AMENDMENT NO._____ Calendar No._____

Purpose: To establish the Small Business Lending Fund Program, and for other purposes.

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

H. R. 5297

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. LANDRIEU to the amendment (No. _____) proposed by Mr. REID

Viz:

At the end, add the following:

TITLE V—ADDITIONAL SMALL BUSINESS PROVISIONS

Subtitle A—Small Business Lending Fund

SEC. 5101. PURPOSE.

The purpose of this subtitle is to address the ongoing effects of the financial crisis on small businesses by pro-

viding temporary authority to the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses.

SEC. 5102. DEFINITIONS.

For purposes of this subtitle:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means—

(A) the Committee on Small Business and Entrepreneurship, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and

(B) the Committee on Small Business, the Committee on Agriculture, the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.

(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term ''appropriate Federal banking agency'' has the meaning given such term under section

3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(3) BANK HOLDING COMPANY.—The term ''bank holding company'' has the meaning given such term under section 2(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(1)).

(4) CALL REPORT.—The term ''call report'' means—

(A) reports of Condition and Income submitted to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

(B) the Office of Thrift Supervision Thrift Financial Report;

(C) any report that is designated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, as applicable, as a successor to any report referred to in subparagraph (A) or (B);

(D) reports of Condition and Income as designated through guidance developed by the

Secretary, in consultation with the Director of the Community Development Financial Institutions Fund; and

(E) with respect to an eligible institution for which no report exists that is described under subparagraph (A), (B), (C), or (D), such other report or set of information as the Secretary, in consultation with the Administrator of the Small Business Administration, may prescribe.

(5) CDCI.—The term ''CDCI'' means the Community Development Capital Initiative created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008.

(6) CDCI INVESTMENT.—The term ''CDCI investment'' means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CDCI that has not been repaid.

(7) CDFI; COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The terms ''CDFI'' and ''community development financial institution'' have the meaning given the term ''community development financial institution'' under the Riegle Community

Development and Regulatory Improvement Act of 1994.

(8) CDLF; COMMUNITY DEVELOPMENT LOAN FUND.—The terms ''CDLF'' and ''community development loan fund'' mean any entity that—

(A) is certified by the Department of the Treasury as a community development financial institution loan fund;

(B) is exempt from taxation under the Internal Revenue Code of 1986; and

(C) had assets less than or equal to $10,000,000,000 as of the end of the fourth quarter of calendar year 2009.

(9) CPP.—The term ''CPP'' means the Capital Purchase Program created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008.

(10) CPP INVESTMENT.—The term ''CPP investment'' means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CPP that has not been repaid.

(11) ELIGIBLE INSTITUTION.—The term ''eligible institution'' means—

(A) any insured depository institution, which—

(i) is not controlled by a bank holding company or savings and loan holding company that is also an eligible institution;

(ii) has total assets of equal to or less than $10,000,000,000, as reported in the call report of the insured depository institution as of the end of the fourth quarter of calendar year 2009; and

(iii) is not directly or indirectly controlled by any company or other entity that has total consolidated assets of more than $10,000,000,000, as so reported;

(B) any bank holding company which has total consolidated assets of equal to or less than $10,000,000,000, as reported in the call report of the bank holding company as of the end of the fourth quarter of calendar year 2009;

(C) any savings and loan holding company which has total consolidated assets of equal to or less than $10,000,000,000, as reported in the call report of the savings and loan holding company as of the end of the fourth quarter of calendar year 2009; and

(D) any community development financial institution loan fund which has total assets of equal to or less than $10,000,000,000, as reported in audited financial statements for the fiscal year of the community development financial institution loan fund that ends in calendar year 2009.

(12) FUND.—The term ''Fund'' means the Small Business Lending Fund established under section 5103(a)(1).

(13) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' has the meaning given such term under section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

(14) MINORITY-OWNED AND WOMEN-OWNED BUSINESS.—The terms ''minority-owned business'' and ''women-owned business'' shall have the meaning given the terms ''minority-owned business'' and ''women's business'', respectively, under section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441A(r)(4)).

(15) PROGRAM.—The term ''Program'' means the Small Business Lending Fund Program authorized under section 5103(a)(2).

(16) SAVINGS AND LOAN HOLDING COMPANY.—The term ''savings and loan holding company'' has the meaning given such term under section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)).

(17) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(18) SMALL BUSINESS LENDING.—

(A) IN GENERAL.—The term ''small business lending'' means lending, as defined by and reported in an eligible institutions' quarterly call report, where each loan comprising such lending is one of the following types:

(i) Commercial and industrial loans.

(ii) Owner-occupied nonfarm, nonresidential real estate loans.

(iii) Loans to finance agricultural production and other loans to farmers.

(iv) Loans secured by farmland.

(B) EXCLUSION.—No loan that has an original amount greater than $10,000,000 or that goes to a business with more than $50,000,000 in revenues shall be included in the measure.

(C) TREATMENT OF HOLDING COMPANIES.—In the case of eligible institutions that are bank holding companies or savings and loan holding companies having one or more insured depository institution subsidiaries, small business lending shall be measured based on the combined small business lending reported in the call report of the insured depository institution subsidiaries.

(19) VETERAN-OWNED BUSINESS.—

(A) The term ''veteran-owned business'' means a business—

(i) more than 50 percent of the ownership or control of which is held by 1 or more veterans;

(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more veterans; and

(iii) a significant percentage of senior management positions of which are held by veterans.

(B) For purposes of this paragraph, the term ''veteran'' has the meaning given such term in section 101(2) of title 38, United States Code.

SEC. 5103. SMALL BUSINESS LENDING FUND.

(a) FUND AND PROGRAM.—

(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the ''Small Business Lending Fund'', which shall be administered by the Secretary.

(2) PROGRAMS AUTHORIZED.—The Secretary is authorized to establish the Small Business Lending Fund Program for using the Fund consistent with this subtitle.

