing agent, see that any revi-  
5           sions are implemented.

6           “(4) If the managing agent fails to meet the re-  
7           quirements of this section the Secretary may termi-  
8           nate the award to the managing agent.

9           “(5) The Secretary shall conduct outreach ef-  
10          forts to help raise awareness of the Mathematics and  
11          Science Honors Scholarships.

12          “(d) DUTIES OF THE MANAGING AGENT.—The man-  
13          aging agent shall—

14                 “(1) develop criteria to award Mathematics and  
15                 Science Honors Scholarships based on established  
16                 measurements available to secondary students who  
17                 wish to pursue degrees in physical, life, or computer  
18                 sciences, mathematics, and engineering;

19                 “(2) establish a Mathematics and Science Hon-  
20                 ors Scholarship Fund in a separate, named account  
21                 that clearly discloses the amount of Federal and  
22                 non-Federal funds deposited in the account and used  
23                 for scholarships under this section;

1           “(3) solicit funds for scholarships and for the  
2           administration of the program from non-Federal  
3           sources;

4           “(4) solicit applicants for scholarships;

5           “(5) from the amounts in the Fund, award  
6           scholarships to eligible students and transfer such  
7           funds to the institutions of higher education that  
8           they attend; and

9           “(6) annually submit to the Secretary a finan-  
10          cial audit and a report on the progress of the pro-  
11          gram, and such other documents as the Secretary  
12          may require to determine the effective management  
13          of the program.

14          “(e) APPLICATIONS.—

15                 “(1) Any eligible entity that desires to be the  
16                 managing agent under this section shall submit an  
17                 application to the Secretary, in such form and con-  
18                 taining such information, as the Secretary may re-  
19                 quire.

20                 “(2) Each application shall include a descrip-  
21                 tion of—

22                         “(A) how the applicant meets or will meet  
23                         requirements established under subsections  
24                         (c)(3)(A) and (d);

1           “(B) how the applicant will solicit funds  
2 for scholarships and for the administration of  
3 the program from non-Federal sources;

4           “(C) how the applicant will provide nation-  
5 wide outreach to inform students about the pro-  
6 gram and to encourage students to pursue de-  
7 grees in physical, life, or computer sciences,  
8 mathematics, and engineering;

9           “(D) how the applicant will solicit applica-  
10 tions for scholarships, including how the appli-  
11 cant will balance efforts in urban and rural  
12 areas;

13           “(E) the selection criteria based on estab-  
14 lished measurements available to secondary stu-  
15 dents the applicant will use to award scholar-  
16 ships and to renew those awards;

17           “(F) how the applicant will inform the in-  
18 stitution of higher education chosen by the re-  
19 cipient of the name and scholarship amount of  
20 the recipient;

21           “(G) what procedures and assurances the  
22 applicant and the institution of higher edu-  
23 cation that the recipient attends will use to  
24 verify student eligibility, attendance, degree  
25 progress, and academic performance and to de-

1           liver and account for payments to such institu-  
2           tion;

3           “(H) the management (including audit and  
4           accounting) procedures the applicant will use  
5           for the program;

6           “(I) the human, financial, and other re-  
7           sources that the applicant will need and use to  
8           manage the program;

9           “(J) how the applicant will evaluate the  
10          program and report to the Secretary annually;  
11          and

12          “(K) a description of how the entity will  
13          coordinate with, complement, and build on simi-  
14          lar public and private mathematics and science  
15          programs.

16          “(f) SCHOLARSHIP RECIPIENTS.—

17                 “(1) A student receiving a scholarship under  
18                 this section shall be known as a ‘Innovation Mathe-  
19                 matics and Science Honors Scholar’.

20                 “(2) Any student desiring to receive a scholar-  
21                 ship under this section shall submit an application  
22                 to the managing agent in such form, and containing  
23                 such information, as the managing agent may re-  
24                 quire.

1           “(3) Any student that receives a scholarship  
2           under this section shall enter into an agreement with  
3           the managing agent to complete 5 consecutive years  
4           of service to begin no later than 12 months following  
5           completion of the final degree in a position related  
6           to physical, life, or computer sciences, mathematics,  
7           or engineering as defined under this section.

8           “(4) If any student that receives a scholarship  
9           under this section fails to earn at least a bacca-  
10          laureate degree in physical, life, or computer  
11          sciences, mathematics, or engineering as defined  
12          under this section, the student shall repay to the  
13          managing agent the amount of any financial assist-  
14          ance paid to such student.

15          “(5) If any student that receives a scholarship  
16          under this section fails to meet the requirements of  
17          paragraph (3), the student shall repay to the man-  
18          aging agent the amount of any financial assistance  
19          paid to such student.

20          “(6)(A) Scholarships shall be awarded for only  
21          one academic year of study at a time.

22          “(B)(i) A scholarship shall be renewable on an  
23          annual basis for the established length of the aca-  
24          demic program if the student awarded the scholar-  
25          ship remains eligible.

1           “(ii) The managing agent may condition re-  
2           newal of a scholarship on measures of academic  
3           progress and achievement, with the approval of the  
4           Secretary.

5           “(C)(i) If a student fails to either remain eligi-  
6           ble or meet established measures of academic  
7           progress and achievement, the managing agent shall  
8           instruct the student’s institution of higher education  
9           to suspend payment of the student’s scholarship.

10           “(ii) A suspension of payment shall remain in  
11           effect until the student is able to demonstrate to the  
12           satisfaction of the managing agent that he or she is  
13           again eligible and meets the established measures of  
14           academic progress and achievement.

15           “(iii) A student’s eligibility for a scholarship  
16           shall be terminated if a suspension period exceeds  
17           12 months.

18           “(D)(i)(I) A student awarded a scholarship  
19           may, in a manner and under the terms established  
20           by, and with the approval of, the managing agent,  
21           postpone or interrupt his or her enrollment at an in-  
22           stitution of higher education for up to 12 months.

23           “(II) Such a postponement or interruption shall  
24           not be considered a suspension for purposes of sub-  
25           paragraph (C).

1           “(ii) Neither a student nor the student’s insti-  
2           tution of higher education shall receive the student’s  
3           scholarship payments during the period of postpone-  
4           ment or interruption, but such payments shall re-  
5           sume upon enrollment or reenrollment.

6           “(iii) In exceptional circumstances, such as seri-  
7           ous injury or illness or the necessity to care for fam-  
8           ily members, the student’s postponement or inter-  
9           ruption may, upon notification and approval of the  
10          managing agent, be extended beyond the 12 month  
11          period described in clause (i)(I).

12          “(g) RESPONSIBILITIES OF INSTITUTION OF HIGHER  
13          EDUCATION.—

14                 “(1) The managing agent shall require any in-  
15                 stitution of higher education that enrolls a student  
16                 who receives a scholarship under this section to an-  
17                 nually provide an assurance, prior to making any  
18                 payment, that the student—

19                         “(A) is eligible in accordance with sub-  
20                         section (b)(2); and

21                         “(B) has provided the institution with a  
22                         written commitment to attend, or is attending,  
23                         classes and is satisfactorily meeting the institu-  
24                         tion’s academic criteria for enrollment in its  
25                         program of study.

1           “(2)(A) The managing agent shall provide the  
2 institution of higher education with payments from  
3 the Fund for selected recipients in at least two in-  
4 stallments.

5           “(B) An institution of higher education shall re-  
6 turn prorated amounts of any scholarship payment  
7 to the managing agent, who shall deposit it in to the  
8 Fund, if a recipient declines a scholarship, does not  
9 attend courses, transfers to another institution of  
10 higher education, or becomes ineligible for a scholar-  
11 ship.

12 **“SEC. 419B. MATHEMATICS AND SCIENCE INCENTIVE PRO-**  
13 **GRAM.**

14           “(a) PROGRAM.—

15           “(1) IN GENERAL.—The Secretary is authorized  
16 to carry out a program of assuming the obligation  
17 to pay, pursuant to the provisions of this section, the  
18 interest on a loan made, insured, or guaranteed  
19 under part B or D of this title.

20           “(2) ELIGIBILITY.—The Secretary may assume  
21 interest payments under paragraph (1) only for a  
22 borrower who—

23           “(A) has submitted an application in com-  
24 pliance with subsection (d);



1           “(B) obtained one or more loans described  
2           in paragraph (1) as an undergraduate student;

3           “(C) is a new borrower (within the mean-  
4           ing of section 103(7) of this Act) on or after  
5           the date of enactment of the College Access and  
6           Opportunity Act of 2005;

7           “(D) is a highly qualified teacher of  
8           science, technology, engineering or mathematics  
9           at an elementary or secondary school in a high  
10          need local educational agency, or is a mathe-  
11          matics, science, or engineering professional; and

12          “(E) enters into an agreement with the  
13          Secretary to complete 5 consecutive years of  
14          service in a position described in subparagraph  
15          (D), starting on the date of the agreement.

16          “(3) PRIOR INTEREST LIMITATIONS.—The Sec-  
17          retary shall not make any payments for interest  
18          that—

19                 “(A) accrues prior to the beginning of the  
20                 repayment period on a loan in the case of a  
21                 loan made under section 428H or a Federal Di-  
22                 rect Unsubsidized Stafford Loan; or

23                 “(B) has accrued prior to the signing of an  
24                 agreement under paragraph (2)(E).

1           “(4) INITIAL SELECTION.—In selecting partici-  
2 pants for the program under this section, the Sec-  
3 retary—

4           “(A) shall choose among eligible applicants  
5 on the basis of—

6           “(i) the national security, homeland  
7 security, and economic security needs of  
8 the United States, as determined by the  
9 Secretary, in consultation with other Fed-  
10 eral agencies, including the Departments  
11 of Labor, Defense, Homeland Security,  
12 Commerce, and Energy, the Central Intel-  
13 ligence Agency, and the National Science  
14 Foundation; and

15           “(ii) the academic record or job per-  
16 formance of the applicant; and

17           “(B) may choose among eligible applicants  
18 on the basis of—

19           “(i) the likelihood of the applicant to  
20 complete the 5-year service obligation;

21           “(ii) the likelihood of the applicant to  
22 remain in science, mathematics, or engi-  
23 neering after the completion of the service  
24 requirement; or

1                   “(iii) other relevant criteria deter-  
2                   mined by the Secretary.

