

112TH CONGRESS
1ST SESSION

H. R. 2346

To improve the lives of working families by providing family and medical need assistance, child care assistance, in-school and after school assistance, family care assistance, and encouraging the establishment of family-friendly workplaces.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2011

Ms. WOOLSEY (for herself, Mr. STARK, Mrs. MALONEY, Ms. DELAURO, Mr. GEORGE MILLER of California, Ms. SCHAKOWSKY, Mr. DAVIS of Illinois, Ms. LEE of California, Mr. CONYERS, Ms. WATERS, Mr. OLVER, Ms. HIRONO, Mr. HASTINGS of Florida, Mr. BRADY of Pennsylvania, Mr. FILNER, Ms. MOORE, Mr. PAYNE, Mr. JACKSON of Illinois, Mr. RUSH, Mr. McDERMOTT, Ms. CHU, Mr. ELLISON, Mr. HINCHEY, Mr. GRIJALVA, Ms. BROWN of Florida, Mr. HONDA, Ms. NORTON, Ms. FUDGE, and Mr. SERRANO) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Oversight and Government Reform, House Administration, and Ways and Means, 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

A BILL

To improve the lives of working families by providing family and medical need assistance, child care assistance, in-school and after school assistance, family care assistance, and encouraging the establishment of family-friendly workplaces.

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Balancing Act of 2011”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

**TITLE I—PAID LEAVE FOR NEW PARENTS AND FAMILY AND
MEDICAL LEAVE ENHANCEMENT ACT**

Subtitle A—Paid Leave for New Parents

Sec. 101. Short title.

Sec. 102. General definitions.

PART 1—FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Sec. 111. Program definitions.

Sec. 112. Establishment of program.

Sec. 113. Program benefits.

Sec. 114. Voluntary employer plan.

Sec. 115. Additional benefits.

Sec. 116. Prohibited acts by employer.

Sec. 117. Enforcement.

Sec. 118. Penalties.

Sec. 119. Education programs.

Sec. 120. Regulations.

Sec. 121. Effective date.

**PART 2—CIVIL SERVICE FAMILY AND MEDICAL LEAVE INSURANCE
PROGRAM**

Sec. 131. Program definitions.

Sec. 132. Establishment of program.

PART 3—FAMILY AND MEDICAL LEAVE INSURANCE FUND

Sec. 141. Establishment.

Sec. 142. Board of Trustees.

Sec. 143. Investment of the Family and Medical Leave Insurance Fund.

Sec. 144. Payments from Family and Medical Leave Insurance Fund.

Sec. 145. Administrative expenses.

Sec. 146. Amendments to the Internal Revenue Code of 1986.

Subtitle B—Family and Medical Leave Enhancement Act

Sec. 151. Short title.

Sec. 152. Eligible employee.

Sec. 153. Entitlement to additional leave under the FMLA for parental involve-
ment and family wellness.

Sec. 154. Entitlement of Federal employees to leave for parental involvement and family wellness.

Subtitle C—Domestic Violence Leave Act

Sec. 161. Short title.
 Sec. 162. Entitlement to leave for domestic violence, sexual assault, or stalking.
 Sec. 163. Inclusion of same-sex spouses and domestic partners.
 Sec. 164. Entitlement to leave for Federal employees for domestic violence, sexual assault, or stalking.
 Sec. 165. Inclusion of same-sex spouses and domestic partners for leave for Federal employees.

Subtitle D—Healthy Families Act

Sec. 171. Short title.
 Sec. 172. Purposes.
 Sec. 173. Definitions.
 Sec. 174. Provision of paid sick time.
 Sec. 175. Posting requirement.
 Sec. 176. Prohibited acts.
 Sec. 177. Enforcement authority.
 Sec. 178. Collection of data on paid sick time and further study.
 Sec. 179. Effect on other laws.
 Sec. 180. Effect on existing employment benefits.
 Sec. 181. Encouragement of more generous leave policies.
 Sec. 182. Regulations.
 Sec. 183. Effective dates.

TITLE II—CHILD CARE EXPANSION AND IMPROVEMENT

Subtitle A—Care for Young Children

Sec. 201. Expanding child care for young children.

Subtitle B—Improving Child Care Quality Through Teacher Incentives

Sec. 211. Purpose.
 Sec. 212. Definitions.
 Sec. 213. Funds for child care provider development and retention grants, scholarships, and health benefits coverage.
 Sec. 214. Allotments to States.
 Sec. 215. Application and plan.
 Sec. 216. Child Care Provider Development and Retention Grant Program.
 Sec. 217. Child Care Provider Scholarship Program.
 Sec. 218. Child care provider health benefits coverage.
 Sec. 219. Annual report.
 Sec. 220. Evaluation of health benefits programs by Secretary.
 Sec. 221. Authorization of appropriations.

Subtitle C—Child Care Facilities Financing

Sec. 231. Short title.
 Sec. 232. Technical and financial assistance grants.
 Sec. 233. Definitions.
 Sec. 234. Authorization of appropriations.

Subtitle D—Business Child Care Incentive Grant Program

Sec. 241. Business child care incentive grant program.

TITLE III—PRE-SCHOOL, IN-SCHOOL, AND AFTER SCHOOL
ASSISTANCE

Subtitle A—Universal Prekindergarten Act

Sec. 301. Short title.
 Sec. 302. Purpose.
 Sec. 303. Prekindergarten grant program authorization.
 Sec. 304. State requirements.
 Sec. 305. Local requirements.
 Sec. 306. Professional development set-aside.
 Sec. 307. Reporting.
 Sec. 308. Federal funds supplementary.
 Sec. 309. Definitions.
 Sec. 310. Authorization of appropriations.

Subtitle B—Universal Free School Breakfast Program

Sec. 311. Universal free school breakfast program.

Subtitle C—Afterschool Education Enhancement Act

Sec. 341. Short title.
 Sec. 342. Amendments regarding 21st Century community learning centers.

TITLE IV—IMPROVING THE WORKPLACE FOR FAMILIES

Subtitle A—Part-Time and Temporary Workers Benefits

Sec. 401. Treatment of employees working at less than full-time under participation, vesting, and accrual rules governing pension plans.
 Sec. 402. Treatment of employees working at less than full-time under group health plans.
 Sec. 403. Expansion of definition of employee to include certain individuals whose services are leased or contracted for.
 Sec. 404. Effective dates.

Subtitle B—United States Business Telework Act

Sec. 411. Short title.
 Sec. 412. Telework pilot program.
 Sec. 413. Report to Congress.
 Sec. 414. Definition.
 Sec. 415. Termination.
 Sec. 416. Authorization of appropriations.

1 SEC. 2. FINDINGS.

2 Congress finds the following:

3 (1) Currently 58 percent of married families
4 with children in the United States, both parents

1 work full-time. Seventy-one percent of mothers with
2 children under age 18 work full-time.

3 (2) The National Study of the Changing Work-
4 force found that 75 percent of employed parents in-
5 dicated that they don't have enough time with their
6 children.

7 (3)(A) A survey conducted by the Boys and
8 Girls Clubs of America found that more than half of
9 the respondents indicated that they had little or no
10 time to spend in physical activities with their chil-
11 dren.

12 (B) Parents in 3,500,000 households, rep-
13 resenting 7,000,000 children, spend an hour or less
14 a week doing physical activities with their children.

15 (C) The primary obstacle cited by the parents
16 to engaging in physical activities with their children
17 was their work schedules.

18 (4) According to the National Partnership for
19 Women and Families, 78 percent of workers who
20 need leave do not take it because they cannot afford
21 it.

22 (5) Nearly every industrialized nation other
23 than the United States, and most developing na-
24 tions, provides parents with paid leave for infant
25 care.

1 (6) In the United States, more than half of all
2 mothers of children under the age of one work. Yet
3 parents of infants and toddlers face acute problems
4 finding child care, and child care that is available is
5 often of mediocre quality.

6 (7) Since 2000, the cost of child care has in-
7 creased twice as fast as the median income of fami-
8 lies with children. According to the National Asso-
9 ciation of Child Care Resource & Referral Agencies,
10 the average annual cost of child care ranges from
11 \$4,560 in Mississippi to \$18,773 in Massachusetts.
12 In addition, the annual cost of child care for a 4-
13 year old is more than the annual in State tuition at
14 a public four-year college in 36 States and the Dis-
15 trict of Columbia.

16 (8) The average annual child care teacher sal-
17 ary is \$20,940, a wage so low that many programs
18 find it extremely challenging to recruit fully qualified
19 teachers and to retain them. High turnover rates
20 make it more difficult to provide quality and con-
21 tinuity of care.

22 (9) Only 17 percent of eligible families received
23 child care assistance through the Child Care Devel-
24 opment Block Grant, the Social Services Block
25 Grant, and the Temporary Assistance for Needy

1 Families program in 2006. In addition, approxi-
2 mately 40 percent of eligible preschoolers are able to
3 participate in the Head Start program.

4 (10) Among needy students, school nutrition
5 programs often provide the primary opportunity for
6 consumption of nutritionally valuable foods.

7 (11) Breakfast is a critical meal for children
8 and provides the nutrition necessary to optimize
9 their learning capacities.