(b) USE OF FUND.—

(1) IN GENERAL.—Subject to paragraph (2), the Fund shall be available to the Secretary, without further appropriation or fiscal year limitation, for the costs of purchases (including commitments to purchase), and modifications of such purchases, of preferred stock and other financial instruments from eligible institutions on such terms and conditions as are determined by the Secretary in accordance with this subtitle. For purposes of this paragraph and with respect to an eligible institution, the term ''other financial instruments'' shall include only debt instruments for which such eligible institution is fully liable or equity equivalent capital of the eligible institution. Such debt instruments may be subordi-

nated to the claims of other creditors of the eligible institution.

(2) MAXIMUM PURCHASE LIMIT.—The aggregate amount of purchases (and commitments to purchase) made pursuant to paragraph (1) may not exceed $30,000,000,000.

(3) PROCEEDS USED TO PAY DOWN PUBLIC DEBT.—All funds received by the Secretary in connection with purchases made pursuant to paragraph (1), including interest payments, dividend payments, and proceeds from the sale of any financial instrument, shall be paid into the general fund of the Treasury for reduction of the public debt.

(4) LIMITATION ON PURCHASES FROM CDLFS.—

(A) IN GENERAL.—Not more than 1 percent of the maximum purchase limit of the Program, pursuant to paragraph (2), may be used to make purchases from community development loan funds.

(B) ELIGIBILITY STANDARDS.—The Secretary, in consultation with the Community Development Financial Institutions Fund, shall develop eligibility criteria to determine the financial ability of a CDLF to participate in the

Program and repay the investment. Such criteria shall include the following:

(i) Ratio of net assets to total assets is at least 20 percent.

(ii) Ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) is at least 30 percent.

(iii) Positive net income measured on a 3-year rolling average.

(iv) Operating liquidity ratio of at least 1.0 for the 4 most recent quarters and for one or both of the two preceding years.

(v) Ratio of loans and leases 90 days or more delinquent (including loans sold with full recourse) to total equity plus loan loss reserves is less than 40 percent.

(C) REQUIREMENT TO SUBMIT AUDITED FINANCIAL STATEMENTS.—CDLFs participating in the Program shall submit audited financial statements to the Secretary, have a clean audit opinion, and have at least 3 years of operating experience.

(c) CREDITS TO THE FUND.—There shall be credited to the Fund amounts made available pursuant to section 5108, to the extent provided by appropriations Acts.

(d) TERMS.—

(1) APPLICATION.—

(A) INSTITUTIONS WITH ASSETS OF $1,000,000,000 OR LESS.—Eligible institutions having total assets equal to or less than $1,000,000,000, as reported in a call report as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

(B) INSTITUTIONS WITH ASSETS OF MORE THAN $1,000,000,000 AND LESS THAN OR EQUAL TO $10,000,000,000.—Eligible institutions having total assets of more than $1,000,000,000 but less than $10,000,000,000, as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 3 percent of risk-weighted assets, as reported in the call re-

port immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

(C) TREATMENT OF HOLDING COMPANIES.—In the case of an eligible institution that is a bank holding company or a savings and loan holding company having one or more insured depository institution subsidiaries, total assets shall be measured based on the combined total assets reported in the call report of the insured depository institution subsidiaries as of the end of the fourth quarter of calendar year 2009 and risk-weighted assets shall be measured based on the combined risk-weighted assets of the insured depository institution subsidiaries as reported in the call report immediately preceding the date of application.

(D) TREATMENT OF APPLICANTS THAT ARE INSTITUTIONS CONTROLLED BY HOLDING COMPANIES.—If an eligible institution that applies to receive a capital investment under the Program is under the control of a bank holding company or a savings and loan holding company, then the Secretary may use the Fund to purchase preferred stock or other financial in-

struments from the top-tier bank holding company or savings and loan holding company of such eligible institution, as applicable. For purposes of this subparagraph, the term ''control'' with respect to a bank holding company shall have the same meaning as in section 2(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(2)). For purposes of this subparagraph, the term ''control'' with respect to a savings and loan holding company shall have the same meaning as in 10(a)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(2)).

(E) REQUIREMENT TO PROVIDE A SMALL BUSINESS LENDING PLAN.—At the time that an applicant submits an application to the Secretary for a capital investment under the Program, the applicant shall deliver to the appropriate Federal banking agency, and, for applicants that are State-chartered banks, to the appropriate State banking regulator, a small business lending plan describing how the applicant's business strategy and operating goals will allow it to address the needs of small businesses in the areas it serves, as well as a plan to provide

linguistically and culturally appropriate outreach, where appropriate. In the case of eligible institutions that are community development loan funds, this plan shall be submitted to the Secretary. This plan shall be confidential supervisory information.

(F) TREATMENT OF APPLICANTS THAT ARE COMMUNITY DEVELOPMENT LOAN FUNDS.—Eligible institutions that are community development loan funds may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of total assets, as reported in the audited financial statements for the fiscal year of the eligible institution that ends in calendar year 2009.

(2) CONSULTATION WITH REGULATORS.—For each eligible institution that applies to receive a capital investment under the Program, the Secretary shall—

(A) consult with the appropriate Federal banking agency or, in the case of an eligible institution that is a nondepository community development financial institution, the Community Development Financial Institution Fund, for the eligible institution, to determine whether

the eligible institution may receive such capital investment;

(B) in the case of an eligible institution that is a State-chartered bank, consider any views received from the State banking regulator of the State of the eligible institution regarding the financial condition of the eligible institution; and

(C) in the case of a community development financial institution loan fund, consult with the Community Development Financial Institution Fund.

(3) CONSIDERATION OF MATCHED PRIVATE INVESTMENTS.—

(A) IN GENERAL.—For an eligible institution that applies to receive a capital investment under the Program, if the entity to be consulted under paragraph (2) would not otherwise recommend the eligible institution to receive the capital investment, the Secretary, in consultation with the entity to be so consulted, may consider whether the entity to be consulted would recommend the eligible institution to receive a capital investment based on the financial

condition of the institution if the conditions in subparagraph (B) are satisfied.