3                   “(5) AVAILABILITY SUBJECT TO APPROPRIA-  
4                   TIONS.—Loan interest payments under this section  
5                   shall be subject to the availability of appropriations.  
6                   If the amount appropriated for any fiscal year is not  
7                   sufficient to provide interest payments on behalf of  
8                   all qualified applicants, the Secretary shall give pri-  
9                   ority to those individuals on whose behalf interest  
10                  payments were made during the preceding fiscal  
11                  year.

12                  “(6) REGULATIONS.—The Secretary is author-  
13                  ized to prescribe such regulations as may be nec-  
14                  essary to carry out the provisions of this section.

15                  “(b) DURATION AND AMOUNT OF INTEREST PAY-  
16                  MENTS.—The period during which the Secretary shall pay  
17                  interest on behalf of a student borrower who is selected  
18                  under subsection (a) is the period that begins on the effec-  
19                  tive date of the agreement under subsection (a)(2)(E),  
20                  continues after successful completion of the service obliga-  
21                  tion, and ends on the earlier of—

22                         “(1) the completion of the repayment period of  
23                         the loan;

24                         “(2) payment by the Secretary of a total of  
25                         \$5,000 on behalf of the borrower;

1           “(3) if the borrower ceases to fulfill the service  
2           obligation under such agreement prior to the end of  
3           the 5-year period, as soon as the borrower is deter-  
4           mined to have ceased to fulfill such obligation in ac-  
5           cordance with regulations of the Secretary; or

6           “(4) 6 months after the end of any calendar  
7           year in which the borrower’s gross income equals or  
8           exceeds 4 times the national per capita disposable  
9           personal income (current dollars) for such calendar  
10          year, as determined on the basis of the National In-  
11          come and Product Accounts Tables of the Bureau of  
12          Economic Analysis of the Department of Commerce,  
13          as determined in accordance with regulations pre-  
14          scribed by the Secretary.

15          “(c) REPAYMENT TO ELIGIBLE LENDERS.—Subject  
16          to the regulations prescribed by the Secretary by regula-  
17          tion under subsection (a)(6), the Secretary shall pay to  
18          each eligible lender or holder for each payment period the  
19          amount of the interest that accrues on a loan of a student  
20          borrower who is selected under subsection (a).

21          “(d) APPLICATION FOR REPAYMENT.—

22                 “(1) IN GENERAL.—Each eligible individual de-  
23                 siring loan interest payment under this section shall  
24                 submit a complete and accurate application to the  
25                 Secretary at such time, in such manner, and con-

1       taining such information as the Secretary may re-  
2       quire.

3           “(2) FAILURE TO COMPLETE SERVICE AGREE-  
4       MENT.—Such application shall contain an agreement  
5       by the individual that, if the individual fails to com-  
6       plete the 5 consecutive years of service required by  
7       subsection (a)(2)(E), the individual agrees to repay  
8       the Secretary the amount of any interest paid by the  
9       Secretary on behalf of the individual.

10       “(e) TREATMENT OF CONSOLIDATION LOANS.—A  
11       consolidation loan made under section 428C of this Act,  
12       or a Federal Direct Consolidation Loan made under part  
13       D of title IV of this Act, may be a qualified loan for the  
14       purpose of this section only to the extent that such loan  
15       amount was used by a borrower who otherwise meets the  
16       requirements of this section to repay—

17           “(1) a loan made under section 428 or 428H  
18       of this Act; or

19           “(2) a Federal Direct Stafford Loan, or a Fed-  
20       eral Direct Unsubsidized Stafford Loan, made under  
21       part D of title IV of this Act.

22       “(f) PREVENTION OF DOUBLE BENEFITS.—No bor-  
23       rower may, for the same service, receive a benefit under  
24       both this section and—

1           “(1) any loan forgiveness program under title  
2           IV of this Act; or

3           “(2) subtitle D of title I of the National and  
4           Community Service Act of 1990 (42 U.S.C. 12601  
5           et seq.).

6           “(g) DEFINITIONS.—As used in this section—

7           “(1) the term ‘high need local educational agen-  
8           cy’ has the same meaning given such term in section  
9           201(b)(4); and

10          “(2) the term ‘mathematics, science, or engi-  
11          neering professional’ means a person who—

12                 “(A) holds a baccalaureate, masters, or  
13                 doctoral degree (or a combination thereof) in  
14                 science, mathematics, or engineering; and

15                 “(B) works in a field the Secretary deter-  
16                 mines is closely related to that degree, which  
17                 shall include working as a professor at a two-  
18                 or four-year institution of higher education.

19           **“SEC. 419C. MATHEMATICS AND SCIENCE EDUCATION CO-  
20           ORDINATING COUNCIL GRANTS.**

21           “(a) PURPOSES.—The purposes of this section in-  
22           clude—

23                 “(1) supporting programs that encourage stu-  
24                 dents to enroll in and successfully complete bacca-

1 laureate and advanced degrees in science, tech-  
2 nology, engineering, and mathematics;

3 “(2) achieving the common objective of orga-  
4 nizing, leading, and implementing State-based re-  
5 form agendas that support the continuing improve-  
6 ment of mathematics and science education; and

7 “(3) improving collaboration in a State among  
8 the State educational agency, 2-year and 4-year in-  
9 stitutions of higher education, and the business com-  
10 munity through the development or improvement of  
11 a coordinating council.

12 “(b) DEFINITIONS.—For the purposes of this section:

13 “(1) the term ‘eligible State’ means—

14 “(A) the Governor of a State; or

15 “(B) in the case of a State for which the  
16 constitution or laws of the State designate an  
17 individual, entity, or agency in the State, other  
18 than the Governor, to be responsible for coordi-  
19 nation among segments of the State’s edu-  
20 cational systems, such individual, entity, or  
21 agency.

22 “(2) the term ‘mathematics and science edu-  
23 cation coordinating council’ means an organization  
24 that is charged by a State with coordinating mathe-  
25 matics and science education in the State. Such a

1 council shall be composed of education, business,  
2 and community leaders working together to increase  
3 student participation and academic achievement in  
4 mathematics and science.

5 “(c) STATE GRANTS.—From amounts made available  
6 under section 419D for this section, the Secretary is au-  
7 thorized to use not more than \$5,000,000 to award grants  
8 on a competitive basis to eligible States for the purpose  
9 of carrying out activities described in subsection (d).

10 “(d) USES OF FUNDS.—An eligible State that re-  
11 ceives a grant under this section is authorized to use grant  
12 funds to carry out one or more of the following activities:

13 “(1) In a State in which a mathematics and  
14 science education coordinating council does not exist,  
15 planning and establishing such a council.

16 “(2) In a State in which such a council exists,  
17 reforming or expanding the activities of the council,  
18 including implementing State-based reform agendas  
19 that support the continuing improvement of mathe-  
20 matics and science education, and support services  
21 that lead to better teacher recruitment and training,  
22 increased student academic achievement, and in-  
23 creased student enrollment and degree attainment in  
24 science, technology, engineering, and mathematics.



1           “(3) Coordinating with activities under part B  
2 of title II of the Elementary and Secondary Edu-  
3 cation Act of 1965 and with title II of this Act, es-  
4 pecially as it pertains to the recruitment and prepa-  
5 ration of highly qualified mathematics and science  
6 teachers.

7           “(e) APPLICATION.—To be eligible to receive a grant  
8 under this section, an eligible State shall submit an appli-  
9 cation to the Secretary that—

10           “(1) describes the activities the State will carry  
11 out with the funds;

12           “(2) contains a plan for continuing such activi-  
13 ties once Federal funding ceases; and

14           “(3) contains such other information and assur-  
15 ances as the Secretary may require.

16           “(f) CONSULTATION.—The Governor of a State, or  
17 the individual, entity, or agency in the State described in  
18 subsection (b)(1)(B), shall consult with the State board  
19 of education, State educational agency, and the State  
20 agency for higher education, as appropriate, with respect  
21 to the activities assisted under this section. In the case  
22 of an individual, entity, or agency described in subsection  
23 (b)(1)(B), such consultation shall also include the Gov-  
24 ernor.

1       “(g) CONSTRUCTION.—Nothing in this section shall  
2 be construed to negate or supersede the legal authority  
3 under State law of any State agency, State entity, or State  
4 public official over programs that are under the jurisdic-  
5 tion of the agency, entity, or official.

6       “(h) ADMINISTRATIVE PROVISIONS.—

7           “(1) IN GENERAL.—

8               “(A) Grants awarded under this section  
9 shall be awarded for a period not to exceed 5  
10 years.

11               “(B) A grantee may receive a grant under  
12 this part only once.

13               “(C) Payments of grant funds under this  
14 section shall be annual.

15           “(2) SECRETARIAL SELECTIONS.—The Sec-  
16 retary shall determine which applications receive  
17 funds under this section, and the amount of the  
18 grant. In determining grant amounts, the Secretary  
19 shall take into account the total amount of funds  
20 available for all grants under this section and the  
21 nature of each grant proposal, including whether  
22 funds are being sought to assist in the creation of  
23 a new State mathematics and science education co-  
24 ordinating council or to extend the work of an exist-  
25 ing council. The Secretary shall also take into ac-

1 count the equitable geographic distribution of grants  
2 throughout the United States.

3 “(3) MATCHING REQUIREMENT.—Each eligible  
4 State receiving a grant under this section shall pro-  
5 vide, from non-Federal sources, an amount equal to  
6 50 percent of the amount of the grant (in cash or  
7 in kind) to carry out the activities supported by the  
8 grant.