10 (12) According to a recent nationwide report by
11 the Afterschool Alliance, approximately 15,000,000
12 children in the United States are left alone after
13 school each week without adult supervision.

14 (13) Violent juvenile crime peaks between the
15 hours of 3:00 p.m. and 7:00 p.m. and teens are
16 more likely to be victims of serious violent crime in
17 the hour after school lets out than any other time
18 of the day.

19 (14) The Nation's communities can benefit
20 from teleworking, which give workers more time to
21 spend at home with their families.

22 (15) Companies with telework programs have
23 found that telework can boost employee productivity
24 5 percent to 20 percent, thereby saving businesses
25 valuable resources and time.

1 **TITLE I—PAID LEAVE FOR NEW**
2 **PARENTS AND FAMILY AND**
3 **MEDICAL LEAVE ENHANCE-**
4 **MENT ACT**

5 **Subtitle A—Paid Leave for New**
6 **Parents**

7 **SEC. 101. SHORT TITLE.**

8 This subtitle may be cited as the “Family Leave In-
9 surance Act”.

10 **SEC. 102. GENERAL DEFINITIONS.**

11 (a) IN GENERAL.—The definitions provided by sec-
12 tion 101 of the Family and Medical Leave Act of 1993
13 (29 U.S.C. 2611), other than the definitions of the terms
14 “son or daughter”, shall apply for purposes of this sub-
15 title.

16 (b) ADDITIONAL DEFINITIONS.—In this subtitle, the
17 following additional definitions shall apply:

18 (1) BOARD OF TRUSTEES.—The term “Board
19 of Trustees” means the Board of Trustees of the In-
20 surance Fund.

21 (2) COVERED AGENCY.—The term “covered
22 agency”, when used with respect to a State, means
23 the State agency referred to in paragraph (1) of sec-
24 tion 112(b), or the Commissioner of Social Security
25 if the Commissioner is carrying out the State Family

1 and Medical Insurance Program in the State under
2 paragraph (2) of such section.

3 (3) DOMESTIC PARTNER.—The term “domestic
4 partner” means—

5 (A) the person recognized as the domestic
6 partner of the employee under any domestic
7 partner registry or civil union laws of the State
8 or political subdivision of a State where the em-
9 ployee resides;

10 (B) a same-sex spouse as determined
11 under the applicable law of the State or polit-
12 ical subdivision of a State where the employee
13 resides; or

14 (C) in the case of an unmarried employee
15 who lives in a State where a person cannot
16 marry a person of the same sex under the laws
17 of the State, a single, unmarried adult person
18 of the same sex as the employee who is in a
19 committed, intimate relationship with the em-
20 ployee, is not a domestic partner to any other
21 person, and who is designated to the employer
22 by such employee as that employee’s domestic
23 partner.

1 (4) INSURANCE FUND.—The term “Insurance
2 Fund” means the Family and Medical Leave Insur-
3 ance Fund established under section 141.

4 (5) MANAGING TRUSTEE.—The term “Man-
5 aging Trustee” means the Managing Trustee of the
6 Board of Trustees of the Insurance Fund.

7 (6) SON OR DAUGHTER.—The term “son or
8 daughter” means a biological, adopted, or foster
9 child, a stepchild, a legal ward, a child of a person’s
10 domestic partner, or a child of a person standing in
11 loco parentis, who is—

12 (A) under 18 years of age; or

13 (B) 18 years of age or older and incapable
14 of self-care because of a mental or physical dis-
15 ability.

16 **PART 1—FAMILY AND MEDICAL LEAVE**

17 **INSURANCE PROGRAM**

18 **SEC. 111. PROGRAM DEFINITIONS.**

19 In this part:

20 (1) ELIGIBLE EMPLOYEE.—The term “eligible
21 employee” means any of the following:

22 (A) An employee who—

23 (i) earned wages with a covered em-
24 ployer for a minimum of 6 months prior to

1 filing an application for leave benefits
2 under this part; and

3 (ii) has been employed by the em-
4 ployer with respect to whom paid leave is
5 requested for at least 625 hours of service
6 during the previous 6 months.

7 (B) An employee—

8 (i) of a small employer that has elect-
9 ed to participate in the Program under
10 this part in accordance with such regula-
11 tions as the Secretary shall prescribe; and

12 (ii) who meets the requirements of
13 subparagraph (A), but is not an employee
14 of the Federal Government.

15 (C) A self-employed individual who has—

16 (i) elected to participate in the Pro-
17 gram under this part in accordance with
18 such regulations as the Secretary shall pre-
19 scribe;

20 (ii) self-employment income while a
21 covered employer for 6 of the last 12
22 months prior to filing an application for
23 leave benefits under this part; and

24 (iii) paid premiums under section
25 1401(c) of the Internal Revenue Code of

1 1986 with respect to such self-employment
2 income.

3 (2) EMPLOYER-RELATED DEFINITIONS.—

4 (A) COVERED EMPLOYER.—The term
5 “covered employer” means a person—

6 (i) that is—

7 (I) an employer;

8 (II) a small employer that has
9 elected to participate in the Program
10 under this part in accordance with
11 such regulations as the Secretary shall
12 prescribe; or

13 (III) a self-employed individual
14 who has elected to so participate; and

15 (ii) that is not a voluntary plan em-
16 ployer.

17 (B) EMPLOYER.—The term “employer”
18 shall have the meaning given that term in sec-
19 tion 101(4) of the Family and Medical Leave
20 Act of 1993 (29 U.S.C. 2611(4)), except that
21 such term shall include any person who employs
22 2 or more employees for each working day dur-
23 ing each of 20 or more calendar workweeks in
24 the current or preceding calendar year.

1 (C) SMALL EMPLOYER.—The term “small
2 employer”—

3 (i) means any person engaged in com-
4 merce or in any industry or activity affect-
5 ing commerce who employs not less than 2
6 and not more than 19 employees for each
7 working day during each of 20 or more
8 calendar workweeks in the current or pre-
9 ceding calendar year; and

10 (ii) includes—

11 (I) any person who acts, directly
12 or indirectly, in the interest of an em-
13 ployer described in clause (i) to any of
14 the employees of such employer;

15 (II) any successor in interest of
16 an employer described in clause (i);
17 and

18 (III) any public agency, as de-
19 fined in section 3(x) of the Fair Labor
20 Standards Act of 1938 (29 U.S.C.
21 203(x)) that is an employer described
22 in clause (i) but is not an entity of the
23 Federal Government.

24 (D) VOLUNTARY PLAN EMPLOYER.—The
25 term “voluntary plan employer” means an em-

1 employer for which the Secretary has approved a
2 voluntary plan under section 114 for the period
3 involved.

4 (3) LEAVE BENEFIT.—The term “leave benefit”
5 means a family and medical leave insurance benefit
6 described in section 113.

7 (4) VOLUNTARY PAID BENEFIT.—The term
8 “voluntary paid benefit” means a family and medical
9 leave insurance benefit provided under a voluntary
10 plan approved under section 114 for the period in-
11 volved.

12 **SEC. 112. ESTABLISHMENT OF PROGRAM.**

13 (a) FEDERAL PROGRAM.—The Secretary of Labor
14 shall establish a Family and Medical Insurance Program.

15 (b) STATE PROGRAMS.—In carrying out the Federal
16 Program established under subsection (a), the Secretary
17 may—

18 (1) enter into a contract with a State under
19 which—

20 (A) the State agrees to establish, or ex-
21 pand a State program in effect at the date of
22 the enactment of this Act to include, a State
23 Family and Medical Insurance Program that
24 provides the benefits described in this part; and

1 (B) the Secretary agrees to instruct the
2 Managing Trustee of the Family and Medical
3 Leave Insurance Fund, established under sec-
4 tion 141, to provide the State funds for such
5 benefits from the Insurance Fund; or

6 (2) at the request of the Governor of a State,
7 enter into an interagency agreement with the Com-
8 missioner of Social Security under which—

9 (A) the Commissioner of Social Security
10 agrees to establish a State Family and Medical
11 Insurance Program in such State to provide the
12 benefits described in this part in such State;
13 and

14 (B) the Secretary agrees to instruct the
15 Managing Trustee of the Insurance Fund to
16 provide the Commissioner of Social Security
17 funds for such benefits from the Insurance
18 Fund.

19 (c) STATE APPLICATION.—To be eligible to receive
20 a contract under subsection (b)(1), a State shall submit
21 an application to the Secretary at such time, in such man-
22 ner, and containing such information as the Secretary may
23 require. At a minimum, the application shall include infor-
24 mation identifying the State agency to carry out the State

1 Family and Medical Insurance Program under subsection
2 (b)(1).

3 **SEC. 113. PROGRAM BENEFITS.**

4 (a) ENTITLEMENT.—Subject to subsections (b), (d),
5 and (e), an eligible employee of a covered employer shall
6 be entitled to a family and medical leave insurance benefit
7 for a total of 12 workweeks of leave during any 12-month
8 period for 1 or more of the following reasons:

9 (1) Because of the birth of a son or daughter
10 of the employee and in order to care for such son
11 or daughter.

12 (2) Because of the placement of a son or
13 daughter with the employee for adoption or foster
14 care.

15 (3) In order to care for a child, parent, spouse,
16 domestic partner, grandchild, grandparent, or sibling
17 of the employee and who has a serious health condi-
18 tion.