(B) CONDITIONS.—The conditions referred to in subparagraph (A) are as follows:

(i) CAPITAL SOURCES.—The eligible institution shall receive capital both under the Program and from private, nongovernment investors.

(ii) AMOUNT OF CAPITAL.—The amount of capital to be received under the Program shall not exceed 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

(iii) TERMS.—The amount of capital to be received from private, nongovernment investors shall be—

(I) equal to or greater than 100 percent of the capital to be received under the Program; and

(II) subordinate to the capital investment made by the Secretary under the Program.

(4) INELIGIBILITY OF INSTITUTIONS ON FDIC PROBLEM BANK LIST.—

(A) IN GENERAL.—An eligible institution may not receive any capital investment under the Program, if—

(i) such institution is on the FDIC problem bank list; or

(ii) such institution has been removed from the FDIC problem bank list for less than 90 days.

(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed as limiting the discretion of the Secretary to deny the application of an eligible institution that is not on the FDIC problem bank list.

(C) FDIC PROBLEM BANK LIST DEFINED.—For purposes of this paragraph, the term ''FDIC problem bank list'' means the list of depository institutions having a current rating of 4 or 5 under the Uniform Financial Institutions Rating System, or such other list designated by the Federal Deposit Insurance Corporation.

(5) INCENTIVES TO LEND.—

(A) REQUIREMENTS ON PREFERRED STOCK AND OTHER FINANCIAL INSTRUMENTS.—Any preferred stock or other financial instrument issued to Treasury by an eligible institution receiving a capital investment under the Program shall provide that—

(i) the rate at which dividends or interest are payable shall be 5 percent per annum initially;

(ii) within the first 2 years after the date of the capital investment under the Program, the rate may be adjusted based on the amount of an eligible institution's small business lending. Changes in the amount of small business lending shall be measured against the average amount of small business lending reported by the eligible institution in its call reports for the 4 full quarters immediately preceding the date of enactment of this Act, minus adjustments from each quarterly balance in respect of—

(I) net loan charge offs with respect to small business lending; and

(II) gains realized by the eligible institution resulting from mergers, acquisitions or purchases of loans after origination and syndication; which adjustments shall be determined in accordance with guidance promulgated by the Secretary; and

(iii) during any calendar quarter during the initial 2-year period referred to in clause (ii), an institution's rate shall be adjusted to reflect the following schedule, based on that institution's change in the amount of small business lending relative to the baseline—

(I) if the amount of small business lending has increased by less than 2.5 percent, the dividend or interest rate shall be 5 percent;

(II) if the amount of small business lending has increased by 2.5 percent or greater, but by less than 5.0 percent, the dividend or interest rate shall be 4 percent;

(III) if the amount of small business lending has increased by 5.0 per-

cent or greater, but by less than 7.5 percent, the dividend or interest rate shall be 3 percent;

(IV) if the amount of small business lending has increased by 7.5 percent or greater, and but by less than 10.0 percent, the dividend or interest rate shall be 2 percent; or

(V) if the amount of small business lending has increased by 10 percent or greater, the dividend or interest rate shall be 1 percent.

(B) BASIS OF INITIAL RATE.—The initial dividend or interest rate shall be based on call report data published in the quarter immediately preceding the date of the capital investment under the Program.

(C) TIMING OF RATE ADJUSTMENTS.—Any rate adjustment shall occur in the calendar quarter following the publication of call report data, such that the rate based on call report data from any one calendar quarter, which is published in the first following calendar quarter, shall be adjusted in that first following cal-

endar quarter and payable in the second following quarter.

(D) RATE FOLLOWING INITIAL 2-YEAR PERIOD.—Generally, the rate based on call report data from the eighth calendar quarter after the date of the capital investment under the Program shall be payable until the expiration of the 4½-year period that begins on the date of the investment. In the case where the amount of small business lending has remained the same or decreased relative to the institution's baseline in the eighth quarter after the date of the capital investment under the Program, the rate shall be 7 percent until the expiration of the 4½-year period that begins on the date of the investment.

(E) RATE FOLLOWING INITIAL 4½ -YEAR PERIOD.—The dividend or interest rate paid on any preferred stock or other financial instrument issued by an eligible institution that receives a capital investment under the Program shall increase to 9 percent at the end of the 4½-year period that begins on the date of the capital investment under the Program.

(F) LIMITATION ON RATE REDUCTIONS WITH RESPECT TO CERTAIN AMOUNT.—The reduction in the dividend or interest rate payable to Treasury by any eligible institution shall be limited such that the rate reduction shall not apply to a dollar amount of the investment made by Treasury that is greater than the dollar amount increase in the amount of small business lending realized under this program. The Secretary may issue guidelines that will apply to new capital investments limiting the amount of capital available to eligible institutions consistent with this limitation.

(G) RATE ADJUSTMENTS FOR S CORPORATION.—Before making a capital investment in an eligible institution that is an S corporation or a corporation organized on a mutual basis, the Secretary may adjust the dividend or interest rate on the financial instrument to be issued to the Secretary, from the dividend or interest rate that would apply under subparagraphs (A) through (F), to take into account any differential tax treatment of securities issued by such eligible institution. For purpose of this subparagraph, the term ''S corporation'' has the same

meaning as in section 1361(a) of the Internal Revenue Code of 1986.

(H) REPAYMENT DEADLINE.—The capital investment received by an eligible institution under the Program shall be evidenced by preferred stock or other financial instrument that—

(i) includes, as a term and condition, that the capital investment will—

(I) be repaid not later than the end of the 10-year period beginning on the date of the capital investment under the Program; or

(II) at the end of such 10-year period, be subject to such additional terms as the Secretary shall prescribe, which shall include a requirement that the stock or instrument shall carry the highest dividend or interest rate payable; and

(ii) provides that the term and condition described under clause (i) shall not apply if the application of that term and condition would adversely affect the capital treatment of the stock or financial instru-

ment under current or successor applicable capital provisions compared to a capital instrument with identical terms other than the term and condition described under clause (i).