9 “(i) ACCOUNTABILITY AND EVALUATION.—

10 “(1) STATE GRANT ACCOUNTABILITY RE-  
11 PORT.—An eligible State that receives a grant under  
12 this section shall submit an annual accountability re-  
13 port to the Secretary. Such report shall include a de-  
14 scription of the degree to which the eligible State, in  
15 using grant funds, has made substantial progress in  
16 meeting its objectives.

17 “(2) EVALUATION AND DISSEMINATION.—The  
18 Secretary shall evaluate the activities funded under  
19 this section and report the Secretary’s findings re-  
20 garding such activities to the authorizing commit-  
21 tees. The Secretary shall broadly disseminate suc-  
22 cessful practices developed by eligible States under  
23 this section, and shall broadly disseminate informa-  
24 tion regarding such practices that were found to be  
25 ineffective.

1           “(3) REVOCATION.—If the Secretary deter-  
2           mines that an eligible State is not making substan-  
3           tial progress in meeting the purposes, objectives, and  
4           measures, as appropriate, required under this sec-  
5           tion by the end of the second year of a grant, then  
6           the grant payment shall not be made for the third  
7           year and subsequent years of the grant.

8   **“SEC. 419D. AUTHORIZATION OF APPROPRIATIONS.**

9           “There are authorized to be appropriated  
10          \$41,000,000 for fiscal year 2006 and such sums as may  
11          be necessary for each of the 5 succeeding fiscal years to  
12          carry out this subpart.”.

13                   **TITLE III—PROMOTION OF**  
14                   **RESEARCH AND DEVELOPMENT**

15   **SEC. 301. SHORT TITLE.**

16           This title may be cited as the “Investment in America  
17          Act of 2006”.

18   **SEC. 302. FINDINGS.**

19           The Congress finds as follows:

20                   (1) Research and development performed in the  
21                   United States results in quality jobs, better and  
22                   safer products, increased ownership of technology-  
23                   based intellectual property, and higher productivity  
24                   in the United States.

1           (2) The extent to which companies perform and  
2           increase research and development activities in the  
3           United States is in part dependent on Federal tax  
4           policy.

5           (3) The Congress should make permanent a re-  
6           search and development credit that provides a mean-  
7           ingful incentive to all types of taxpayers.

8   **SEC. 303. PERMANENT EXTENSION OF RESEARCH CREDIT.**

9           (a) IN GENERAL.—Section 41 of the Internal Rev-  
10          enue Code of 1986 (relating to credit for increasing re-  
11          search activities) is amended by striking subsection (h).

12          (b) CONFORMING AMENDMENT.—Paragraph (1) of  
13          section 45C(b) of such Code is amended by striking sub-  
14          paragraph (D).

15          (c) EFFECTIVE DATE.—The amendments made by  
16          this section shall apply to amounts paid or incurred after  
17          the date of the enactment of this Act.

18   **SEC. 304. INCREASE IN RATES OF ALTERNATIVE INCRE-**  
19                           **MENTAL CREDIT.**

20          (a) IN GENERAL.—Subparagraph (A) of section  
21          41(c)(4) of the Internal Revenue Code of 1986 (relating  
22          to election of alternative incremental credit) is amended—

23                  (1) by striking “2.65 percent” and inserting “3  
24          percent”,

1           (2) by striking “3.2 percent” and inserting “4  
2           percent”, and

3           (3) by striking “3.75 percent” and inserting “5  
4           percent”.

5           (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall apply to taxable years ending after the  
7 date of the enactment of this Act.

8   **SEC. 305. ALTERNATIVE SIMPLIFIED CREDIT FOR QUALI-**  
9                                   **FIED RESEARCH EXPENSES.**

10          (a) IN GENERAL.—Subsection (c) of section 41 of the  
11 Internal Revenue Code of 1986 (relating to base amount)  
12 is amended by redesignating paragraphs (5) and (6) as  
13 paragraphs (6) and (7), respectively, and by inserting  
14 after paragraph (4) the following new paragraph:

15                   “(5) ELECTION OF ALTERNATIVE SIMPLIFIED  
16           CREDIT.—

17                           “(A) IN GENERAL.—At the election of the  
18           taxpayer, the credit determined under sub-  
19           section (a)(1) shall be equal to 12 percent of so  
20           much of the qualified research expenses for the  
21           taxable year as exceeds 50 percent of the aver-  
22           age qualified research expenses for the 3 tax-  
23           able years preceding the taxable year for which  
24           the credit is being determined.

1           “(B) SPECIAL RULE IN CASE OF NO  
2 QUALIFIED RESEARCH EXPENSES IN ANY OF 3  
3 PRECEDING TAXABLE YEARS.—

4           “(i) TAXPAYERS TO WHICH SUBPARA-  
5 GRAPH APPLIES.—The credit under this  
6 paragraph shall be determined under this  
7 subparagraph if the taxpayer has no quali-  
8 fied research expenses in any one of the 3  
9 taxable years preceding the taxable year  
10 for which the credit is being determined.

11           “(ii) CREDIT RATE.—The credit de-  
12 termined under this subparagraph shall be  
13 equal to 6 percent of the qualified research  
14 expenses for the taxable year.

15           “(C) ELECTION.—An election under this  
16 paragraph shall apply to the taxable year for  
17 which made and all succeeding taxable years  
18 unless revoked with the consent of the Sec-  
19 retary. An election under this paragraph may  
20 not be made for any taxable year to which an  
21 election under paragraph (4) applies.”.

22           (b) COORDINATION WITH ELECTION OF ALTER-  
23 NATIVE INCREMENTAL CREDIT.—

24           (1) IN GENERAL.—Section 41(c)(4)(B) of such  
25 Code (relating to election) is amended by adding at

1 the end the following: “An election under this para-  
2 graph may not be made for any taxable year to  
3 which an election under paragraph (5) applies.”.

4 (2) TRANSITION RULE.—In the case of an elec-  
5 tion under section 41(c)(4) of the Internal Revenue  
6 Code of 1986 which applies to the taxable year  
7 which includes the date of the enactment of this Act,  
8 such election shall be treated as revoked with the  
9 consent of the Secretary of the Treasury if the tax-  
10 payer makes an election under section 41(c)(5) of  
11 such Code (as added by subsection (a)) for such  
12 year.

13 (c) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years ending after the  
15 date of the enactment of this Act.

16 **TITLE IV—INCREASE ACCESS TO**  
17 **AND EFFICIENCY OF HEALTH**  
18 **CARE**

19 **Subtitle A—Health Care Choice**

20 **SEC. 401. SHORT TITLE OF SUBTITLE.**

21 This subtitle may be cited as “Health Care Choice  
22 Act of 2006”.



1 **SEC. 402. SPECIFICATION OF CONSTITUTIONAL AUTHORITY**  
2 **FOR ENACTMENT OF LAW.**

3 This subtitle is enacted pursuant to the power grant-  
4 ed Congress under article I, section 8, clause 3, of the  
5 United States Constitution.

6 **SEC. 403. FINDINGS.**

7 Congress finds the following:

8 (1) The application of numerous and significant  
9 variations in State law impacts the ability of insur-  
10 ers to offer, and individuals to obtain, affordable in-  
11 dividual health insurance coverage, thereby impeding  
12 commerce in individual health insurance coverage.

13 (2) Individual health insurance coverage is in-  
14 creasingly offered through the Internet, other elec-  
15 tronic means, and by mail, all of which are inher-  
16 ently part of interstate commerce.

17 (3) In response to these issues, it is appropriate  
18 to encourage increased efficiency in the offering of  
19 individual health insurance coverage through a col-  
20 laborative approach by the States in regulating this  
21 coverage.

22 (4) The establishment of risk-retention groups  
23 has provided a successful model for the sale of insur-  
24 ance across State lines, as the acts establishing  
25 those groups allow insurance to be sold in multiple  
26 States but regulated by a single State.

1 **SEC. 404. COOPERATIVE GOVERNING OF INDIVIDUAL**  
2 **HEALTH INSURANCE COVERAGE.**

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

6 “PART D—COOPERATIVE GOVERNING OF INDIVIDUAL  
7 HEALTH INSURANCE COVERAGE

8 “DEFINITIONS

9 “SEC. 2795. In this part:

10 “(1) PRIMARY STATE.—The term ‘primary  
11 State’ means, with respect to individual health insur-  
12 ance coverage offered by a health insurance issuer,  
13 the State designated by the issuer as the State  
14 whose covered laws shall govern the health insurance  
15 issuer in the sale of such coverage under this part.  
16 An issuer, with respect to a particular policy, may  
17 only designate one such State as its primary State  
18 with respect to all such coverage it offers. Such an  
19 issuer may not change the designated primary State  
20 with respect to individual health insurance coverage  
21 once the policy is issued, except that such a change  
22 may be made upon renewal of the policy. With re-  
23 spect to such designated State, the issuer is deemed  
24 to be doing business in that State.

25 “(2) SECONDARY STATE.—The term ‘secondary  
26 State’ means, with respect to individual health insur-

1       ance coverage offered by a health insurance issuer,  
2       any State that is not the primary State. In the case  
3       of a health insurance issuer that is selling a policy  
4       in, or to a resident of, a secondary State, the issuer  
5       is deemed to be doing business in that secondary  
6       State.

7               “(3) HEALTH INSURANCE ISSUER.—The term  
8       ‘health insurance issuer’ has the meaning given such  
9       term in section 2791(b)(2), except that such an  
10       issuer must be licensed in the primary State and be  
11       qualified to sell individual health insurance coverage  
12       in that State.

13               “(4) INDIVIDUAL HEALTH INSURANCE COV-  
14       ERAGE.—The term ‘individual health insurance cov-  
15       erage’ means health insurance coverage offered in  
16       the individual market, as defined in section  
17       2791(e)(1).

18               “(5) APPLICABLE STATE AUTHORITY.—The  
19       term ‘applicable State authority’ means, with respect  
20       to a health insurance issuer in a State, the State in-  
21       surance commissioner or official or officials des-  
22       ignated by the State to enforce the requirements of  
23       this title for the State with respect to the issuer.