19 (4) Because of a serious health condition that
20 makes the employee unable to perform the functions
21 of the position of such employee.

22 (5) Because of any qualifying exigency (as the
23 Secretary of Labor shall, by regulation, determine)
24 arising out of the fact that the spouse, or a son,
25 daughter, or parent of the employee is on active

1 duty (or has been notified of an impending call or
2 order to active duty) in the Armed Forces of the
3 United States in support of a contingency operation.

4 (6) In order to care for a child, parent, spouse,
5 domestic partner, grandchild, grandparent, sibling,
6 or next of kin of the employee who is a covered serv-
7 icemember as such term is defined in section
8 101(16) of the Family and Medical Leave Act of
9 1993 (29 U.S.C. 2611(16)).

10 (b) WAITING PERIOD.—During each 12-month pe-
11 riod described in subsection (a), each eligible employee
12 shall be subject to a waiting period of 5 workdays of leave
13 described in subsection (a) (but not more than 7 calendar
14 days), during which a leave benefit shall not be paid to
15 the employee. The waiting period shall not reduce the 12
16 workweeks of leave benefits available under subsection (a).

17 (c) BENEFIT AMOUNT.—

18 (1) IN GENERAL.—Subject to paragraph (2), an
19 eligible employee’s leave benefit for any workday on
20 which the employee takes leave as described in sub-
21 section (a) shall be calculated as—

22 (A) in the case of an employee with an an-
23 nual income of not more than \$20,000, an
24 amount equal to 100 percent of that employee’s
25 daily earnings;

1 (B) in the case of an employee with an an-
2 nual income of more than \$20,000 and not
3 more than \$30,000, an amount equal to the
4 greater of—

5 (i) 75 percent of that employee's daily
6 earnings; or

7 (ii) 100 percent of the daily earnings
8 of an employee with an annual income of
9 \$20,000;

10 (C) in the case of an employee with an an-
11 nual income of more than \$30,000 and not
12 more than \$60,000, an amount equal to the
13 greater of—

14 (i) 55 percent of that employee's daily
15 earnings; or

16 (ii) 75 percent of the daily earnings of
17 an employee with an annual income of
18 \$30,000;

19 (D) in the case of an employee with an an-
20 nual income of more than \$60,000 and not
21 more than \$97,000, an amount equal to the
22 greater of—

23 (i) 40 percent of that employee's daily
24 earnings; or

1 (ii) 55 percent of the daily earnings of
2 an employee with an annual income of
3 \$60,000; and

4 (E) in the case of an employee with an an-
5 nual income of more than \$97,000, an amount
6 equal to 40 percent of the daily earnings of an
7 employee with an annual income of \$97,000.

8 (2) INDEXING OF ANNUAL INCOME CAT-
9 EGORIES.—

10 (A) IN GENERAL.—The Secretary shall
11 index the annual income amounts specified in
12 paragraph (1) for each calendar year, using the
13 national average wage index, as determined
14 under section 209(k) of the Social Security Act
15 (42 U.S.C. 409(k)).

16 (B) PUBLICATION.—Not later than the
17 November 1 preceding each calendar year, the
18 Secretary shall publish in the Federal Register
19 the indexed amount determined under subpara-
20 graph (A) for that calendar year.

21 (d) APPLICATION.—

22 (1) IN GENERAL.—To be eligible to receive a
23 family and medical insurance benefit under this part
24 in a State, an eligible employee shall submit an ap-
25 plication to the covered agency for the State at such

1 time, in such manner, and containing the informa-
2 tion specified in paragraph (3) and such additional
3 information as the agency may require.

4 (2) IRREVOCABILITY FOR SELF-EMPLOYED IN-
5 DIVIDUALS.—An election by a self-employed indi-
6 vidual to participate in the Program shall be irrev-
7 ovable.

8 (3) CERTIFICATION REQUIREMENTS.—The cov-
9 ered agency shall require each of the following, as
10 part of the application for benefits under this section
11 in connection with any leave:

12 (A) A certification, submitted in a timely
13 manner, issued by the health care provider of
14 the eligible employee or of the child, spouse,
15 parent, domestic partner, grandchild, grand-
16 parent or sibling of the employee, as appro-
17 priate, and similar to the certification described
18 section 103(b) of the Family and Medical Leave
19 Act of 1993 (29 U.S.C. 2613(b)) in connection
20 with such leave.

21 (B) In any case in which the covered agen-
22 cy has reason to doubt the validity of the cer-
23 tification provided under subparagraph (A), the
24 Secretary may require, at the expense of the
25 covered agency, that the eligible employee ob-

1 tain the opinion of a second health care pro-
2 vider designated or approved by the agency con-
3 cerning any information certified under sub-
4 paragraph (A).

5 (C) In any case in which the second opin-
6 ion described in subparagraph (B) differs from
7 the opinion in the original certification provided
8 under subparagraph (A), the covered agency
9 may require, at the expense of the agency, that
10 the employee obtain the opinion of a third
11 health care provider designated or approved
12 jointly by the agency and the employee con-
13 cerning the information certified under sub-
14 paragraph (A). The opinion of the third health
15 care provider concerning such information shall
16 be considered to be final and shall be binding
17 on the agency and the employee.

18 (e) PAYMENT OF BENEFITS.—

19 (1) PAYMENT FROM INSURANCE FUND.—Pay-
20 ments of benefits required to be made under this
21 section shall be made only from the Insurance Fund
22 established under section 141.

23 (2) CERTIFICATION AND PAYMENT.—On the
24 final decision of a covered agency or on the final
25 judgment of any court of competent jurisdiction pur-

1 suant to paragraph (3) that any person is entitled
2 to any payment under this section—

3 (A) the covered agency shall certify to the
4 Managing Trustee of the Board of Trustees of
5 the Insurance Fund the name and address of
6 the person entitled to receive such payment, the
7 amount of such payment, and the time at which
8 such payment shall be made;

9 (B) the Managing Trustee shall pay the
10 certified amount from the Insurance Fund to
11 the covered agency; and

12 (C) the covered agency shall make the pay-
13 ment to the person.

14 (3) REVIEW.—Any eligible employee dissatisfied
15 with any initial determination under this section
16 shall be entitled to reconsideration of the determina-
17 tion, and a hearing on the determination, by the
18 Secretary to the same extent as is provided in sec-
19 tion 205(b) of the Social Security Act (42 U.S.C. 22
20 405(b)) and to judicial review of the final decision
21 after such hearing as is provided in section 205(g)
22 of the Social Security Act (42 U.S.C. 405(g)).

23 (4) WITHHOLDING OF CERTIFICATION.—In any
24 case in which a review of the covered agency's deci-
25 sion is or may be sought under paragraph (3), the

1 covered agency may withhold certification of pay-
2 ment pending such review.

3 (5) OTHER COMPENSATION.—Except as pro-
4 vided in section 115, no employee shall be eligible to
5 receive paid leave benefits under this part for any
6 period during which—

7 (A) the employee is receiving worker’s
8 compensation or compensation through unem-
9 ployment insurance in connection with the event
10 for which the employee is taking the leave; or

11 (B) the employee is receiving paid leave
12 benefits from an employer under a voluntary
13 employer plan approved under section 114.

14 (f) REGULATIONS.—The Secretary shall issue regula-
15 tions to carry out this section, including the determination
16 of benefits for leave taken intermittently or on a reduced
17 leave schedule, or for leave taken by a part-time, seasonal,
18 or intermittent employee.

19 **SEC. 114. VOLUNTARY EMPLOYER PLAN.**

20 (a) IN GENERAL.—Any employer may submit an ap-
21 plication to the Secretary for approval of a voluntary plan.
22 The Secretary may require the employer to resubmit the
23 plan for approval on an annual basis. During a period for
24 which the Secretary has approved a plan, the applicant

1 shall provide a voluntary paid benefit under the plan rath-
2 er than participating in the Program.

3 (b) APPROVAL.—The Secretary shall approve the vol-
4 untary plan of the applicant if the Secretary finds each
5 of the following with respect to the applicant:

6 (1) The rights afforded to the employees cov-
7 ered under the plan are equal to or greater than the
8 rights afforded through the Program.

9 (2) The plan has been made available to all of
10 the employees of the applicant employed in the
11 United States or to all employees at any 1 distinct,
12 separate establishment maintained by the applicant
13 in the United States.

14 (3) A majority of the employees of the employer
15 employed in the United States or a majority of the
16 employees employed at any one distinct, separate es-
17 tablishment maintained by the employer in the
18 United States have consented to the plan.

19 (4) The plan provides for insurance to be issued
20 by an admitted disability insurer approved by the
21 Secretary or equivalent insurance (which may be
22 self-insurance).

23 (5) The applicant has consented to the plan and
24 has agreed to make the premium contributions re-

1 required, if any, and transmit the proceeds to the dis-
2 ability insurer, if any.

3 (6) The plan provides for the inclusion of future
4 employees.

5 (7)(A) The plan will be in effect for a period of
6 not less than 1 year and, thereafter, continuously
7 unless the Secretary finds that the applicant has
8 given notice of intent to terminate the plan, as de-
9 scribed in subparagraph (B), and that the fee de-
10 scribed in subparagraph (C) has been paid.