(I) REQUIREMENTS ON FINANCIAL INSTRUMENTS ISSUED BY A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION LOAN FUND.—Any equity equivalent capital issued to the Treasury by a community development loan fund receiving a capital investment under the Program shall provide that the rate at which interest is payable shall be 2 percent per annum for 8 years. After 8 years, the rate at which interest is payable shall be 9 percent.

(6) ADDITIONAL INCENTIVES TO REPAY.—The Secretary may, by regulation or guidance issued under section 5104(9), establish repayment incentives in addition to the incentive in paragraph (5)(E) that will apply to new capital investments in a manner that the Secretary determines to be consistent with the purposes of this subtitle.

(7) CAPITAL PURCHASE PROGRAM REFINANCE.—

(A) IN GENERAL.—The Secretary shall, in a manner that the Secretary determines to be consistent with the purposes of this subtitle, issue regulations and other guidance to permit eligible institutions to refinance securities issued to Treasury under the CDCI and the CPP for securities to be issued under the Program.

(B) PROHIBITION ON PARTICIPATION BY NON-PAYING CPP PARTICIPANTS.—Subparagraph (A) shall not apply to any eligible institution that has missed more than one dividend payment due under the CPP. For purposes of this subparagraph, a CPP dividend payment that is submitted within 60 days of the due date of such payment shall not be considered a missed dividend payment.

(8) OUTREACH TO MINORITIES, WOMEN, AND VETERANS.—The Secretary shall require eligible institutions receiving capital investments under the Program to provide linguistically and culturally appropriate outreach and advertising in the applicant pool describing the availability and application process of receiving loans from the eligible institution that are made possible by the Program through the

use of print, radio, television or electronic media outlets which target organizations, trade associations, and individuals that—

(A) represent or work within or are members of minority communities;

(B) represent or work with or are women; and

(C) represent or work with or are veterans.

(9) ADDITIONAL TERMS.—The Secretary may, by regulation or guidance issued under section 5104(9), make modifications that will apply to new capital investments in order to manage risks associated with the administration of the Fund in a manner consistent with the purposes of this subtitle.

(10) MINIMUM UNDERWRITING STANDARDS.—The appropriate Federal banking agency for an eligible institution that receives funds under the Program shall within 60 days issue guidance regarding prudent underwriting standards that must be used for loans made by the eligible institution using such funds.

SEC. 5104. ADDITIONAL AUTHORITIES OF THE SECRETARY.

The Secretary may take such actions as the Secretary deems necessary to carry out the authorities in this subtitle, including, without limitation, the following:

(1) The Secretary may use the services of any agency or instrumentality of the United States or component thereof on a reimbursable basis, and any such agency or instrumentality or component thereof is authorized to provide services as requested by the Secretary using all authorities vested in or delegated to that agency, instrumentality, or component.

(2) The Secretary may enter into contracts, including contracts for services authorized by section 3109 of title 5, United States Code.

(3) The Secretary may designate any bank, savings association, trust company, security broker or dealer, asset manager, or investment adviser as a financial agent of the Federal Government and such institution shall perform all such reasonable duties related to this subtitle as financial agent of the Federal Government as may be required. The Secretary shall have authority to amend existing agreements with financial agents, entered into during the 2-year period before the date of enactment of this Act, to perform reasonable duties related to this subtitle.

(4) The Secretary may exercise any rights received in connection with any preferred stock or other financial instruments or assets purchased or

acquired pursuant to the authorities granted under this subtitle.

(5) Subject to section 5103(b)(3), the Secretary may manage any assets purchased under this subtitle, including revenues and portfolio risks therefrom.

(6) The Secretary may sell, dispose of, transfer, exchange or enter into securities loans, repurchase transactions, or other financial transactions in regard to, any preferred stock or other financial instrument or asset purchased or acquired under this subtitle, upon terms and conditions and at a price determined by the Secretary.

(7) The Secretary may manage or prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under this subtitle.

(8) The Secretary may establish and use vehicles, subject to supervision by the Secretary, to purchase, hold, and sell preferred stock or other financial instruments and issue obligations.

(9) The Secretary may, in consultation with the Administrator of the Small Business Administration, issue such regulations and other guidance as may be

necessary or appropriate to define terms or carry out the authorities or purposes of this subtitle.

SEC. 5105. CONSIDERATIONS.

In exercising the authorities granted in this subtitle, the Secretary shall take into consideration—

(1) increasing the availability of credit for small businesses;

(2) providing funding to minority-owned eligible institutions and other eligible institutions that serve small businesses that are minority-, veteran-, and women-owned and that also serve low- and moderate-income, minority, and other underserved or rural communities;

(3) protecting and increasing American jobs;

(4) increasing the opportunity for small business development in areas with high unemployment rates that exceed the national average;

(5) ensuring that all eligible institutions may apply to participate in the program established under this subtitle, without discrimination based on geography;

(6) providing transparency with respect to use of funds provided under this subtitle;

(7) minimizing the cost to taxpayers of exercising the authorities;

(8) promoting and engaging in financial education to would-be borrowers; and

(9) providing funding to eligible institutions that serve small businesses directly affected by the discharge of oil arising from the explosion on and sinking of the mobile offshore drilling unit Deepwater Horizon and small businesses in communities that have suffered negative economic effects as a result of that discharge with particular consideration to States along the coast of the Gulf of Mexico.

SEC. 5106. REPORTS.

The Secretary shall provide to the appropriate committees of Congress—

(1) within 7 days of the end of each month commencing with the first month in which transactions are made under the Program, a written report describing all of the transactions made during the reporting period pursuant to the authorities granted under this subtitle;

(2) after the end of March and the end of September, commencing September 30, 2010, a written report on all projected costs and liabilities, all operating expenses, including compensation for financial agents, and all transactions made by the Fund, which shall include participating institutions and

amounts each institution has received under the Program; and

(3) within 7 days of the end of each calendar quarter commencing with the first calendar quarter in which transactions are made under the Program, a written report detailing how eligible institutions participating in the Program have used the funds such institutions received under the Program.