24               “(6) HAZARDOUS FINANCIAL CONDITION.—The  
25       term ‘hazardous financial condition’ means that,

1 based on its present or reasonably anticipated finan-  
2 cial condition, a health insurance issuer is unlikely  
3 to be able—

4 “(A) to meet obligations to policyholders  
5 with respect to known claims and reasonably  
6 anticipated claims; or

7 “(B) to pay other obligations in the normal  
8 course of business.

9 “(7) COVERED LAWS.—The term ‘covered laws’  
10 means the laws, rules, regulations, agreements, and  
11 orders governing the insurance business pertaining  
12 to—

13 “(A) individual health insurance coverage  
14 issued by a health insurance issuer;

15 “(B) the offer, sale, and issuance of indi-  
16 vidual health insurance coverage to an indi-  
17 vidual; and

18 “(C) the provision to an individual in rela-  
19 tion to individual health insurance coverage  
20 of—

21 “(i) health care and insurance related  
22 services;

23 “(ii) management, operations, and in-  
24 vestment activities of a health insurance  
25 issuer; and

1                   “(iii) loss control and claims adminis-  
2                   tration for a health insurance issuer with  
3                   respect to liability for which the issuer pro-  
4                   vides insurance.

5                   “(8) STATE.—The term ‘State’ means only the  
6                   50 States and the District of Columbia.

7                   “(9) UNFAIR CLAIMS SETTLEMENT PRAC-  
8                   TICES.—The term ‘unfair claims settlement prac-  
9                   tices’ means only the following practices:

10                   “(A) Knowingly misrepresenting to claim-  
11                   ants and insured individuals relevant facts or  
12                   policy provisions relating to coverage at issue.

13                   “(B) Failing to acknowledge with reason-  
14                   able promptness pertinent communications with  
15                   respect to claims arising under policies.

16                   “(C) Failing to adopt and implement rea-  
17                   sonable standards for the prompt investigation  
18                   and settlement of claims arising under policies.

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

22                   “(E) Refusing to pay claims without con-  
23                   ducting a reasonable investigation.

24                   “(F) Failing to affirm or deny coverage of  
25                   claims within a reasonable period of time after

1           having completed an investigation related to  
2           those claims.

3           “(10) FRAUD AND ABUSE.—The term ‘fraud  
4           and abuse’ means an act or omission committed by  
5           a person who, knowingly and with intent to defraud,  
6           commits, or conceals any material information con-  
7           cerning, one or more of the following:

8                   “(A) Presenting, causing to be presented  
9                   or preparing with knowledge or belief that it  
10                  will be presented to or by an insurer, a rein-  
11                  surer, broker or its agent, false information as  
12                  part of, in support of or concerning a fact ma-  
13                  terial to one or more of the following:

14                           “(i) An application for the issuance or  
15                           renewal of an insurance policy or reinsur-  
16                           ance contract.

17                           “(ii) The rating of an insurance policy  
18                           or reinsurance contract.

19                           “(iii) A claim for payment or benefit  
20                           pursuant to an insurance policy or reinsur-  
21                           ance contract.

22                           “(iv) Premiums paid on an insurance  
23                           policy or reinsurance contract.

1           “(v) Payments made in accordance  
2           with the terms of an insurance policy or  
3           reinsurance contract.

4           “(vi) A document filed with the com-  
5           missioner or the chief insurance regulatory  
6           official of another jurisdiction.

7           “(vii) The financial condition of an in-  
8           surer or reinsurer.

9           “(viii) The formation, acquisition,  
10          merger, reconsolidation, dissolution or  
11          withdrawal from one or more lines of in-  
12          surance or reinsurance in all or part of a  
13          State by an insurer or reinsurer.

14          “(ix) The issuance of written evidence  
15          of insurance.

16          “(x) The reinstatement of an insur-  
17          ance policy.

18          “(B) Solicitation or acceptance of new or  
19          renewal insurance risks on behalf of an insurer  
20          reinsurer or other person engaged in the busi-  
21          ness of insurance by a person who knows or  
22          should know that the insurer or other person  
23          responsible for the risk is insolvent at the time  
24          of the transaction.

1           “(C) Transaction of the business of insur-  
2           ance in violation of laws requiring a license, cer-  
3           tificate of authority or other legal authority for  
4           the transaction of the business of insurance.

5           “(D) Attempt to commit, aiding or abet-  
6           ting in the commission of, or conspiracy to com-  
7           mit the acts or omissions specified in this para-  
8           graph.

9                           “APPLICATION OF LAW

10          “SEC. 2796. (a) IN GENERAL.—The covered laws of  
11 the primary State shall apply to individual health insur-  
12 ance coverage offered by a health insurance issuer in the  
13 primary State and in any secondary State, but only if the  
14 coverage and issuer comply with the conditions of this sec-  
15 tion with respect to the offering of coverage in any sec-  
16 ondary State.

17          “(b) EXEMPTIONS FROM COVERED LAWS IN A SEC-  
18 ONDARY STATE.—Except as provided in this section, a  
19 health insurance issuer with respect to its offer, sale, re-  
20 newal, and issuance of individual health insurance cov-  
21 erage in any secondary State is exempt from any covered  
22 laws of the secondary State (and any rules, regulations,  
23 agreements, or orders sought or issued by such State  
24 under or related to such covered laws) to the extent that  
25 such laws would—



1           “(1) make unlawful, or regulate, directly or in-  
2 directly, the operation of the health insurance issuer  
3 operating in the secondary State, except that any  
4 secondary State may require such an issuer—

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

10                   “(B) to register with and designate the  
11 State insurance commissioner as its agent solely  
12 for the purpose of receiving service of legal doc-  
13 uments or process;

14                   “(C) to submit to an examination of its fi-  
15 nancial condition by the State insurance com-  
16 missioner in any State in which the issuer is  
17 doing business to determine the issuer’s finan-  
18 cial condition, if—

19                           “(i) the State insurance commissioner  
20 of the primary State has not done an ex-  
21 amination within the period recommended  
22 by the National Association of Insurance  
23 Commissioners; and

24                           “(ii) any such examination is con-  
25 ducted in accordance with the examiners’

1 handbook of the National Association of  
2 Insurance Commissioners and is coordi-  
3 nated to avoid unjustified duplication and  
4 unjustified repetition;

5 “(D) to comply with a lawful order  
6 issued—

7 “(i) in a delinquency proceeding com-  
8 menced by the State insurance commis-  
9 sioner if there has been a finding of finan-  
10 cial impairment under subparagraph (C);  
11 or

12 “(ii) in a voluntary dissolution pro-  
13 ceeding;

14 “(E) to comply with an injunction issued  
15 by a court of competent jurisdiction, upon a pe-  
16 tition by the State insurance commissioner al-  
17 leging that the issuer is in hazardous financial  
18 condition;

19 “(F) to participate, on a nondiscriminatory  
20 basis, in any insurance insolvency guaranty as-  
21 sociation or similar association to which a  
22 health insurance issuer in the State is required  
23 to belong;

24 “(G) to comply with any State law regard-  
25 ing fraud and abuse (as defined in section

1           2795(10)), except that if the State seeks an in-  
2           junction regarding the conduct described in this  
3           subparagraph, such injunction must be obtained  
4           from a court of competent jurisdiction; or

5                   “(H) to comply with any State law regard-  
6           ing unfair claims settlement practices (as de-  
7           fined in section 2795(9));

8                   “(2) require any individual health insurance  
9           coverage issued by the issuer to be countersigned by  
10          an insurance agent or broker residing in that Sec-  
11          ondary State; or

12                   “(3) otherwise discriminate against the issuer  
13          issuing insurance in both the primary State and in  
14          any secondary State.

15          “(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A  
16          health insurance issuer shall provide the following, in 12-  
17          point bold type, in any insurance coverage offered in a  
18          secondary State under this part by such a health insur-  
19          ance issuer and at renewal of the policy, with the 5 blank  
20          spaces therein being appropriately filled with the name of  
21          the health insurance issuer, the name of primary State,  
22          the name of the secondary State, the name of the sec-  
23          ondary State, and the name of the secondary State, re-  
24          spectively, for the coverage concerned:

**Notice**

1  
2       **‘This policy is issued by \_\_\_\_\_ and is**  
3 **governed by the laws and regulations of the**  
4 **State of \_\_\_\_\_, and it has met all the laws**  
5 **of that State as determined by that State’s De-**  
6 **partment of Insurance. This policy may be**  
7 **less expensive than others because it is not**  
8 **subject to all of the insurance laws and regu-**  
9 **lations of the State of \_\_\_\_\_, including**  
10 **coverage of some services or benefits man-**  
11 **dated by the law of the State of \_\_\_\_\_. Ad-**  
12 **ditionally, this policy is not subject to all of**  
13 **the consumer protection laws or restrictions**  
14 **on rate changes of the State of \_\_\_\_\_. As**  
15 **with all insurance products, before pur-**  
16 **chasing this policy, you should carefully re-**  
17 **view the policy and determine what health**  
18 **care services the policy covers and what bene-**  
19 **fits it provides, including any exclusions, limi-**  
20 **tations, or conditions for such services or ben-**  
21 **efits.’.**

22       “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS  
23 AND PREMIUM INCREASES.—

24               “(1) IN GENERAL.—For purposes of this sec-  
25       tion, a health insurance issuer that provides indi-

1       vidual health insurance coverage to an individual  
2       under this part in a primary or secondary State may  
3       not upon renewal—

4               “(A) move or reclassify the individual in-  
5               sured under the health insurance coverage from  
6               the class such individual is in at the time of  
7               issue of the contract based on the health-status  
8               related factors of the individual; or

9               “(B) increase the premiums assessed the  
10              individual for such coverage based on a health  
11              status-related factor or change of a health sta-  
12              tus-related factor or the past or prospective  
13              claim experience of the insured individual.