11 (B) The notice shall be filed in writing with the
12 Secretary and shall be effective—

13 (i) on the anniversary of the effective date
14 of the plan next following the date of the filing
15 of the notice; or

16 (ii) if such anniversary would occur less
17 than 30 days after the date of the filing of the
18 notice, on the next anniversary of that effective
19 date.

20 (C) The applicant shall pay a fee to the Sec-
21 retary in such amount as the Secretary determines
22 to be adequate to provide leave benefits under this
23 part to all eligible employees of the applicant for a
24 period of at least 4 months, plus an amount to pay

1 administrative costs related to processing and paying
2 such benefits.

3 (D) Amounts received by the Secretary under
4 this paragraph shall be deposited in the Insurance
5 Fund.

6 (8) The amount of deductions from the wages
7 of an employee that is in effect for the plan shall not
8 be increased on any date other than on the date of
9 an anniversary of the effective date of the plan.

10 (c) ORDERS AND WITHDRAWAL OF APPROVAL.—If
11 the Secretary finds that a voluntary plan employer is not
12 paying voluntary paid benefits required under the vol-
13 untary plan to the employees under the plan, the Secretary
14 may order the employer to make the payments. If the Sec-
15 retary finds that a voluntary plan employer is not com-
16 plying with the provisions of the plan, including by not
17 paying voluntary paid benefits required under the plan,
18 the Secretary may revoke the Secretary's approval for the
19 plan, and require the employer to participate in the Pro-
20 gram.

21 **SEC. 115. ADDITIONAL BENEFITS.**

22 (a) ADDITIONAL EMPLOYER BENEFITS.—

23 (1) COVERED EMPLOYERS.—Nothing in this
24 part shall be construed to discourage a covered em-
25 ployer from providing an additional benefit in con-

1 junction with leave described in section 113(a) to an
2 eligible employee, in addition to the leave benefit
3 provided to that employee. The additional employer
4 benefit shall not reduce the amount of the leave ben-
5 efit that an eligible employee receives under this
6 part.

7 (2) VOLUNTARY PLAN EMPLOYERS.—Nothing
8 in this part shall be construed to discourage a vol-
9 untary plan employer from providing an additional
10 benefit in conjunction with leave described in section
11 113(a) to an employee, in addition to the voluntary
12 paid benefit provided to that employee. The addi-
13 tional employer benefit shall not reduce the amount
14 of the voluntary paid benefit that an employee re-
15 ceives under a voluntary plan described in section
16 114.

17 (b) COLLECTIVE BARGAINING.—

18 (1) MORE PROTECTIVE.—Nothing in this part
19 shall be construed to diminish the obligation of a
20 covered employer or voluntary plan employer to com-
21 ply with any collective bargaining agreement or any
22 employment benefit program or plan that provides
23 greater paid leave rights to employees than the
24 rights established under this part (including rights
25 established under a plan described in section 114).

1 (2) LESS PROTECTIVE.—The rights established
2 for employees under this part (including rights es-
3 tablished under a plan described in section 114)
4 shall not be diminished by any collective bargaining
5 agreement or any employment benefit program or
6 plan.

7 **SEC. 116. PROHIBITED ACTS BY EMPLOYER.**

8 (a) INTERFERENCE WITH RIGHTS.—It shall be un-
9 lawful for any covered employer to interfere with, restrain,
10 or deny the exercise of or the attempt to exercise, any
11 right provided under this part.

12 (b) DISCRIMINATION.—It shall be unlawful for any
13 covered employer to discharge or in any other manner dis-
14 criminate against any individual for opposing any practice
15 made unlawful by this part.

16 (c) INTERFERENCE WITH PROCEEDINGS OR INQUIR-
17 IES.—It shall be unlawful for any person to discharge or
18 in any other manner discriminate against any individual
19 because such individual—

20 (1) has filed any charge, or has instituted or
21 caused to be instituted any proceeding, under or re-
22 lated to this part;

23 (2) has given, or is about to give, any informa-
24 tion in connection with any inquiry or proceeding re-
25 lating to any right provided under this part; or

1 (3) has testified, or is about to testify, in any
2 inquiry or proceeding relating to any right provided
3 under this part.

4 **SEC. 117. ENFORCEMENT.**

5 (a) CIVIL ACTION BY EMPLOYEES.—

6 (1) LIABILITY.—Any covered employer who vio-
7 lates section 116 shall be liable to any eligible em-
8 ployee affected—

9 (A) for damages equal to—

10 (i) the amount of—

11 (I) any wages, salary, employ-
12 ment benefits, or other compensation
13 denied or lost to such employee by
14 reason of the violation; or

15 (II) in a case in which wages,
16 salary, employment benefits, or other
17 compensation have not been denied or
18 lost to the employee, any actual mone-
19 tary losses sustained by the employee
20 as a direct result of the violation, such
21 as the cost of providing care, up to a
22 sum equal to 8 weeks of wages or sal-
23 ary for the employee;

1 (ii) the interest on the amount de-
2 scribed in clause (i) calculated at the pre-
3 vailing rate; and

4 (iii) an additional amount as liq-
5 uidated damages equal to the sum of the
6 amount described in clause (i) and the in-
7 terest described in clause (ii), except that
8 if a covered employer who has violated sec-
9 tion 116 proves to the satisfaction of the
10 court that the act or omission which vio-
11 lated section 116 was in good faith and
12 that the employer had reasonable grounds
13 for believing that the act or omission was
14 not a violation of section 116, such court
15 may, in the discretion of the court, reduce
16 the amount of the liability to the amount
17 and interest determined under clauses (i)
18 and (ii), respectively; and

19 (B) for such equitable relief as may be ap-
20 propriate, including employment, reinstatement,
21 and promotion.

22 (2) RIGHT OF ACTION.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph (B), an action to recover the
25 damages or equitable relief prescribed in para-

1 graph (1) may be maintained against any cov-
2 ered employer (including a public agency) in
3 any Federal or State court of competent juris-
4 diction by any 1 or more employees for and on
5 behalf of—

6 (i) the employees; or

7 (ii) the employees and other employ-
8 ees similarly situated.

9 (B) LIMITATION.—The right provided by
10 subparagraph (A) to bring an action by or on
11 behalf of any employee shall terminate—

12 (i) on the filing of a complaint by the
13 Secretary in an action under subsection
14 (b)(3) in which restraint is sought of any
15 further delay in the payment of the
16 amount described in paragraph (1)(A) to
17 such employee by an employer responsible
18 under paragraph (1) for the payment; or

19 (ii) on the filing of a complaint by the
20 Secretary in an action under paragraph (1)
21 or (2) of subsection (b) in which a recovery
22 is sought of the damages described in
23 paragraph (1)(A) owing to an eligible em-
24 ployee by an employer liable under para-
25 graph (1),

1 unless the action described in clause (i) or (ii)
2 is dismissed without prejudice on motion of the
3 Secretary.

4 (3) FEES AND COSTS.—The court in an action
5 brought under this subsection shall, in addition to
6 any judgment awarded to the plaintiff, allow a rea-
7 sonable attorneys' fee, reasonable expert witness
8 fees, and other costs of the action to be paid by the
9 defendant.

10 (b) ACTIONS BY THE SECRETARY.—

11 (1) ADMINISTRATIVE ACTION.—The Secretary
12 shall receive, investigate, and attempt to resolve
13 complaints of violations of section 116 in the same
14 manner that the Secretary receives, investigates, and
15 attempts to resolve complaints of violations of sec-
16 tions 6 and 7 of the Fair Labor Standards Act of
17 1938 (29 U.S.C. 206 and 207).

18 (2) CIVIL ACTION.—

19 (A) RIGHT OF ACTION.—The Secretary
20 may bring an action in any court of competent
21 jurisdiction to recover the damages described in
22 subsection (a)(1)(A).

23 (B) SUMS RECOVERED.—Any sums recov-
24 ered by the Secretary pursuant to this para-
25 graph shall be held in a special deposit account

1 and shall be paid, on order of the Secretary, di-
2 rectly to each employee affected. Any such sums
3 not paid to an employee because of inability to
4 do so within a period of 3 years shall be depos-
5 ited into the Treasury of the United States as
6 miscellaneous receipts.

7 (3) ACTION FOR INJUNCTION BY THE SEC-
8 RETARY.—The district courts of the United States
9 shall have jurisdiction, for cause shown, in an action
10 brought by the Secretary—

11 (A) to restrain violations of section 116,
12 including the restraint of any withholding of
13 payment of wages, salary, employment benefits,
14 or other compensation, plus interest, found by
15 the court to be due to eligible employees; or

16 (B) to award such other equitable relief as
17 may be appropriate, including employment, re-
18 instatement, and promotion.

19 (4) SOLICITOR OF LABOR.—The Solicitor of
20 Labor may appear for and represent the Secretary
21 on any litigation brought under this subsection.

22 (c) LIMITATION.—

23 (1) Except as provided in paragraph (2), an ac-
24 tion may be brought under subsections (a) or (b) not
25 later than 2 years after the date of the last event

1 constituting the alleged violation for which the ac-
2 tion is brought.

3 (2) WILLFUL VIOLATION.—In the case of such
4 action brought for a willful violation of section 116,
5 such action may be brought within 3 years of the
6 date of the last event constituting the alleged viola-
7 tion for which such action is brought.