SEC. 5107. OVERSIGHT AND AUDITS.

(a) INSPECTOR GENERAL OVERSIGHT.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of the Program through the Office of Small Business Lending Fund Program Oversight established under subsection (b).

(b) OFFICE OF SMALL BUSINESS LENDING FUND PROGRAM OVERSIGHT.—

(1) ESTABLISHMENT.—There is hereby established within the Office of the Inspector General of the Department of the Treasury a new office to be named the ''Office of Small Business Lending Fund Program Oversight'' to provide oversight of the Program.

(2) LEADERSHIP.—The Inspector General shall appoint a Special Deputy Inspector General for

SBLF Program Oversight to lead the Office, with commensurate staff, who shall report directly to the Inspector General and who shall be responsible for the performance of all auditing and investigative activities relating to the Program.

(3) REPORTING.—

(A) IN GENERAL.—The Inspector General shall issue a report no less than two times a year to the Congress and the Secretary devoted to the oversight provided by the Office, including any recommendations for improvements to the Program.

(B) RECOMMENDATIONS.—With respect to any deficiencies identified in a report under subparagraph (A), the Secretary shall either—

(i) take actions to address such deficiencies; or

(ii) certify to the appropriate committees of Congress that no action is necessary or appropriate.

(4) COORDINATION.—The Inspector General, in maximizing the effectiveness of the Office, shall work with other Offices of Inspector General, as appropriate, to minimize duplication of effort and ensure comprehensive oversight of the Program.

(5) TERMINATION.—The Office shall terminate at the end of the 6-month period beginning on the date on which all capital investments are repaid under the Program or the date on which the Secretary determines that any remaining capital investments will not be repaid.

(6) DEFINITIONS.—For purposes of this subsection:

(A) OFFICE.—The term ''Office'' means the Office of Small Business Lending Fund Program Oversight established under paragraph (1).

(B) INSPECTOR GENERAL.—The term ''Inspector General'' means the Inspector General of the Department of the Treasury.

(c) GAO AUDIT.—The Comptroller General of the United States shall perform an annual audit of the Program and issue a report to the appropriate committees of Congress containing the results of such audit.

(d) REQUIRED CERTIFICATIONS.—

(1) ELIGIBLE INSTITUTION CERTIFICATION.—Each eligible institution that participates in the Program must certify that such institution is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation

that, at a minimum, requires financial institutions, as that term is defined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

(2) LOAN RECIPIENTS.—With respect to funds received by an eligible institution under the Program, any business receiving a loan from the eligible institution using such funds after the date of the enactment of this Act shall certify to such eligible institution that the principals of such business have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).

(e) PROHIBITION ON PORNOGRAPHY.—None of the funds made available under this subtitle may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical

Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

SEC. 5108. CREDIT REFORM; FUNDING.

(a) CREDIT REFORM.—The cost of purchases of preferred stock and other financial instruments made as capital investments under this subtitle shall be determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(b) FUNDS MADE AVAILABLE.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the costs of $30,000,000,000 of capital investments in eligible institutions, including the costs of modifying such investments, and reasonable costs of administering the program of making, holding, managing, and selling the capital investments.

SEC. 5109. TERMINATION AND CONTINUATION OF AUTHORITIES.

(a) TERMINATION OF INVESTMENT AUTHORITY.—The authority to make capital investments in eligible institutions, including commitments to purchase preferred stock or other instruments, provided under this subtitle

shall terminate 1 year after the date of enactment of this Act.

(b) CONTINUATION OF OTHER AUTHORITIES.—The authorities of the Secretary under section 5104 shall not be limited by the termination date in subsection (a).

SEC. 5110. PRESERVATION OF AUTHORITY.

Nothing in this subtitle may be construed to limit the authority of the Secretary under any other provision of law.

SEC. 5111. ASSURANCES.

(a) SMALL BUSINESS LENDING FUND SEPARATE FROM TARP.—The Small Business Lending Fund Program is established as separate and distinct from the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008. An institution shall not, by virtue of a capital investment under the Small Business Lending Fund Program, be considered a recipient of the Troubled Asset Relief Program.

(b) CHANGE IN LAW.—If, after a capital investment has been made in an eligible institution under the Program, there is a change in law that modifies the terms of the investment or program in a materially adverse respect for the eligible institution, the eligible institution may, after consultation with the appropriate Federal

banking agency for the eligible institution, repay the investment without impediment.

SEC. 5112. STUDY AND REPORT WITH RESPECT TO WOMEN-OWNED, VETERAN-OWNED, AND MINORITY-OWNED BUSINESSES.

(a) STUDY.—The Secretary shall conduct a study of the impact of the Program on women-owned businesses, veteran-owned businesses, and minority-owned businesses.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted pursuant to subsection (a). To the extent possible, the Secretary shall disaggregate the results of such study by ethnic group and gender.

(c) INFORMATION PROVIDED TO THE SECRETARY.—Eligible institutions that participate in the Program shall provide the Secretary with such information as the Secretary may require to carry out the study required by this section.

SEC. 5113. SENSE OF CONGRESS.

It is the sense of Congress that the Federal Deposit Insurance Corporation and other bank regulators are sending mixed messages to banks regarding regulatory capital requirements and lending standards, which is a

contributing cause of decreased small business lending and increased regulatory uncertainty at community banks.

Subtitle B—Other Provisions

PART I—SMALL BUSINESS EXPORT PROMOTION INITIATIVES

SEC. 5221. GLOBAL BUSINESS DEVELOPMENT AND PROMOTION ACTIVITIES OF THE DEPARTMENT OF COMMERCE.