14             “(2) CONSTRUCTION.—Nothing in paragraph  
15             (1) shall be construed to prohibit a health insurance  
16             issuer—

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

20               “(B) from raising premium rates for all  
21               policy holders within a class based on claims ex-  
22               perience;

23               “(C) from changing premiums or offering  
24               discounted premiums to individuals who engage  
25               in wellness activities at intervals prescribed by

1 the issuer, if such premium changes or incen-  
2 tives—

3 “(i) are disclosed to the consumer in  
4 the insurance contract;

5 “(ii) are based on specific wellness ac-  
6 tivities that are not applicable to all indi-  
7 viduals; and

8 “(iii) are not obtainable by all individ-  
9 uals to whom coverage is offered;

10 “(D) from reinstating lapsed coverage; or

11 “(E) from retroactively adjusting the rates  
12 charged an individual insured individual if the  
13 initial rates were set based on material mis-  
14 representation by the individual at the time of  
15 issue.

16 “(e) PRIOR OFFERING OF POLICY IN PRIMARY  
17 STATE.—A health insurance issuer may not offer for sale  
18 individual health insurance coverage in a secondary State  
19 unless that coverage is currently offered for sale in the  
20 primary State.

21 “(f) LICENSING OF AGENTS OR BROKERS FOR  
22 HEALTH INSURANCE ISSUERS.—Any State may require  
23 that a person acting, or offering to act, as an agent or  
24 broker for a health insurance issuer with respect to the  
25 offering of individual health insurance coverage obtain a

1 license from that State, except that a State may not im-  
2 pose any qualification or requirement which discriminates  
3 against a nonresident agent or broker.

4 “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-  
5 SURANCE COMMISSIONER.—Each health insurance issuer  
6 issuing individual health insurance coverage in both pri-  
7 mary and secondary States shall submit—

8 “(1) to the insurance commissioner of each  
9 State in which it intends to offer such coverage, be-  
10 fore it may offer individual health insurance cov-  
11 erage in such State—

12 “(A) a copy of the plan of operation or fea-  
13 sibility study or any similar statement of the  
14 policy being offered and its coverage (which  
15 shall include the name of its primary State and  
16 its principal place of business);

17 “(B) written notice of any change in its  
18 designation of its primary State; and

19 “(C) written notice from the issuer of the  
20 issuer’s compliance with all the laws of the pri-  
21 mary State; and

22 “(2) to the insurance commissioner of each sec-  
23 ondary State in which it offers individual health in-  
24 surance coverage, a copy of the issuer’s quarterly fi-  
25 nancial statement submitted to the primary State,

1       which statement shall be certified by an independent  
2       public accountant and contain a statement of opin-  
3       ion on loss and loss adjustment expense reserves  
4       made by—

5               “(A) a member of the American Academy  
6               of Actuaries; or

7               “(B) a qualified loss reserve specialist.

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

11              “(1) the solicitation or sale of individual health  
12              insurance coverage by a health insurance issuer to  
13              any person or group who is not eligible for such in-  
14              surance; or

15              “(2) the solicitation or sale of individual health  
16              insurance coverage by, or operation of, a health in-  
17              surance issuer that is in hazardous financial condi-  
18              tion.

19       “(i) STATE POWERS TO ENFORCE STATE LAWS.—

20              “(1) IN GENERAL.—Subject to the provisions of  
21              subsection (b)(1)(G) (relating to injunctions) and  
22              paragraph (2), nothing in this section shall be con-  
23              strued to affect the authority of any State to make  
24              use of any of its powers to enforce the laws of such



1 State with respect to which a health insurance issuer  
2 is not exempt under subsection (b).

3 “(2) COURTS OF COMPETENT JURISDICTION.—

4 If a State seeks an injunction regarding the conduct  
5 described in paragraphs (1) and (2) of subsection  
6 (h), such injunction must be obtained from a Fed-  
7 eral or State court of competent jurisdiction.

8 “(j) STATES’ AUTHORITY TO SUE.—Nothing in this  
9 section shall affect the authority of any State to bring ac-  
10 tion in any Federal or State court.

11 “(k) GENERALLY APPLICABLE LAWS.—Nothing in  
12 this section shall be construed to affect the applicability  
13 of State laws generally applicable to persons or corpora-  
14 tions.

15 “PRIMARY STATE MUST MEET FEDERAL FLOOR BEFORE  
16 ISSUER MAY SELL INTO SECONDARY STATES

17 “SEC. 2797. A health insurance issuer may not offer,  
18 sell, or issue individual health insurance coverage in a sec-  
19 ondary State if the primary State does not meet the fol-  
20 lowing requirements:

21 “(1) The State insurance commissioner must  
22 use a risk-based capital formula for the determina-  
23 tion of capital and surplus requirements for all  
24 health insurance issuers.

25 “(2) The State must have legislation or regula-  
26 tions in place establishing an independent review

1 process for individuals who are covered by individual  
2 health insurance coverage unless the issuer provides  
3 an independent review mechanism functionally equiv-  
4 alent (as determined by the primary State insurance  
5 commissioner or official) to that prescribed in the  
6 ‘Health Carrier External Review Model Act’ of the  
7 National Association of Insurance Commissioners for  
8 all individuals who purchase insurance coverage  
9 under the terms of this part.

10 “ENFORCEMENT

11 “SEC. 2798. (a) IN GENERAL.—Subject to subsection  
12 (b), with respect to specific individual health insurance  
13 coverage the primary State for such coverage has sole ju-  
14 risdiction to enforce the primary State’s covered laws in  
15 the primary State and any secondary State.

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

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

24 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case  
25 of individual health insurance coverage offered in a sec-  
26 ondary State that fails to comply with the covered laws

1 of the primary State, the applicable State authority of the  
2 secondary State may notify the applicable State authority  
3 of the primary State.”.

4 (b) **EFFECTIVE DATE.**—The amendment made by  
5 subsection (a) shall apply to individual health insurance  
6 coverage offered, issued, or sold after the date of the en-  
7 actment of this Act.

8 **SEC. 405. SEVERABILITY.**

9 If any provision of this subtitle or the application of  
10 such provision to any person or circumstance is held to  
11 be unconstitutional, the remainder of this subtitle and the  
12 application of the provisions of such to any other person  
13 or circumstance shall not be affected.

14 **Subtitle B—Health Information**  
15 **Technology Promotion**

16 **SEC. 411. SHORT TITLE OF SUBTITLE.**

17 This subtitle may be cited as the “Health Informa-  
18 tion Technology Promotion Act of 2006”.

19 **SEC. 412. OFFICE OF THE NATIONAL COORDINATOR FOR**  
20 **HEALTH INFORMATION TECHNOLOGY.**

21 (a) **IN GENERAL.**—Title II of the Public Health Serv-  
22 ices Act is amended by adding at the end the following new  
23 part:

1       “PART D—HEALTH INFORMATION TECHNOLOGY

2       “OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH  
3               INFORMATION TECHNOLOGY

4       “SEC. 271. (a) ESTABLISHMENT.—There is estab-  
5       lished within the Department of Health and Human Serv-  
6       ices an Office of the National Coordinator for Health In-  
7       formation Technology that shall be headed by the National  
8       Coordinator for Health Information Technology (referred  
9       to in this section as the ‘National Coordinator’). The Na-  
10      tional Coordinator shall be appointed by the President and  
11      shall report directly to the Secretary. The National Coor-  
12      dinator shall be paid at a rate equal to the rate of basic  
13      pay for level IV of the Executive Schedule.

14      “(b) GOALS OF NATIONWIDE INTEROPERABLE  
15      HEALTH INFORMATION TECHNOLOGY INFRASTRUC-  
16      TURE.—The National Coordinator shall perform the du-  
17      ties under subsection (c) in a manner consistent with the  
18      development of a nationwide interoperable health informa-  
19      tion technology infrastructure that—

20                      “(1) improves health care quality, reduces med-  
21      ical errors, increases the efficiency of care, and ad-  
22      vances the delivery of appropriate, evidence-based  
23      health care services;

24                      “(2) promotes wellness, disease prevention, and  
25      management of chronic illnesses by increasing the

1 availability and transparency of information related  
2 to the health care needs of an individual for such in-  
3 dividual;

4 “(3) ensures that appropriate information nec-  
5 essary to make medical decisions is available in a us-  
6 able form at the time and in the location that the  
7 medical service involved is provided;

8 “(4) produces greater value for health care ex-  
9 penditures by reducing health care costs that result  
10 from inefficiency, medical errors, inappropriate care,  
11 and incomplete information;

12 “(5) promotes a more effective marketplace,  
13 greater competition, greater systems analysis, in-  
14 creased choice, enhanced quality, and improved out-  
15 comes in health care services;

16 “(6) improves the coordination of information  
17 and the provision of such services through an effec-  
18 tive infrastructure for the secure and authorized ex-  
19 change and use of health care information; and

20 “(7) ensures that the confidentiality of individ-  
21 ually identifiable health information of a patient is  
22 secure and protected.

23 “(c) DUTIES OF NATIONAL COORDINATOR.—

24 “(1) STRATEGIC PLANNER FOR INTEROPER-  
25 ABLE HEALTH INFORMATION TECHNOLOGY.—The

1 National Coordinator shall maintain, direct, and  
2 oversee the continuous improvement of a strategic  
3 plan to guide the nationwide implementation of  
4 interoperable health information technology in both  
5 the public and private health care sectors consistent  
6 with subsection (b).

7 “(2) PRINCIPAL ADVISOR TO HHS.—The Na-  
8 tional Coordinator shall serve as the principal advi-  
9 sor of the Secretary on the development, application,  
10 and use of health information technology, and co-  
11 ordinate the health information technology programs  
12 of the Department of Health and Human Services.

13 “(3) COORDINATOR OF FEDERAL GOVERNMENT  
14 ACTIVITIES.—

15 “(A) IN GENERAL.—The National Coordi-  
16 nator shall serve as the coordinator of Federal  
17 Government activities relating to health infor-  
18 mation technology.