8 (3) COMMENCEMENT.—In determining when an
9 action is commenced by the Secretary for the pur-
10 poses of this subsection, it shall be considered to be
11 commenced on the date when the complaint is filed.

12 (d) INVESTIGATIVE AUTHORITY.—

13 (1) IN GENERAL.—To ensure compliance with
14 the provisions of this part, or any regulation or
15 order issued under this part, the Secretary shall
16 have, subject to paragraph (3), the investigative au-
17 thority provided under section 11(a) of the Fair
18 Labor Standards Act of 1938 (29 U.S.C. 211(a)).

19 (2) OBLIGATION TO KEEP AND PRESERVE
20 RECORDS.—Any covered employer shall make, keep,
21 and preserve records pertaining to compliance with
22 this part in accordance with section 11(c) of the
23 Fair Labor Standards Act of 1938 (29 U.S.C.
24 211(c)) and in accordance with regulations issued by

1 the Secretary. The Secretary shall have access to the
2 records for purposes of conducting audits.

3 (3) REQUIRED SUBMISSIONS GENERALLY LIM-
4 ITED TO AN ANNUAL BASIS.—The Secretary shall
5 not under the authority of this subsection require
6 any covered employer or any plan, fund, or program
7 to submit to the Secretary any books or records
8 more than once during any 12-month period, unless
9 the Secretary has reasonable cause to believe there
10 may exist a violation of this part or any regulation
11 or order issued pursuant to this part, or is inves-
12 tigating a charge pursuant to subsection (b).

13 (4) SUBPOENA POWER.—For the purposes of
14 any investigation provided for in this section, the
15 Secretary shall have the subpoena authority provided
16 for under section 9 of the Fair Labor Standards Act
17 of 1938 (29 U.S.C. 209).

18 **SEC. 118. PENALTIES.**

19 (a) PENALTIES FOR SUBMISSION OF FALSE CERTIFI-
20 CATIONS.—If the Secretary finds that any individual sub-
21 mits a false certification of the health condition of any
22 person in order to obtain leave benefits under this part
23 with the intent to defraud, the Secretary shall assess a
24 penalty against the individual in an amount up to 100 per-
25 cent of the benefits paid as a result of the false certifi-

1 cation. Penalties collected under this subsection shall be
2 deposited in the Insurance Fund, notwithstanding the pro-
3 visions of title 31, United States Code and used to reim-
4 burse the covered employers involved for the amount of
5 the leave benefits.

6 (b) CRIMINAL PENALTIES FOR FALSE STATEMENTS
7 AND SOLICITATIONS.—Whoever—

8 (1) makes or causes to be made any false state-
9 ment in support of an application for leave benefits
10 under this part;

11 (2) knowingly presents or causes to be pre-
12 sented any false written or oral material statement
13 in support of any claim for leave benefits under this
14 part;

15 (3) knowingly solicits, receives, offers, pays, or
16 accepts any rebate, refund, commission, preference,
17 patronage, dividend, discount, or other consider-
18 ation, whether in the form of money or otherwise, as
19 compensation or inducement for soliciting a claimant
20 to apply for leave benefits under this part, except to
21 the extent authorized by a law of the United States;
22 or

23 (4) knowingly assists, abets, solicits, or con-
24 spires with any person to engage in an act that is
25 prohibited under paragraph (1), (2), or (3),

1 shall be guilty of a felony and upon conviction shall be
2 fined under title 18, United States Code, or imprisoned
3 for not more than 5 years, or both.

4 **SEC. 119. EDUCATION PROGRAMS.**

5 (a) **AUTHORITY.**—The Secretary shall develop and
6 maintain a program of education concerning the rights
7 and leave benefits under this part.

8 (b) **NOTICE TO EMPLOYERS.**—The Secretary shall
9 provide to each covered employer a notice informing em-
10 ployees of the rights and leave benefits available under this
11 part. The notice shall be given by every covered employer
12 to each employee hired, and to each employee taking leave
13 as described in section 113(a).

14 **SEC. 120. REGULATIONS.**

15 The Secretary shall issue regulations to carry out this
16 part.

17 **SEC. 121. EFFECTIVE DATE.**

18 This part shall take effect on January 1, 2012, and
19 apply to periods of leave that commence on or after Janu-
20 ary 1, 2013.

21 **PART 2—CIVIL SERVICE FAMILY AND MEDICAL**
22 **LEAVE INSURANCE PROGRAM**

23 **SEC. 131. PROGRAM DEFINITIONS.**

24 In this part:

1 (1) AGENCY.—The term “agency” means an
2 agency covered under subchapter V of chapter 63 of
3 title 5, United States Code.

4 (2) AGENCY EMPLOYEE.—The term “agency
5 employee” means an employee who—

6 (A) meets the requirements of paragraph
7 (1) of section 6381 of title 5, United States
8 Code; and

9 (B) has earned wages with an agency for
10 12 of the last 18 months, prior to filing an ap-
11 plication for leave benefits under this part.

12 **SEC. 132. ESTABLISHMENT OF PROGRAM.**

13 (a) IN GENERAL.—The Director of the Office of Per-
14 sonnel Management shall establish a Civil Service Family
15 and Medical Leave Insurance Program, and shall issue
16 regulations providing for the implementation of the pro-
17 gram. In issuing the regulations, the Director shall require
18 that the Director shall provide, or that the agencies shall
19 provide, family and medical leave insurance benefits de-
20 scribed in section 113 to agency employees. The regula-
21 tions issued under this subsection shall include provisions
22 that are the same as regulations issued by the Secretary
23 to implement the statutory provisions of sections 113,
24 115, 119, and 120, except insofar as the Director may
25 determine, for good cause shown and stated together with

1 the regulations, that a modification of the regulations
 2 would be more effective for the implementation of the
 3 rights and protections under those sections. The regula-
 4 tions shall provide for appropriate remedies and proce-
 5 dures for violations of this part.

6 (b) PAYMENT.—At the direction of the Director or
 7 the head of an agency, as specified in the regulations, the
 8 Managing Trustee shall pay funds from the Insurance
 9 Fund for the leave benefits.

10 **PART 3—FAMILY AND MEDICAL LEAVE**

11 **INSURANCE FUND**

12 **SEC. 141. ESTABLISHMENT.**

13 (a) IN GENERAL.—There is created in the Treasury
 14 of the United States a trust fund to be known as the Fam-
 15 ily and Medical Leave Insurance Fund. The Insurance
 16 Fund shall consist of such amounts as may be deposited
 17 in, or appropriated to, such fund as provided in this sec-
 18 tion.

19 (b) APPROPRIATIONS TO INSURANCE FUND.—

20 (1) AMOUNTS APPROPRIATED.—There is appro-
 21 priated to the Insurance Fund for fiscal year 2012
 22 and each fiscal year thereafter, out of any moneys
 23 in the Treasury not otherwise appropriated, amounts
 24 equivalent to 100 percent of—

1 (A) the family and medical leave premiums
2 imposed by sections 3101(c) and 3111(c) of the
3 Internal Revenue Code of 1986 with respect to
4 wages (as defined in section 3121 of such Code)
5 reported to the Secretary of the Treasury or the
6 Secretary's delegate under subtitle F of such
7 Code after December 31, 2010, as determined
8 by the Secretary of the Treasury by applying
9 the applicable rates of premium payment under
10 such sections to such wages, which wages shall
11 be certified by the Commissioner of Social Se-
12 curity;

13 (B) on the basis of the records of wages
14 established and maintained by the Commis-
15 sioner of the Social Security Administration in
16 accordance with such reports;

17 (C) the family and medical leave premiums
18 imposed by section 1401(c) of such Code with
19 respect to self-employment income (as defined
20 in section 1402 of such Code) reported to the
21 Secretary of the Treasury or the Secretary's
22 delegate on tax returns under subtitle F of such
23 Code after December 31, 2009, as determined
24 by the Secretary of the Treasury by applying
25 the applicable rate of premium payment under

1 such section 1401(c) to such self-employment
2 income, which self-employment income shall be
3 certified by the Commissioner of Social Secu-
4 rity; and

5 (D) on the basis of the records of self-em-
6 ployment income established and maintained by
7 the Commissioner of Social Security in accord-
8 ance with such returns.

9 (2) TRANSFERS.—Such appropriated amounts
10 shall be transferred from time to time from the gen-
11 eral fund of the Treasury to the Insurance Fund.
12 Such amounts shall be determined on the basis of
13 estimates by the Secretary of the Treasury of the
14 premiums, specified in paragraph (1), paid to or de-
15 posited into the Treasury, and proper adjustments
16 shall be made in amounts subsequently transferred
17 to the extent prior estimates were in excess of or
18 were less than such premiums.

19 (3) INVESTMENTS.—All amounts transferred to
20 the Insurance Fund under paragraph (2) shall be in-
21 vested by the Managing Trustee referred to in sec-
22 tion 312(c) in the same manner and to the same ex-
23 tent as the other assets of the Insurance Fund.