(a) INCREASE IN EMPLOYEES WITH RESPONSIBILITY FOR GLOBAL BUSINESS DEVELOPMENT AND PROMOTION ACTIVITIES.—

(1) IN GENERAL.—During the 24-month period beginning on the date of the enactment of this Act, the Secretary of Commerce shall increase the number of full-time departmental employees whose primary responsibilities involve promoting or facilitating participation by United States businesses in the global marketplace and facilitating the entry into, or expansion of, such participation by United States businesses. In carrying out this subsection, the Secretary shall ensure that—

(A) the cohort of such employees is increased by not less than 80 persons; and

(B) a substantial portion of the increased cohort is stationed outside the United States.

(2) ENHANCED FOCUS ON UNITED STATES SMALL- AND MEDIUM-SIZED BUSINESSES.—In carrying out this subsection, the Secretary shall take such action as may be necessary to ensure that the activities of the Department of Commerce relating to promoting and facilitating participation by United States businesses in the global marketplace include promoting and facilitating such participation by small and medium-sized businesses in the United States.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2011 and 2012 such sums as may be necessary to carry out this section.

(b) ADDITIONAL FUNDING FOR GLOBAL BUSINESS DEVELOPMENT AND PROMOTION ACTIVITIES OF THE DEPARTMENT OF COMMERCE.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce for the period beginning on the date of the enactment of this Act and ending 18 months thereafter, $30,000,000 to promote or facilitate participation by United States businesses in the global marketplace

and facilitating the entry into, or expansion of, such participation by United States businesses.

(2) REQUIREMENTS.—In obligating and expending the funds authorized to be appropriated by paragraph (1), the Secretary of Commerce shall give preference to activities that—

(A) assist small- and medium-sized businesses in the United States; and

(B) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 5222. ADDITIONAL FUNDING TO IMPROVE ACCESS TO GLOBAL MARKETS FOR RURAL BUSINESSES.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce $5,000,000 for each of the fiscal years 2011 and 2012 for improving access to the global marketplace for goods and services provided by rural businesses in the United States.

(b) REQUIREMENTS.—In obligating and expending the funds authorized to be appropriated by subsection (a), the Secretary of Commerce shall give preference to activities that—

(1) assist small- and medium-sized businesses in the United States; and

(2) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 5223. ADDITIONAL FUNDING FOR THE EXPORTECH PROGRAM.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce $11,000,000 for the period beginning on the date of the enactment of this Act and ending 18 months thereafter, to expand ExporTech, a joint program of the Hollings Manufacturing Partnership Program and the Export Assistance Centers of the Department of Commerce.

(b) REQUIREMENTS.—In obligating and expending the funds authorized to be appropriated by subsection (a), the Secretary of Commerce shall give preference to activities that—

(1) assist small- and medium-sized businesses in the United States; and

(2) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 5224. ADDITIONAL FUNDING FOR THE MARKET DEVELOPMENT COOPERATOR PROGRAM OF THE DEPARTMENT OF COMMERCE.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce for the period beginning on the date of the enactment of this Act and ending 18 months thereafter, $15,000,000 for the Manufacturing and Services unit of the International Trade Administration—

(1) to establish public-private partnerships under the Market Development Cooperator Program of the International Trade Administration; and

(2) to underwrite a portion of the start-up costs for new projects carried out under that Program to strengthen the competitiveness and market share of United States industry, not to exceed, for each such project, the lesser of—

(A) ⅓ of the total start-up costs for the project; or

(B) $500,000.

(b) REQUIREMENTS.—In obligating and expending the funds authorized to be appropriated by subsection (a), the Secretary of Commerce shall give preference to activities that—

(1) assist small- and medium-sized businesses in the United States; and

(2) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 5225. HOLLINGS MANUFACTURING PARTNERSHIP PROGRAM; TECHNOLOGY INNOVATION PROGRAM.

(a) HOLLINGS MANUFACTURING PARTNERSHIP PROGRAM.—Section 25(f) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(f)) is amended by adding at the end the following:

"(7) GLOBAL MARKETPLACE PROJECTS.—In making awards under this subsection, the Director, in consultation with the Manufacturing Extension Partnership Advisory Board and the Secretary of Commerce, may—

"(A) take into consideration whether an application has significant potential for enhancing the competitiveness of small and medium-sized United States manufacturers in the global marketplace; and

"(B) give a preference to applications for such projects to the extent the Director deems appropriate, taking into account the broader purposes of this subsection.".

(b) TECHNOLOGY INNOVATION PROGRAM.—In awarding grants, cooperative agreements, or contracts under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), in addition to the award criteria set forth in subsection (c) of that section, the Director of the National Institute of Standards and Technology may take into consideration whether an application has significant potential for enhancing the competitiveness of small- and medium-sized businesses in the United States in the global marketplace. The Director shall consult with the Technology Innovation Program Advisory Board and the Secretary of Commerce in implementing this subsection.

SEC. 5226. SENSE OF THE SENATE CONCERNING FEDERAL COLLABORATION WITH STATES ON EXPORT PROMOTION ISSUES.

It is the sense of the Senate that the Secretary of Commerce should enhance Federal collaboration with the States on export promotion issues by—

(1) providing the necessary training to the staff at State international trade agencies to enable them to assist the United States and Foreign Commercial Service (established by section 2301 of the Export Enhancement Act of 1988 (15 U.S.C. 4721)) in pro-

viding counseling and other export services to businesses in their communities; and

(2) entering into agreements with State international trade agencies for those agencies to deliver export promotion services in their local communities in order to extend the outreach of United States and Foreign Commercial Service programs.

SEC. 5227. REPORT ON TARIFF AND NONTARIFF BARRIERS.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the United States Trade Representative and other appropriate entities, shall report to Congress on the tariff and nontariff barriers imposed by Colombia, the Republic of Korea, and Panama with respect to exports of articles from the United States, including articles exported or produced by small- and medium-sized businesses in the United States.

PART II—MEDICARE FRAUD

SEC. 5241. USE OF PREDICTIVE MODELING AND OTHER ANALYTICS TECHNOLOGIES TO IDENTIFY AND PREVENT WASTE, FRAUD, AND ABUSE IN THE MEDICARE FEE-FOR-SERVICE PROGRAM.