19 “(B) SPECIFIC COORDINATION FUNC-  
20 TIONS.—In carrying out subparagraph (A), the  
21 National Coordinator shall provide for—

22 “(i) the development and approval of  
23 standards used in the electronic creation,  
24 maintenance, or exchange of health infor-  
25 mation; and

1                   “(ii) the certification and inspection of  
2                   health information technology products, ex-  
3                   changes, and architectures to ensure that  
4                   such products, exchanges, and architec-  
5                   tures conform to the applicable standards  
6                   approved under clause (i).

7                   “(C) USE OF PRIVATE ENTITIES.—The  
8                   National Coordinator shall, to the maximum ex-  
9                   tent possible, contract with or recognize private  
10                  entities in carrying out subparagraph (B).

11                  “(D) UNIFORM APPLICATION OF STAND-  
12                  ARDS.—A standard approved under subpara-  
13                  graph (B)(i) for use in the electronic creation,  
14                  maintenance, or exchange of health information  
15                  shall preempt a standard adopted under State  
16                  law, regulation, or rule for such a use.

17                  “(4) INTRAGOVERNMENTAL COORDINATOR.—  
18                  The National Coordinator shall ensure that health  
19                  information technology policies and programs of the  
20                  Department of Health and Human Services are co-  
21                  ordinated with those of relevant executive branch  
22                  agencies and departments with a goal to avoid dupli-  
23                  cation of effort and to ensure that each agency or  
24                  department conducts programs within the areas of  
25                  its greatest expertise and its mission in order to cre-

1       ate a national interoperable health information sys-  
2       tem capable of meeting national public health needs  
3       effectively and efficiently.

4           “(5) ADVISOR TO OMB.—The National Coordi-  
5       nator shall provide to the Director of the Office of  
6       Management and Budget comments and advice with  
7       respect to specific Federal health information tech-  
8       nology programs.

9           “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
10      are authorized to be appropriated such sums as may be  
11      necessary to carry out this section for each of fiscal years  
12      2007 through 2011.”.

13          (b) TREATMENT OF EXECUTIVE ORDER 13335.—Ex-  
14      ecutive Order 13335 shall not have any force or effect  
15      after the date of the enactment of this Act.

16          (c) TRANSITION FROM ONCHIT UNDER EXECUTIVE  
17      ORDER.—

18           (1) IN GENERAL.—All functions, personnel, as-  
19      sets, liabilities, administrative actions, and statutory  
20      reporting requirements applicable to the old Na-  
21      tional Coordinator or the Office of the old National  
22      Coordinator on the date before the date of the enact-  
23      ment of this Act shall be transferred, and applied in  
24      the same manner and under the same terms and  
25      conditions, to the new National Coordinator and the



1 Office of the new National Coordinator as of the  
2 date of the enactment of this Act.

3 (2) ACTING NATIONAL COORDINATOR.—Before  
4 the appointment of the new National Coordinator,  
5 the old National Coordinator shall act as the Na-  
6 tional Coordinator for Health Information Tech-  
7 nology until the office is filled as provided in section  
8 271(a) of the Public Health Service Act, as added  
9 by subsection (a). The President may appoint the  
10 old National Coordinator as the new National Coor-  
11 dinator.

12 (3) DEFINITIONS.—For purposes of this sub-  
13 section:

14 (A) NEW NATIONAL COORDINATOR.—The  
15 term “new National Coordinator” means the  
16 National Coordinator for Health Information  
17 Technology appointed under section 271(a) of  
18 the Public Health Service Act, as added by sub-  
19 section (a).

20 (B) OLD NATIONAL COORDINATOR.—The  
21 term “old National Coordinator” means the  
22 National Coordinator for Health Information  
23 Technology appointed under Executive Order  
24 13335.

1 **SEC. 413. SAFE HARBORS FOR PROVISION OF HEALTH IN-**  
2 **FORMATION TECHNOLOGY AND TRAINING**  
3 **SERVICES TO HEALTH CARE PROFES-**  
4 **SIONALS.**

5 (a) FOR CIVIL PENALTIES.—Section 1128A(b) of the  
6 Social Security Act (42 U.S.C. 1320a–7a(b)) is amended  
7 by adding at the end the following new paragraph:

8 “(4)(A) For purposes of this subsection, a payment  
9 described in paragraph (1) does not include any nonmone-  
10 tary remuneration (in the form of health information tech-  
11 nology and related training services) made by an entity  
12 to a physician if—

13 “(i) such remuneration is made without a con-  
14 dition that—

15 “(I) limits or restricts the use of the health  
16 information technology to services provided by  
17 the physician to individuals receiving services at  
18 the entity;

19 “(II) limits or restricts the use of the  
20 health information technology in conjunction  
21 with other health information technology; or

22 “(III) takes into account the volume or  
23 value of referrals (or other business generated)  
24 by the physician to the entity;

25 “(ii) in the case of such remuneration made on  
26 a date that is on or after the date described in sec-

1       tion 413(d)(2) of the Health Information Tech-  
2       nology Promotion Act of 2006, to the extent the Na-  
3       tional Coordinator of Health Information Tech-  
4       nology has approved a standard under section  
5       271(e)(3)(B)(i) of the Public Health Service Act, the  
6       health information technology provided conforms to  
7       such standard;

8               “(iii) in the case of such remuneration made on  
9       or after the date that is three years after the date  
10      described in section 413(d)(2) of the Health Infor-  
11     mation Technology Promotion Act of 2006, if the  
12     Secretary establishes criteria under section  
13     413(e)(3) of such Act, such remuneration is made in  
14     accordance with such criteria; and

15              “(iv) such remuneration is arranged for in a  
16     written agreement that is signed by a representative  
17     of the entity and by the physician and that specifies  
18     the remuneration made.

19              “(B) For purposes of subparagraph (A) and sections  
20     1128B(b)(3)(J) and 1877(e)(9), the term ‘health informa-  
21     tion technology’ means hardware, software, license, right,  
22     intellectual property, equipment, or other information  
23     technology used primarily for the electronic creation,  
24     maintenance, and exchange of clinical health information  
25     to improve health care quality or efficiency.”.

1 (b) FOR CRIMINAL PENALTIES.—Section  
2 1128B(b)(3) of such Act (42 U.S.C. 1320a–7b(b)(3)) is  
3 amended—

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

6 (2) in the subparagraph (H) added by section  
7 237(d) of the Medicare Prescription Drug, Improve-  
8 ment, and Modernization Act of 2003 (Public Law  
9 108–173; 117 Stat. 2213)—

10 (A) by moving such subparagraph 2 ems to  
11 the left; and

12 (B) by striking the period at the end and  
13 inserting a semicolon;

14 (3) in the subparagraph (H) added by section  
15 431(a) of such Act (117 Stat. 2287)—

16 (A) by redesignating such subparagraph as  
17 subparagraph (I);

18 (B) by moving such subparagraph 2 ems  
19 to the left; and

20 (C) by striking the period at the end and  
21 inserting “; and”; and

22 (4) by adding at the end the following new sub-  
23 paragraph:

24 “(J) any nonmonetary remuneration (in the  
25 form of health information technology, as defined in

1 section 1128A(b)(4)(B), and related training serv-  
2 ices) made to a person if—

3 “(i) such remuneration is solicited or re-  
4 ceived (or offered or paid) without a condition  
5 that—

6 “(I) limits or restricts the use of the  
7 health information technology to services  
8 provided by the person to individuals re-  
9 ceiving services at the location of the entity  
10 providing such technology;

11 “(II) limits or restricts the use of the  
12 health information technology in conjunc-  
13 tion with other health information tech-  
14 nology; or

15 “(III) takes into account the volume  
16 or value of referrals (or other business  
17 generated) by the person to the entity pro-  
18 viding such technology;

19 “(ii) in the case of such remuneration  
20 made on a date that is on or after the date de-  
21 scribed in section 413(d)(2) of the Health In-  
22 formation Technology Promotion Act of 2006,  
23 to the extent the National Coordinator of  
24 Health Information Technology has approved a  
25 standard under section 271(c)(3)(B)(i) of the

1 Public Health Service Act, the health informa-  
2 tion technology provided conforms to such  
3 standard;

4 “(iii) in the case of such remuneration  
5 made on or after the date that is three years  
6 after the date described in section 413(d)(2) of  
7 the Health Information Technology Promotion  
8 Act of 2006, if the Secretary establishes criteria  
9 under section 413(e)(3) of such Act, such remu-  
10 neration is made in accordance with such cri-  
11 teria; and

12 “(iv) such remuneration is arranged for in  
13 a written agreement that is signed by the par-  
14 ties involved and that specifies the remunera-  
15 tion solicited or received (or offered or paid).”.

16 (c) FOR LIMITATION ON CERTAIN PHYSICIAN RE-  
17 FERRALS.—Section 1877(e) of such Act (42 U.S.C.  
18 1395nn(e)) is amended by adding at the end the following  
19 new paragraph:

20 “(9) INFORMATION TECHNOLOGY AND TRAIN-  
21 ING SERVICES.—Any nonmonetary remuneration (in  
22 the form of health information technology, as de-  
23 fined in section 1128A(b)(4)(B), and related train-  
24 ing services) made by an entity to a physician if—

1           “(A) such remuneration is made without a  
2           condition that—

3                   “(i) limits or restricts the use of the  
4                   health information technology to services  
5                   provided by the physician to individuals re-  
6                   ceiving services at the location of the entity  
7                   providing such technology;

8                   “(ii) limits or restricts the use of the  
9                   health information technology in conjunc-  
10                  tion with other health information tech-  
11                  nology; or

12                  “(iii) takes into account the volume or  
13                  value of referrals (or other business gen-  
14                  erated) by the physician to the entity pro-  
15                  viding such technology;

16           “(B) in the case of such remuneration  
17           made on a date that is on or after the date de-  
18           scribed in section 413(d)(2) of the Health In-  
19           formation Technology Promotion Act of 2006,  
20           to the extent the National Coordinator of  
21           Health Information Technology has approved a  
22           standard under section 271(e)(3)(B)(i) of the  
23           Public Health Service Act, the health informa-  
24           tion technology provided conforms to such  
25           standard;

1           “(C) in the case of such remuneration  
2           made on or after the date that is three years  
3           after the date described in section 413(d)(2) of  
4           the Health Information Technology Promotion  
5           Act of 2006, if the Secretary establishes criteria  
6           under section 413(e)(3) of such Act, such remu-  
7           neration is made in accordance with such cri-  
8           teria; and

9           “(D) such remuneration is arranged for in  
10          a written agreement that is signed by a rep-  
11          resentative of the entity and by the physician  
12          and that specifies the remuneration made.”.