1 **SEC. 142. BOARD OF TRUSTEES.**

2 (a) ESTABLISHMENT AND MEMBERSHIP.—With re-
3 spect to the Insurance Fund, there is established a body
4 to be known as the Board of Trustees of the Insurance
5 Fund which shall be composed of the Secretary of the
6 Treasury, the Secretary of Labor, the Commissioner of
7 Social Security, and the Secretary of Health and Human
8 Services, all ex officio, and of two members of the public
9 (both of whom may not be from the same political party),
10 who shall be nominated by the President, by and with the
11 advice and consent of the Senate.

12 (b) TERMS AND VACANCIES.—Members of the Board
13 of Trustees shall serve for a period of 4 years. A member
14 of the Board of Trustees nominated and confirmed as a
15 member of the public to fill a vacancy occurring during
16 a term shall be nominated and confirmed only for the re-
17 mainder of such term. An individual nominated and con-
18 firmed as a member of the public may serve in such posi-
19 tion after the expiration of such member's term until the
20 earlier of the date on which the member's successor takes
21 office or the date on which a report of the Board is first
22 issued under paragraph (2) after the expiration of the
23 member's term.

24 (c) MANAGING TRUSTEE AND SECRETARY.—The
25 Secretary of the Treasury shall be the Managing Trustee

1 of the Board of Trustees. The Secretary of Labor shall
2 serve as the Secretary of the Board of Trustees.

3 (d) BASIC DUTIES OF THE BOARD OF TRUSTEES.—

4 The Board of Trustees shall meet not less frequently than
5 once each calendar year. It shall be the duty of the Board
6 of Trustees to—

7 (1) hold the Insurance Fund;

8 (2) report to Congress not later than April 1 of
9 each year—

10 (A) on the operation and status of the In-
11 surance Fund during the fiscal year preceding
12 the fiscal year in which the report is made; and

13 (B) on the expected operation and status
14 of the Insurance Fund during the fiscal year in
15 which the report is made and the next 2 fiscal
16 years;

17 (3) report immediately to Congress whenever
18 the Board is of the opinion that the amount in the
19 Insurance Fund is unduly small; and

20 (4) review the general policies followed in man-
21 aging the Insurance Fund, and recommend changes
22 in such policies, including necessary changes in the
23 provisions of law that govern the way in which the
24 Insurance Fund is to be managed.

1 (e) REQUIREMENTS RELATING TO ANNUAL RE-
2 PORT.—The report provided for in subsection (d)(2) shall
3 include a statement of the assets of, and the disburse-
4 ments made from, the Insurance Fund during the fiscal
5 year preceding the fiscal year in which the report is made,
6 an estimate of the expected income to, and disbursements
7 to be made from, the Insurance Fund during the fiscal
8 year in which the report is made and each of the next
9 two fiscal years, and a statement of the actuarial status
10 of the Insurance Fund. Such report shall also include an
11 actuarial opinion by an appropriate employee of the De-
12 partment of Labor certifying that the techniques and
13 methodologies used for the report are generally accepted
14 within the actuarial profession and that the assumptions
15 and cost estimates used for the report are reasonable.

16 (f) LIABILITY.—A person serving as a member of the
17 Board of Trustees shall not be considered to be a fiduciary
18 and shall not be personally liable for actions taken in such
19 capacity with respect to the Insurance Fund.

20 **SEC. 143. INVESTMENT OF THE FAMILY AND MEDICAL**
21 **LEAVE INSURANCE FUND.**

22 (a) OBLIGATIONS.—It shall be the duty of the Man-
23 aging Trustee to invest such portion of the Insurance
24 Fund as is not, in the trustee's judgment, required to meet
25 current withdrawals. Such investments may be made only

1 in interest-bearing obligations of the United States or in
 2 obligations guaranteed as to both principal and interest
 3 by the United States.

4 (b) ACQUISITION.—The obligations referred to in
 5 subsection (a) may be acquired—

6 (1) on original issue at the issue price; or

7 (2) by purchase of outstanding obligations at
 8 the market price.

9 (c) OBLIGATIONS ISSUED FOR PURCHASE BY
 10 FUND.—The purposes for which obligations of the United
 11 States may be issued under chapter 31 of title 31, United
 12 States Code, are extended to authorize the issuance at par
 13 of public debt obligations for purchase by the Insurance
 14 Fund. Such obligations issued for purchase by the Insur-
 15 ance Fund shall have dates of maturity fixed with due re-
 16 gard for the needs of the Insurance Fund. Such obliga-
 17 tions shall bear interest at a rate equal to—

18 (1) except as provided in paragraph (2), the av-
 19 erage market yield (computed by the Managing
 20 Trustee on the basis of market quotations as of the
 21 end of the calendar month preceding the date of
 22 such issue) on all marketable interest-bearing obliga-
 23 tions of the United States forming a part of the
 24 public debt that are not due or callable until after

1 the expiration of four years from the end of such
2 calendar month; or

3 (2) in a case in which such average market
4 yield is not a multiple of 0.1 percent, the multiple
5 of 0.1 percent nearest such market yield.

6 (d) OTHER OBLIGATIONS.—The Managing Trustee
7 may purchase interest-bearing obligations of the United
8 States that are not described in subsection (c) or obliga-
9 tions guaranteed as to both principal and interest by the
10 United States, on original issue or at the market price,
11 only in cases in which the trustee determines that the pur-
12 chase of obligations described in this paragraph is in the
13 public interest.

14 (e) DISPOSITION AND REDEMPTION OF OBLIGA-
15 TIONS.—Any obligations acquired by the Insurance Fund
16 (except public debt obligations issued exclusively to the In-
17 surance Fund) may be sold by the Managing Trustee at
18 the market price, and such public debt obligations may
19 be redeemed at par plus accrued interest.

20 (f) CREDITING OF INTEREST AND PROCEEDS.—The
21 interest on, and the proceeds from the sale or redemption
22 of, any obligations held in the Insurance Fund shall be
23 credited to and form a part of the Insurance Fund.

1 **SEC. 144. PAYMENTS FROM FAMILY AND MEDICAL LEAVE**
 2 **INSURANCE FUND.**

3 The Managing Trustee shall pay from time to time
 4 from the Insurance Fund such amounts as the Secretary
 5 of Labor certifies are necessary to make the payments pro-
 6 vided for by section 113, and payments with respect to
 7 administrative expenses under section 145.

8 **SEC. 145. ADMINISTRATIVE EXPENSES.**

9 (a) AVAILABILITY OF INSURANCE FUND.—Under
 10 regulations that shall be prescribed by the Secretary of
 11 Labor, funds shall be made available from the Insurance
 12 Fund in connection with the administration of this subtitle
 13 and the administration of related provisions of the Inter-
 14 nal Revenue Code of 1986 in the same manner and extent
 15 as funds are made available from the trust funds referred
 16 to in section 201(g) of the Social Security Act (42 U.S.C.
 17 401(g)) in connection with the administration of the rel-
 18 evant provisions referred to in such section.

19 (b) AUTHORIZATION OF APPROPRIATIONS.—There
 20 are authorized to be made available for expenditure such
 21 amounts as Congress may determine to be appropriate to
 22 pay the costs of the part of the administration of this sub-
 23 title (including start-up costs, technical assistance, and
 24 costs for small employers electing to participate in the
 25 Family and Medical Leave Insurance Program) for which
 26 the Secretary of Labor is responsible.

1 (c) GIFTS AND BEQUESTS.—The Managing Trustee
 2 may accept on behalf of the United States money gifts
 3 and bequests made unconditionally to the Insurance Fund
 4 for the benefit of the Insurance Fund or any activity fi-
 5 nanced through the Insurance Fund and such gifts and
 6 bequests shall be deposited into the Insurance Fund.

7 (d) PROCESSING OF TAX DATA.—Section 232 of the
 8 Social Security Act (42 U.S.C. 432) shall apply with re-
 9 spect to this subtitle, in the same manner and to the same
 10 extent as such section applies with respect to title II of
 11 the Social Security Act (42 U.S.C. 401 et seq.).

12 **SEC. 146. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 13 **OF 1986.**

14 (a) EMPLOYEE PREMIUMS.—Section 3101 of the In-
 15 ternal Revenue Code of 1986 (relating to tax on employ-
 16 ees) is amended—

17 (1) by redesignating subsection (c) as sub-
 18 section (d); and

19 (2) by inserting after subsection (c) the fol-
 20 lowing new subsection:

21 “(c) FAMILY AND MEDICAL LEAVE PREMIUMS.—

22 “(1) IN GENERAL.—In addition to the taxes im-
 23 posed by subsections (a) and (b), there is imposed
 24 on the income of every individual a family and med-
 25 ical leave premium equal to the applicable percent-

1 age of the wages (as defined in section 3121(a)) re-
2 ceived by the individual with respect to employment
3 (as defined in section 3121(b)).

4 “(2) APPLICABLE PERCENTAGE.—For purposes
5 of paragraph (1), the applicable percentage is—

6 “(A) 0.1 percent with respect to periods of
7 employment by a small employer (as defined in
8 section 103(b) of the Family Leave Insurance
9 Act) electing to participate in the Family and
10 Medical Leave Insurance Program (established
11 under section 112 of such Act); and

12 “(B) 0.2 percent with respect to all other
13 periods of employment.