(a) USE IN THE MEDICARE FEE-FOR-SERVICE PROGRAM.—The Secretary shall use predictive modeling and other analytics technologies (in this section referred to as

1 ''predictive analytics technologies'') to identify improper
2 claims for reimbursement and to prevent the payment of
3 such claims under the Medicare fee-for-service program.
4 (b) PREDICTIVE ANALYTICS TECHNOLOGIES RE-
5 QUIREMENTS.—The predictive analytics technologies used
6 by the Secretary shall—
7 (1) capture Medicare provider and Medicare
8 beneficiary activities across the Medicare fee-for-
9 service program to provide a comprehensive view
10 across all providers, beneficiaries, and geographies
11 within such program in order to—
12 (A) identify and analyze Medicare provider
13 networks, provider billing patterns, and bene-
14 ficiary utilization patterns; and
15 (B) identify and detect any such patterns
16 and networks that represent a high risk of
17 fraudulent activity;
18 (2) be integrated into the existing Medicare fee-
19 for-service program claims flow with minimal effort
20 and maximum efficiency;
21 (3) be able to—
22 (A) analyze large data sets for unusual or
23 suspicious patterns or anomalies or contain
24 other factors that are linked to the occurrence
25 of waste, fraud, or abuse;

(B) undertake such analysis before payment is made; and

(C) prioritize such identified transactions for additional review before payment is made in terms of the likelihood of potential waste, fraud, and abuse to more efficiently utilize investigative resources;

(4) capture outcome information on adjudicated claims for reimbursement to allow for refinement and enhancement of the predictive analytics technologies on the basis of such outcome information, including post-payment information about the eventual status of a claim; and

(5) prevent the payment of claims for reimbursement that have been identified as potentially wasteful, fraudulent, or abusive until such time as the claims have been verified as valid.

(c) IMPLEMENTATION REQUIREMENTS.—

(1) REQUEST FOR PROPOSALS.—Not later than January 1, 2011, the Secretary shall issue a request for proposals to carry out this section during the first year of implementation. To the extent the Secretary determines appropriate—

(A) the initial request for proposals may include subsequent implementation years; and

(B) the Secretary may issue additional requests for proposals with respect to subsequent implementation years.

(2) FIRST IMPLEMENTATION YEAR.—The initial request for proposals issued under paragraph (1) shall require the contractors selected to commence using predictive analytics technologies on July 1, 2011, in the 10 States identified by the Secretary as having the highest risk of waste, fraud, or abuse in the Medicare fee-for-service program.

(3) SECOND IMPLEMENTATION YEAR.—Based on the results of the report and recommendation required under subsection (e)(1)(B), the Secretary shall expand the use of predictive analytics technologies on October 1, 2012, to apply to an additional 10 States identified by the Secretary as having the highest risk of waste, fraud, or abuse in the Medicare fee-for-service program, after the States identified under paragraph (2).

(4) THIRD IMPLEMENTATION YEAR.—Based on the results of the report and recommendation required under subsection (e)(2), the Secretary shall expand the use of predictive analytics technologies on January 1, 2014, to apply to the Medicare fee-for-service program in any State not identified under

1 paragraph (2) or (3) and the commonwealths and
2 territories.
3 (5) FOURTH IMPLEMENTATION YEAR.—Based
4 on the results of the report and recommendation re-
5 quired under subsection (e)(3), the Secretary shall
6 expand the use of predictive analytics technologies,
7 beginning April 1, 2015, to apply to Medicaid and
8 CHIP. To the extent the Secretary determines ap-
9 propriate, such expansion may be made on a phased-
10 in basis.
11 (6) OPTION FOR REFINEMENT AND EVALUA-
12 TION.—If, with respect to the first, second, or third
13 implementation year, the Inspector General of the
14 Department of Health and Human Services certifies
15 as part of the report required under subsection (e)
16 for that year no or only nominal actual savings to
17 the Medicare fee-for-service program, the Secretary
18 may impose a moratorium, not to exceed 12 months,
19 on the expansion of the use of predictive analytics
20 technologies under this section for the succeeding
21 year in order to refine the use of predictive analytics
22 technologies to achieve more than nominal savings
23 before further expansion. If a moratorium is im-
24 posed in accordance with this paragraph, the imple-
25 mentation dates applicable for the succeeding year

or years shall be adjusted to reflect the length of the moratorium period.

(d) CONTRACTOR SELECTION, QUALIFICATIONS, AND DATA ACCESS REQUIREMENTS.—

(1) SELECTION.—

(A) IN GENERAL.—The Secretary shall select contractors to carry out this section using competitive procedures as provided for in the Federal Acquisition Regulation.

(B) NUMBER OF CONTRACTORS.—The Secretary shall select at least 2 contractors to carry out this section with respect to any year.

(2) QUALIFICATIONS.—

(A) IN GENERAL.—The Secretary shall enter into a contract under this section with an entity only if the entity—

(i) has leadership and staff who—

(I) have the appropriate clinical knowledge of, and experience with, the payment rules and regulations under the Medicare fee-for-service program; and

(II) have direct management experience and proficiency utilizing predictive analytics technologies nec-

essary to carry out the requirements under subsection (b); or

(ii) has a contract, or will enter into a contract, with another entity that has leadership and staff meeting the criteria described in clause (i).

(B) CONFLICT OF INTEREST.—The Secretary may only enter into a contract under this section with an entity to the extent that the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(3) DATA ACCESS.—The Secretary shall provide entities with a contract under this section with appropriate access to data necessary for the entity to use predictive analytics technologies in accordance with the contract.

(e) REPORTING REQUIREMENTS.—

(1) FIRST IMPLEMENTATION YEAR REPORT.—Not later than 3 months after the completion of the first implementation year under this section, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes the following:

(A) A description of the implementation of the use of predictive analytics technologies during the year.