13          (d) REGULATION, EFFECTIVE DATE, AND EFFECT  
14          ON STATE LAWS.—

15               (1) REGULATIONS.—Not later than 180 days  
16               after the date of the enactment of this Act, the Sec-  
17               retary of Health and Human Services shall promul-  
18               gate such regulations as may be necessary to carry  
19               out the provisions of this section.

20               (2) EFFECTIVE DATE.—The amendments made  
21               by this section shall take effect on the date that is  
22               180 days after the date of the enactment of this Act.

23               (3) PREEMPTION OF STATE LAWS.—No State  
24               (as defined in section 414(a)(3)) shall have in effect  
25               a State law that imposes a criminal or civil penalty



1 for a transaction described in section 1128A(b)(4);  
2 1128B(b)(3)(J); or 1877(e)(9) of the Social Security  
3 Act, as added by this section, if the conditions de-  
4 scribed in the respective section, with respect to such  
5 transaction, are met.

6 (e) STUDY AND REPORT TO ASSESS EFFECT OF  
7 SAFE HARBORS ON HEALTH SYSTEM.—

8 (1) IN GENERAL.—The Secretary of Health and  
9 Human Services shall conduct a study to determine  
10 the impact of each of the safe harbors described in  
11 paragraph (4). In particular, the study shall examine  
12 the following:

13 (A) The effectiveness of each safe harbor  
14 in increasing the adoption of health information  
15 technology.

16 (B) The types of health information tech-  
17 nology provided under each safe harbor.

18 (C) The extent to which the financial or  
19 other business relationships between providers  
20 under each safe harbor have changed as a re-  
21 sult of the safe harbor in a way that adversely  
22 affects the health care system or choices avail-  
23 able to consumers.

24 (2) REPORT.—Not later than three years after  
25 the effective date described in subsection (d)(2), the

1 Secretary of Health and Human Services shall sub-  
2 mit to Congress a report on the study under para-  
3 graph (1) and shall include such recommendations  
4 for changes in the safe harbors as the Secretary de-  
5 termines may be appropriate.

6 (3) UPDATED CRITERIA FOR PERMISSIBLE  
7 HEALTH INFORMATION TECHNOLOGY REMUNERA-  
8 TION UNDER SAFE HARBORS.—Not later than three  
9 years after the effective date described in subsection  
10 (d)(2), the Secretary of Health and Human Services  
11 may issue regulations that establish updated criteria  
12 for nonmonetary remuneration (in the form of  
13 health information technology and related training  
14 services) for purposes of the safe harbors described  
15 in paragraph (4). Such criteria may be based on the  
16 extent to which the health information technology  
17 conforms to a standard developed under section  
18 271(c)(3)(B)(i) of the Public Health Service Act, as  
19 added by section 412, only to the extent that such  
20 standard is recognized by the National Coordinator  
21 of Health Information Technology under such sec-  
22 tion 271(c)(3)(B)(i).

23 (4) SAFE HARBORS DESCRIBED.—For purposes  
24 of paragraphs (1) and (3), the safe harbors de-  
25 scribed in this paragraph are—

1 (A) the safe harbor under section  
2 1128A(b)(4) of the Social Security Act (42  
3 U.S.C. 1320a–7a(b)(4)), as added by subsection  
4 (a);

5 (B) the safe harbor under section  
6 1128B(b)(3)(J) of such Act (42 U.S.C. 1320a–  
7 7b(b)(3)(J)), as added by subsection (b); and

8 (C) the safe harbor under section  
9 1877(e)(9) of such Act (42 U.S.C.  
10 1395nn(e)(9)), as added by subsection (c).

11 **SEC. 414. UNIFORM HEALTH INFORMATION LAWS AND REG-**  
12 **ULATIONS.**

13 (a) STUDY TO DETERMINE EXTENT OF VARIATION  
14 IN STATE HEALTH INFORMATION LAWS AND REGULA-  
15 TIONS.—

16 (1) IN GENERAL.—The Secretary of Health and  
17 Human Services shall conduct a study of State secu-  
18 rity and confidentiality laws and current Federal se-  
19 curity and confidentiality standards to determine—

20 (A) the degree to which such State laws  
21 vary among States, and between the States and  
22 such current Federal standards;

23 (B) how any such variation may adversely  
24 impact the security and confidentiality of indi-  
25 vidually identifiable health information and the

1 electronic exchange of clinical health informa-  
2 tion among States, the Federal government,  
3 and private entities; and

4 (C) the strengths and weaknesses of such  
5 State laws and of such current Federal stand-  
6 ards for purposes of protecting the security and  
7 confidentiality of individually identifiable health  
8 information while also taking into account the  
9 need for timely and efficient exchanges of  
10 health information to improve quality of care  
11 and ensure the availability of health informa-  
12 tion necessary to make medical decisions at the  
13 the location in which the medical care involved  
14 is provided.

15 (2) REPORT.—Not later than 18 months after  
16 the date of the enactment of this Act, the Secretary  
17 of Health and Human Services shall submit to Con-  
18 gress a report on the study under paragraph (1) and  
19 shall include in such report—

20 (A) a determination by the Secretary  
21 whether State security and confidentiality laws  
22 and current Federal security and confidentiality  
23 standards should be conformed to create a sin-  
24 gle set of national standards to preserve and  
25 protect the security and confidentiality of pa-

1           tient health information in order to improve  
2           health care quality and efficiency; and

3                   (B) if the Secretary determines such State  
4           laws and such current Federal standards should  
5           be conformed to create such a single set of na-  
6           tional standards, what the single set of stand-  
7           ards should be.

8           (3) DEFINITIONS.—For purposes of this sub-  
9           section:

10                   (A) STATE SECURITY AND CONFIDEN-  
11           TIALITY LAWS.—The term “State security and  
12           confidentiality laws” means State laws and reg-  
13           ulations relating to the privacy and confiden-  
14           tiality of individually identifiable health infor-  
15           mation or to the security of such information.

16                   (B) CURRENT FEDERAL SECURITY AND  
17           CONFIDENTIALITY STANDARDS.—The term  
18           “current Federal security and confidentiality  
19           standards” means the Federal privacy stand-  
20           ards established pursuant to section 264(c) of  
21           the Health Insurance Portability and Account-  
22           ability Act of 1996 (42 U.S.C. 1320d–2 note)  
23           and security standards established under sec-  
24           tion 1173(d) of the Social Security Act.

1           (C) STATE.—The term “State” has the  
2 meaning given such term when used in title XI  
3 of the Social Security Act, as provided under  
4 section 1101(a) of such Act (42 U.S.C.  
5 1301(a)).

6           (b) ESTABLISHMENT OF UNIFORM CONFIDEN-  
7 TIALITY AND SECURITY STANDARDS.—

8           (1) IN GENERAL.—Section 1178(a) of the So-  
9 cial Security Act (42 U.S.C. 1320d–7(a)), is amend-  
10 ed—

11           (A) in paragraph (1), by inserting after  
12 “Except as provided in paragraph (2)” the fol-  
13 lowing: “and subject to paragraph (3)”;

14           (B) in paragraph (2), by striking “A provi-  
15 sion” and inserting “Subject to paragraph  
16 (3)(B), a provision”; and

17           (C) by adding at the end the following new  
18 paragraph:

19           “(3) UNIFORM NATIONAL STANDARDS.—

20           “(A) IN GENERAL.—

21           “(i) CREATING UNIFORM NATIONAL  
22 STANDARDS.—If the conditions under  
23 clause (ii) are met, then the regulation and  
24 standards described in subparagraph (C)  
25 shall become the single set of national

1 standards to preserve and protect the secu-  
2 rity and confidentiality of individually iden-  
3 tifiable patient health information in order  
4 to improve health care quality and effi-  
5 ciency and supersede the current Federal  
6 security and confidentiality standards and  
7 State security and confidentiality laws, as  
8 defined in section 414(a)(3) of the Health  
9 Information Technology Promotion Act of  
10 2006.

11 “(ii) CONDITIONS.—For purposes of  
12 clause (i), the conditions under this clause  
13 are the following:

14 “(I) DETERMINATION OF NEED  
15 FOR SINGLE SET OF STANDARDS.—

16 The Secretary determines under sec-  
17 tion 414(a)(2)(A) of the Health Infor-  
18 mation Technology Promotion Act of  
19 2006 that State security and con-  
20 fidentiality laws and current Federal  
21 security and confidentiality standards  
22 should be conformed to create a single  
23 set of national standards to preserve  
24 and protect the security and confiden-  
25 tiality of individually identifiable pa-

1           tient health information in order to  
2           improve health care quality and effi-  
3           ciency.

4                   “(II) SECRETARY SPECIFIES  
5           STANDARDS.—The Secretary specifies  
6           that the regulation and standards de-  
7           scribed in subparagraph (C) should be  
8           the single set of national standards.

9                   “(III) NO LEGISLATION ESTAB-  
10          LISHING STANDARDS.—Legislation  
11          creating a single set of national stand-  
12          ards and preempting State security  
13          and confidentiality laws is not enacted  
14          by the date that is 36 months after  
15          the date of the enactment of the  
16          Health Information Technology Pro-  
17          motion Act of 2006.

18                   “(B) NARROWING OF PREEMPTION EXCEP-  
19          TIONS.—

20                   “(i) SUBSEQUENT LEGISLATION.—If  
21          legislation described in subparagraph (A)  
22          is enacted by the date described in such  
23          subparagraph, as of the date of enactment  
24          of such legislation paragraph (2) shall be  
25          superseded by such exceptions as may be



1 provided for in such legislation. It is the  
2 intent of Congress that such exceptions be  
3 as narrow as possible to maximize the uni-  
4 form application of the regulation and  
5 standards described in subparagraph (C).