14 “(3) EXCEPTION FOR CERTAIN EMPLOY-
15 MENT.—Paragraph (1) shall not apply with respect
16 to a period of employment—

17 “(A) by an employer during which the Sec-
18 retary of Labor determines the employer has in
19 effect a plan which is equivalent to or better
20 than the Family and Medical Leave Insurance
21 Program (established under section 112 of the
22 Family Leave Insurance Act); or

23 “(B) by a small employer (as so defined)
24 who has not elected to participate in such Pro-
25 gram.

1 For purposes of the preceding sentence, the Sec-
2 retary of Labor shall prescribe such regulations as
3 may be appropriate or necessary, including regula-
4 tions requiring documentation of employer pro-
5 grams.”.

6 (b) EMPLOYER PREMIUMS.—Section 3111 of the In-
7 ternal Revenue Code of 1986 (relating to tax on employ-
8 ers) is amended—

9 (1) by redesignating subsection (c) as sub-
10 section (d); and

11 (2) by inserting after subsection (c) the fol-
12 lowing new subsection:

13 “(c) FAMILY AND MEDICAL LEAVE PREMIUMS.—

14 “(1) IN GENERAL.—In addition to the excise
15 taxes imposed by subsections (a) and (b), there is
16 imposed on every employer a family and medical
17 leave premium, with respect to having individuals in
18 such employer’s employ, equal to the applicable per-
19 centage of the wages (as defined in section 3121(a))
20 paid by such employer with respect to employment
21 (as defined in section 3121(b)).

22 “(2) APPLICABLE PERCENTAGE.—For purposes
23 of paragraph (1), the applicable percentage is—

24 “(A) 0.1 percent with respect to small em-
25 ployers (as defined in section 103(b) of the

1 Family Leave Insurance Act) electing to par-
2 ticipate in the Family and Medical Leave Insur-
3 ance Program (established under section 112 of
4 such Act); and

5 “(B) 0.2 percent with respect to all other
6 employers.

7 “(3) EXCEPTION FOR CERTAIN EMPLOYERS.—
8 Paragraph (1) shall not apply for any period with
9 respect to an employer to whom paragraph (1) of
10 section 3101(c) does not apply by reason of para-
11 graph (3) thereof.”.

12 (c) SELF-EMPLOYED PREMIUMS.—Section 1401 of
13 the Internal Revenue Code of 1986 is amended—

14 (1) by redesignating subsection (c) as sub-
15 section (d); and

16 (2) by inserting after subsection (b) the fol-
17 lowing new subsection:

18 “(c) FAMILY AND MEDICAL LEAVE PREMIUMS.—

19 “(1) IN GENERAL.—In addition to the taxes im-
20 posed by subsections (a) and (b), there is imposed
21 for each taxable year, on the self-employment income
22 of every individual, a family and medical leave pre-
23 mium equal to 0.4 percent of the amount of the self-
24 employment income for such taxable year.

1 “(2) EXCEPTION FOR CERTAIN EMPLOYERS.—
2 Paragraph (1) shall not apply for any period with
3 respect to an employer who has not elected to par-
4 ticipate in the Family and Medical Leave Insurance
5 Program (established under section 112 of the Fam-
6 ily Leave Insurance Act).”.

7 (d) CONFORMING AMENDMENTS TO SOCIAL SECU-
8 RITY ACT.—Section 201 of the Social Security Act (42
9 U.S.C. 401) is amended—

10 (1) by striking “sections 3101(b) and 3111(b)”
11 both places it appears in subsection (a)(3) and in-
12 serting “sections 3101(b), 3101(c), 3111(b), and
13 3111(c)”, and

14 (2) by striking “section 1401(b)” both places it
15 appears in subsection (a)(4) and inserting “sections
16 1401(b) and 1401(c)”.

17 (e) EFFECTIVE DATE.—

18 (1) EMPLOYMENT PREMIUMS.—The amend-
19 ments made by subsections (a), (b), and (d)(1) shall
20 apply to wages paid after December 31, 2010.

21 (2) SELF-EMPLOYMENT PREMIUMS.—The
22 amendments made by subsections (c) and (d)(2)
23 shall apply to taxable years beginning after Decem-
24 ber 31, 2010.

1 **Subtitle B—Family and Medical**
 2 **Leave Enhancement Act**

3 **SEC. 151. SHORT TITLE.**

4 This subtitle may be cited as the “Family and Med-
 5 ical Leave Enhancement Act”.

6 **SEC. 152. ELIGIBLE EMPLOYEE.**

7 Section 101(2)(B)(ii) of the Family and Medical
 8 Leave Act of 1993 (29 U.S.C. 2611(2)(B)(ii)) is amended
 9 by striking “less than 50” each place it appears and in-
 10 serting “fewer than 25”.

11 **SEC. 153. ENTITLEMENT TO ADDITIONAL LEAVE UNDER**
 12 **THE FMLA FOR PARENTAL INVOLVEMENT**
 13 **AND FAMILY WELLNESS.**

14 (a) **LEAVE REQUIREMENT.**—Section 102(a) of the
 15 Family and Medical Leave Act of 1993 (29 U.S.C.
 16 2612(a)) is amended by adding at the end the following
 17 new paragraph:

18 “(6) **ENTITLEMENT TO ADDITIONAL LEAVE FOR**
 19 **PARENTAL INVOLVEMENT AND FAMILY**
 20 **WELLNESS.**—

21 “(A) **IN GENERAL.**—Subject to subpara-
 22 graph (B) and section 103(g), an eligible em-
 23 ployee shall be entitled to leave under this para-
 24 graph to—

1 “(i) participate in or attend an activ-
2 ity that is sponsored by a school or com-
3 munity organization and relates to a pro-
4 gram of the school or organization that is
5 attended by a son or daughter or a grand-
6 child of the employee; or

7 “(ii) meet routine family medical care
8 needs, including for medical and dental ap-
9 pointments of the employee or a son,
10 daughter, spouse, or grandchild of the em-
11 ployee, or to attend to the care needs of el-
12 derly individuals who are related to the eli-
13 gible employee, including visits to nursing
14 homes and group homes.

15 “(B) LIMITATIONS.—

16 “(i) IN GENERAL.—An eligible em-
17 ployee is entitled to—

18 “(I) not to exceed 4 hours of
19 leave under this paragraph during any
20 30-day period; and

21 “(II) not to exceed 24 hours of
22 leave under this paragraph during any
23 12-month period.

24 “(ii) COORDINATION RULE.—Leave
25 under this paragraph shall be in addition

1 to any leave provided under any other
2 paragraph of this subsection.

3 “(C) DEFINITIONS.—As used in this para-
4 graph:

5 “(i) SCHOOL.—The term ‘school’
6 means an elementary school or secondary
7 school (as such terms are defined in sec-
8 tion 9101 of the Elementary and Sec-
9 ondary Education Act of 1965 (20 U.S.C.
10 7801)), a Head Start program assisted
11 under the Head Start Act (42 U.S.C. 9831
12 et seq.), or a child care facility.

13 “(ii) COMMUNITY ORGANIZATION.—
14 The term ‘community organization’ means
15 a private nonprofit organization that is
16 representative of a community or a signifi-
17 cant segment of a community and provides
18 activities for individuals described in sub-
19 paragraph (A) or (B) of section 101(12),
20 such as a scouting or sports organiza-
21 tion.”.

22 (b) SCHEDULE.—Section 102(b)(1) of such Act (29
23 U.S.C. 2612(b)(1)) is amended by inserting after the third
24 sentence the following new sentence: “Leave under sub-

1 “(i) participate in or attend an activity that is
2 sponsored by a school or community organization
3 and relates to a program of the school or organiza-
4 tion that is attended by a son or daughter or a
5 grandchild of the employee; or

6 “(ii) meet routine family medical care needs, in-
7 cluding for medical and dental appointments of a
8 son, daughter, spouse, or grandchild of the em-
9 ployee, or to attend to the care needs of elderly indi-
10 viduals who are related to the eligible employee, in-
11 cluding visits to nursing homes and group homes.

12 “(B)(i) An employee is entitled to—

13 “(I) not to exceed 4 hours of leave under this
14 paragraph during any 30-day period; and

15 “(II) not to exceed 24 hours of leave under this
16 paragraph during any 12-month period.

17 “(ii) Leave under this paragraph shall be in addition
18 to any leave provided under any other paragraph of this
19 subsection.

20 “(C) For the purpose of this paragraph—

21 “(i) the term ‘school’ means an elementary
22 school or secondary school (as such terms are de-
23 fined in section 9101 of the Elementary and Sec-
24 ondary Education Act of 1965), a Head Start pro-

1 individual who is a spouse, domestic partner, parent,
2 son or daughter (including an adult son or daugh-
3 ter) of that person.”.

4 (c) INTERMITTENT OR REDUCED LEAVE.—Section
5 102(b)(1) of the Family and Medical Leave Act of 1993
6 (29 U.S.C. 2612(b)(1)) (as amended by section 193(b))
7 is further amended by inserting before the last sentence:
8 “Subject to subsection (e)(4) and 103(g), leave under sub-
9 paragraph (F) or (G) of subsection (a)(1) may be taken
10 by an employee intermittently or on a reduced leave sched-
11 ule.”.