(B) A certification of the Inspector General of the Department of Health and Human Services that—

(i) specifies the actual and projected savings to the Medicare fee-for-service program as a result of the use of predictive analytics technologies, including estimates of the amounts of such savings with respect to both improper payments recovered and improper payments avoided;

(ii) the actual and projected savings to the Medicare fee-for-service program as a result of such use of predictive analytics technologies relative to the return on investment for the use of such technologies and in comparison to other strategies or technologies used to prevent and detect fraud, waste, and abuse in the Medicare fee-for-service program; and

(iii) includes recommendations regarding—

(I) whether the Secretary should continue to use predictive analytics technologies;

(II) whether the use of such technologies should be expanded in accordance with the requirements of subsection (c); and

(III) any modifications or refinements that should be made to increase the amount of actual or projected savings or mitigate any adverse impact on Medicare beneficiaries or providers.

(C) An analysis of the extent to which the use of predictive analytics technologies successfully prevented and detected waste, fraud, or abuse in the Medicare fee-for-service program.

(D) A review of whether the predictive analytics technologies affected access to, or the quality of, items and services furnished to Medicare beneficiaries.

(E) A review of what effect, if any, the use of predictive analytics technologies had on Medicare providers.

(F) Any other items determined appropriate by the Secretary.

(2) SECOND YEAR IMPLEMENTATION REPORT.—Not later than 3 months after the completion of the second implementation year under this section, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes, with respect to such year, the items required under paragraph (1) as well as any other additional items determined appropriate by the Secretary with respect to the report for such year.

(3) THIRD YEAR IMPLEMENTATION REPORT.—Not later than 3 months after the completion of the third implementation year under this section, the Secretary shall submit to the appropriate committees of Congress, and make available to the public, a report that includes with respect to such year, the items required under paragraph (1), as well as any other additional items determined appropriate by the Secretary with respect to the report for such year, and the following:

(A) An analysis of the cost-effectiveness and feasibility of expanding the use of predictive analytics technologies to Medicaid and CHIP.

(B) An analysis of the effect, if any, the application of predictive analytics technologies to claims under Medicaid and CHIP would have on States and the commonwealths and territories.

(C) Recommendations regarding the extent to which technical assistance may be necessary to expand the application of predictive analytics technologies to claims under Medicaid and CHIP, and the type of any such assistance.

(f) INDEPENDENT EVALUATION AND REPORT.—

(1) EVALUATION.—Upon completion of the first year in which predictive analytics technologies are used with respect to claims under Medicaid and CHIP, the Secretary shall, by grant, contract, or interagency agreement, conduct an independent evaluation of the use of predictive analytics technologies under the Medicare fee-for-service program and Medicaid and CHIP. The evaluation shall include an analysis with respect to each such program of the items required for the third year implementation report under subsection (e)(3).

(2) REPORT.—Not later than 18 months after the evaluation required under paragraph (1) is initiated, the Secretary shall submit a report to Con-

gress on the evaluation that shall include the results of the evaluation, the Secretary's response to such results and, to the extent the Secretary determines appropriate, recommendations for legislation or administrative actions.

(g) WAIVER AUTHORITY.—The Secretary may waive such provisions of titles XI, XVIII, XIX, and XXI of the Social Security Act, including applicable prompt payment requirements under titles XVIII and XIX of such Act, as the Secretary determines to be appropriate to carry out this section.

(h) FUNDING.—

(1) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary to carry out this section, $100,000,000 for the period beginning January 1, 2011, to remain available until expended.

(2) RESERVATIONS.—

(A) INDEPENDENT EVALUATION.—The Secretary shall reserve not more than 5 percent of the funds appropriated under paragraph (1) for purposes of conducting the independent evaluation required under subsection (f).

(B) APPLICATION TO MEDICAID AND CHIP.—The Secretary shall reserve such portion

of the funds appropriated under paragraph (1) as the Secretary determines appropriate for purposes of providing assistance to States for administrative expenses in the event of the expansion of predictive analytics technologies to claims under Medicaid and CHIP.

(i) DEFINITIONS.—In this section:

(1) COMMONWEALTHS AND TERRITORIES.—The term ''commonwealth and territories'' includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States in which the Medicare fee-for-service program, Medicaid, or CHIP operates.

(2) CHIP.—The term ''CHIP'' means the Children's Health Insurance Program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(3) MEDICAID.—The term ''Medicaid'' means the program to provide grants to States for medical assistance programs established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(4) MEDICARE BENEFICIARY.—The term ''Medicare beneficiary'' means an individual enrolled in the Medicare fee-for-service program.

(5) MEDICARE FEE-FOR-SERVICE PROGRAM.—The term ''Medicare fee-for-service program'' means the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(6) MEDICARE PROVIDER.—The term ''Medicare provider'' means a provider of services (as defined in subsection (u) of section 1861 of the Social Security Act (42 U.S.C. 1395x)) and a supplier (as defined in subsection (d) of such section).

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services.

(8) STATE.—The term ''State'' means each of the 50 States and the District of Columbia.

PART III—ADVANCE REFUNDABILITY

SEC. 5261. ELIMINATION OF ADVANCE REFUNDABILITY OF EARNED INCOME CREDIT.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, section 2122 and the amendments made by section 2122 shall have no force or effect.

(b) ELIMINATION.—

(1) IN GENERAL.—The following provisions of the Internal Revenue Code of 1986 are repealed:

(A) Section 3507.

(B) Subsection (g) of section 32.

(C) Paragraph (7) of section 6051(a).

(2) CONFORMING AMENDMENTS.—

(A) Section 6012(a) of the Internal Revenue Code of 1986 is amended by striking paragraph (8) and by redesignating paragraph (9) as paragraph (8).

(B) Section 6302 of such Code is amended by striking subsection (i).

(C) The table of sections for chapter 25 of such Code is amended by striking the item relating to section 3507.

(3) EFFECTIVE DATE.—The repeals and amendments made by this subsection shall apply to taxable years beginning after December 31, 2010.