6 “(ii) NO LEGISLATION.—If legislation  
7 described in subparagraph (A) is not en-  
8 acted by the date described in such sub-  
9 paragraph, paragraph (2) shall be super-  
10 seded by such exceptions as may be pro-  
11 vided for by the Secretary by regulation  
12 issued in connection with the regulation  
13 and standards described in subparagraph  
14 (C). It is the intent of Congress that such  
15 exceptions be as narrow as possible to  
16 maximize the uniform application of the  
17 regulation and standards described in sub-  
18 paragraph (C).

19 “(C) APPLICATION OF UNIFORM STAND-  
20 ARDS.—The regulation and standards described  
21 in this subparagraph are the regulation promul-  
22 gated under section 264(c)(1) of the Health In-  
23 surance Portability and Accountability Act of  
24 1996 (42 U.S.C. 1320d–2 note) and standards  
25 under section 1173(d), as modified by the Sec-

1           retary to the extent the Secretary determines,  
2           after consideration of the results of the study  
3           conducted under section 414(a) of the Health  
4           Information Technology Promotion Act of  
5           2006, necessary to promote uniformity and effi-  
6           ciency in the application of confidentiality and  
7           security standards with respect to individually  
8           identifiable health information.”.

9           (2) HIPAA CONFORMING AMENDMENT.—Sec-  
10          tion 264(c)(2) of the Health Insurance Portability  
11          and Accountability Act of 1996 (42 U.S.C. 1320d-  
12          2 note) is amended by striking “A regulation” and  
13          inserting “(A) Subject to section 1178(a)(3) of the  
14          Social Security Act, a regulation”.

15 **SEC. 415. RULEMAKING TO UPGRADE ASC X12 AND NCPDP**  
16 **STANDARDS AND ICD CODES.**

17          (a) IN GENERAL.—Not later than April 1, 2007, the  
18          Secretary of Health and Human Services shall promulgate  
19          a final rule under section 1174(b) of the Social Security  
20          Act (42 U.S.C. 1320d-3(b)) to provide for the following  
21          modification of standards:

22               (1) ACCREDITED STANDARDS COMMITTEE X12  
23               (ASC X12) STANDARD.—The replacement of the Ac-  
24               credited Standards Committee X12 (ASC X12)  
25               version 4010 adopted under section 1173(a) of such

1 Act (42 U.S.C. 1320d-2(a)), including for purposes  
2 of part A of title XVIII of such Act, with the ASC  
3 X12 version 5010, as reviewed by the National Com-  
4 mittee on Vital Health Statistics.

5 (2) NATIONAL COUNCIL FOR PRESCRIPTION  
6 DRUG PROGRAMS (NCPDP) TELECOMMUNICATIONS  
7 STANDARDS.—The replacement of the National  
8 Council for Prescription Drug Programs (NCPDP)  
9 Telecommunications Standards version 5.1 adopted  
10 under section 1173(a) of such Act (42 U.S.C.  
11 1320d-2(a)), including for purposes of part A of  
12 title XVIII of such Act, with NCPDP Telecommuni-  
13 cations Standards version C.3, as approved by such  
14 Council and reviewed by the National Committee on  
15 Vital Health Statistics.

16 (3) ICD CODES.—The replacement of the Inter-  
17 national Statistical Classification of Diseases and  
18 Related Health Problems, 9th revision, Clinical  
19 Modification (ICD-9-CM) under the regulation pro-  
20 mulgated under section 1173(c) of such Act (42  
21 U.S.C. 1320d-2(c)), including for purposes of part  
22 A of title XVIII of such Act, with both of the fol-  
23 lowing:

24 (A) The International Statistical Classi-  
25 fication of Diseases and Related Health Prob-

1 lems, 10th revision, Clinical Modification (ICD–  
2 10–CM).

3 (B) The International Statistical Classi-  
4 fication of Diseases and Related Health Prob-  
5 lems, 10th revision, Procedure Coding System  
6 (ICD–10–PCS).

7 (b) RULE OF CONSTRUCTION.—Nothing in sub-  
8 section (a)(3) shall be construed as affecting the applica-  
9 tion of classification methodologies or codes, such as CPT  
10 or HCPCS codes, other than under the International Sta-  
11 tistical Classification of Diseases and Related Health  
12 Problems (ICD).

13 (c) NOTICE.—Not later than 30 days after the date  
14 of the enactment of this Act, the Secretary of Health and  
15 Human Services shall publish in the Federal Register a  
16 notice of the requirements to promulgate final rules under  
17 subsection (a). Such notice shall include—

18 (1) the respective date by which each such rule  
19 must be promulgated under such subsection;

20 (2) the respective compliance date described in  
21 subsection (e) for each such rule; and

22 (3) a statement that entities covered under the  
23 Health Insurance Portability and Accountability Act  
24 of 1996 and health information technology vendors  
25 should plan for the implementation of upgraded ASC

1 X12, NCPDP, and ICD codes under such sub-  
2 section.

3 (d) NO JUDICIAL REVIEW.—The final rules promul-  
4 gated under subsections (a) shall not be subject to judicial  
5 review.

6 (e) COMPLIANCE WITH UPGRADED STANDARDS.—  
7 For purposes of section 1175(b)(2) of the Social Security  
8 Act (42 U.S.C. 1320d–4(b)(2))—

9 (1) ASC X12 AND NCPDP STANDARDS.—The  
10 final rules promulgated under paragraphs (1) and  
11 (2) of subsection (a) shall apply to transactions oc-  
12 ccurring on or after April 1, 2009.

13 (2) ICD CODES.—The final rule promulgated  
14 under paragraph (3) of subsection (a) shall apply to  
15 transactions occurring on or after October 1, 2009.

16 **SEC. 416. REPORT ON THE AMERICAN HEALTH INFORMA-**  
17 **TION COMMUNITY.**

18 Not later than two years after the date of the enact-  
19 ment of this Act, the Secretary of Health and Human  
20 Services shall submit to Congress a report on the work  
21 conducted by the American Health Information Commu-  
22 nity (in this section referred to as “AHIC”), as established  
23 by the Secretary. Such report shall include the following:

24 (1) A description of the accomplishments of  
25 AHIC, with respect to the promotion of the develop-

1       ment of a nationwide health information network  
2       and the increased adoption of health information  
3       technology.

4           (2) Information identifying the practices that  
5       are used to protect health information and to guar-  
6       antee confidentiality and security of such informa-  
7       tion.

8           (3) Information on the progress in—

9               (A) establishing uniform industry-wide  
10       health information technology standards;

11              (B) achieving an internet-based nationwide  
12       health information network; and

13              (C) achieving interoperable electronic  
14       health record adoption across health care pro-  
15       viders.

16           (4) Recommendations for the transition of the  
17       AHIC to a permanent advisory entity, including—

18              (A) a schedule for such transition;

19              (B) options for structuring the entity as ei-  
20       ther a public-private or private sector entity;

21              (C) the role of the Federal Government in  
22       the entity; and

23              (D) the ongoing responsibilities of the enti-  
24       ty, such as in establishing standards, certifying  
25       health information technology, and providing

1 long-term governance for health care trans-  
2 formation.

3 **SEC. 417. STRATEGIC PLAN FOR COORDINATING IMPLE-**  
4 **MENTATION OF HEALTH INFORMATION**  
5 **TECHNOLOGY.**

6 (a) IN GENERAL.—Not later than 180 days after the  
7 date of the enactment of this Act, the Secretary of Health  
8 and Human Services, in consultation with entities involved  
9 in the area of health information technology, shall develop  
10 a strategic plan related to the need for coordination in  
11 such area.

12 (b) COORDINATION OF SPECIFIC IMPLEMENTATION  
13 PROCESSES.—The strategic plan under subsection (a)  
14 shall address the need for coordination in the implementa-  
15 tion of the following:

16 (1) HEALTH INFORMATION TECHNOLOGY  
17 STANDARDS.—Health information technology stand-  
18 ards approved under section 271(e)(3)(B)(i) of the  
19 Public Health Service Act, as added by section 412.

20 (2) HIPAA TRANSACTION STANDARDS.—Trans-  
21 action standards under section 1173(a) of the Social  
22 Security Act (42 U.S.C. 1320d–2(d)).

23 (3) UPDATED ICD CODES.—The International  
24 Statistical Classification of Diseases and Related  
25 Health Problems, 10th revision, Clinical Modifica-

1       tion (ICD–10–CM) and the International Statistical  
2       Classification of Diseases and Related Health Prob-  
3       lems, 10th revision, Procedure Coding System  
4       (ICD–10–PCS) described in section 415.

5       (c) COORDINATION AMONG SPECIFIC FEDERAL EN-  
6       TITIES.—The strategic plan under subsection (a) shall ad-  
7       dress any methods to coordinate, with respect to the elec-  
8       tronic exchange of health information, actions taken by  
9       the following entities:

10           (1) The Office of the National Coordinator for  
11       Health Information Technology.

12           (2) The American Health Information Commu-  
13       nity.

14           (3) The Office of Electronic Standards and Se-  
15       curity of the Centers for Medicare and Medicaid  
16       Services.

17           (4) The National Committee on Vital Health  
18       Statistics.

19           (5) Any other entity involved in the electronic  
20       exchange of health information that the Secretary  
21       determines appropriate.

## 22       **TITLE V—SEAMLESS MOBILITY**

### 23       **SEC. 501. PROHIBITION ON IMPEDING.**

24       (a) PROHIBITION.—The Federal Communications  
25       Commission shall not, in this or any other proceeding,



1 take any action to impede the development of seamless  
2 mobility.

3 (b) DEFINITION.—For purposes of this section, the  
4 term “seamless mobility” means the ability of a user and  
5 a user’s connecting devices to move easily and smoothly  
6 between and among Internet-protocol enabled technology  
7 platforms, facilities, and networks.

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