12 (d) PAID LEAVE.—Section 102(d)(2)(B) of the Fam-
13 ily and Medical Leave Act of 1993 (29 U.S.C.
14 2612(d)(2)(B)) is amended by inserting at the end the fol-
15 lowing: “An eligible employee may elect to substitute any
16 of the accrued paid vacation leave, personal leave, family
17 leave, or medical or sick leave of the employee for leave
18 provided under subparagraph (F) or (G) of subsection
19 (a)(1) for any part of the 12-week period of such leave
20 under such subsection, except that nothing in this title
21 shall require an employer to provide paid sick leave or paid
22 medical leave in any situation in which such employer
23 would not normally provide any such paid leave.”.

24 (e) NOTICE.—Section 102(e) of the Family and Med-
25 ical Leave Act of 1993 (29 U.S.C. 2612(e)) (as amended

1 made available to employees by an employer, includ-
 2 ing group life insurance, health insurance, disability
 3 insurance, sick leave, annual leave, educational bene-
 4 fits, and pensions, regardless of whether such bene-
 5 fits are provided by a practice or written policy of
 6 an employer or through an “employee benefit plan”,
 7 as defined in section 3(3) of the Employee Retirement
 8 Income Security Act of 1974 (29 U.S.C.
 9 1002(3)).

10 (6) HEALTH CARE PROVIDER.—The term
 11 “health care provider” means a provider who—

12 (A)(i) is a doctor of medicine or osteopathy
 13 who is authorized to practice medicine or sur-
 14 gery (as appropriate) by the State in which the
 15 doctor practices; or

16 (ii) is any other person determined by the
 17 Secretary to be capable of providing health care
 18 services; and

19 (B) is not employed by an employer for
 20 whom the provider issues certification under
 21 this subtitle.

22 (7) PAID SICK TIME.—The term “paid sick
 23 time” means an increment of compensated leave that
 24 can be earned by an employee for use during an ab-
 25 sence from employment for any of the reasons de-

1 (III) not be disclosed except to
2 the affected employee or with the per-
3 mission of the affected employee.

4 (3) CERTIFICATION IN THE CASE OF DOMESTIC
5 VIOLENCE, SEXUAL ASSAULT, OR STALKING.—

6 (A) IN GENERAL.—An employer may re-
7 quire that a request for paid sick time under
8 this section for a purpose described in sub-
9 section (b)(4) be supported by 1 of the fol-
10 lowing forms of documentation:

11 (i) A police report indicating that the
12 employee, or a member of the employee's
13 family described in subsection (b)(4), was
14 a victim of domestic violence, sexual as-
15 sault, or stalking.

16 (ii) A court order protecting or sepa-
17 rating the employee or a member of the
18 employee's family described in subsection
19 (b)(4) from the perpetrator of an act of
20 domestic violence, sexual assault, or stalk-
21 ing, or other evidence from the court or
22 prosecuting attorney that the employee or
23 a member of the employee's family de-
24 scribed in subsection (b)(4) has appeared
25 in court or is scheduled to appear in court

1 in a proceeding related to domestic vio-
2 lence, sexual assault, or stalking.

3 (iii) Other documentation signed by
4 an employee or volunteer working for a vic-
5 tim services organization, an attorney, a
6 police officer, a medical professional, a so-
7 cial worker, an antiviolence counselor, or a
8 member of the clergy, affirming that the
9 employee or a member of the employee's
10 family described in subsection (b)(4) is a
11 victim of domestic violence, sexual assault,
12 or stalking.

13 (B) REQUIREMENTS.—The requirements
14 of paragraph (2) shall apply to certifications
15 under this paragraph, except that—

16 (i) subclauses (III) and (IV) of sub-
17 paragraph (B)(i) and subparagraph (B)(ii)
18 of such paragraph shall not apply;

19 (ii) the certification shall state the
20 reason that the leave is required with the
21 facts to be disclosed limited to the min-
22 imum necessary to establish a need for the
23 employee to be absent from work, and the
24 employee shall not be required to explain

1 the details of the domestic violence, sexual
2 assault, or stalking involved; and

3 (iii) with respect to confidentiality
4 under subparagraph (D) of such para-
5 graph, any information provided to the em-
6 ployer under this paragraph shall be con-
7 fidential, except to the extent that any dis-
8 closure of such information is—

9 (I) requested or consented to in
10 writing by the employee; or

11 (II) otherwise required by appli-
12 cable Federal or State law.

13 **SEC. 175. POSTING REQUIREMENT.**

14 (a) IN GENERAL.—Each employer shall post and
15 keep posted a notice, to be prepared or approved in ac-
16 cordance with procedures specified in regulations pre-
17 scribed under section 182, setting forth excerpts from, or
18 summaries of, the pertinent provisions of this subtitle in-
19 cluding—

20 (1) information describing paid sick time avail-
21 able to employees under this subtitle;

22 (2) information pertaining to the filing of an
23 action under this subtitle;

1 (3) the details of the notice requirement for a
2 foreseeable period of time under section
3 174(d)(1)(B); and

4 (4) information that describes—

5 (A) the protections that an employee has
6 in exercising rights under this subtitle; and

7 (B) how the employee can contact the Sec-
8 retary (or other appropriate authority as de-
9 scribed in section 177) if any of the rights are
10 violated.

11 (b) LOCATION.—The notice described under sub-
12 section (a) shall be posted—

13 (1) in conspicuous places on the premises of the
14 employer, where notices to employees (including ap-
15 plicants) are customarily posted; or

16 (2) in employee handbooks.

17 (c) VIOLATION; PENALTY.—Any employer who will-
18 fully violates the posting requirements of this section shall
19 be subject to a civil fine in an amount not to exceed \$100
20 for each separate offense.

21 **SEC. 176. PROHIBITED ACTS.**

22 (a) INTERFERENCE WITH RIGHTS.—

23 (1) EXERCISE OF RIGHTS.—It shall be unlawful
24 for any employer to interfere with, restrain, or deny

1 the exercise of, or the attempt to exercise, any right
2 provided under this subtitle, including—

3 (A) discharging or discriminating against
4 (including retaliating against) any individual,
5 including a job applicant, for exercising, or at-
6 tempting to exercise, any right provided under
7 this subtitle;

8 (B) using the taking of paid sick time
9 under this subtitle as a negative factor in an
10 employment action, such as hiring, promotion,
11 or a disciplinary action; or

12 (C) counting the paid sick time under a
13 no-fault attendance policy or any other absence
14 control policy.

15 (2) DISCRIMINATION.—It shall be unlawful for
16 any employer to discharge or in any other manner
17 discriminate against (including retaliating against)
18 any individual, including a job applicant, for oppos-
19 ing any practice made unlawful by this subtitle.

20 (b) INTERFERENCE WITH PROCEEDINGS OR INQUIR-
21 IES.—It shall be unlawful for any person to discharge or
22 in any other manner discriminate against (including retali-
23 ating against) any individual, including a job applicant,
24 because such individual—

1 (1) has filed an action, or has instituted or
2 caused to be instituted any proceeding, under or re-
3 lated to this subtitle;

4 (2) has given, or is about to give, any informa-
5 tion in connection with any inquiry or proceeding re-
6 lating to any right provided under this subtitle; or

7 (3) has testified, or is about to testify, in any
8 inquiry or proceeding relating to any right provided
9 under this subtitle.

10 (c) CONSTRUCTION.—Nothing in this section shall be
11 construed to state or imply that the scope of the activities
12 prohibited by section 105 of the Family and Medical Leave
13 Act of 1993 (29 U.S.C. 2615) is less than the scope of
14 the activities prohibited by this section.

15 **SEC. 177. ENFORCEMENT AUTHORITY.**

16 (a) IN GENERAL.—

17 (1) DEFINITIONS.—In this subsection:

18 (A) the term “employee” means an em-
19 ployee described in subparagraph (A) or (B) of
20 section 173(3); and

21 (B) the term “employer” means an em-
22 ployer described in subclause (I) or (II) of sec-
23 tion 173(4)(A)(i).

24 (2) INVESTIGATIVE AUTHORITY.—

1 (A) IN GENERAL.—To ensure compliance
2 with the provisions of this subtitle, or any regu-
3 lation or order issued under this subtitle, the
4 Secretary shall have, subject to subparagraph
5 (C), the investigative authority provided under
6 section 11(a) of the Fair Labor Standards Act
7 of 1938 (29 U.S.C. 211(a)), with respect to em-
8 ployers, employees, and other individuals af-
9 fected.

10 (B) OBLIGATION TO KEEP AND PRESERVE
11 RECORDS.—An employer shall make, keep, and
12 preserve records pertaining to compliance with
13 this subtitle in accordance with section 11(c) of
14 the Fair Labor Standards Act of 1938 (29
15 U.S.C. 211(c)) and in accordance with regula-
16 tions prescribed by the Secretary.

17 (C) REQUIRED SUBMISSIONS GENERALLY
18 LIMITED TO AN ANNUAL BASIS.—The Secretary
19 shall not require, under the authority of this
20 paragraph, an employer to submit to the Sec-
21 retary any books or records more than once
22 during any 12-month period, unless the Sec-
23 retary has reasonable cause to believe there
24 may exist a violation of this subtitle or any reg-
25 ulation or order issued pursuant to this subtitle,

1 or is investigating a charge pursuant to para-
2 graph (4).

3 (D) SUBPOENA AUTHORITY.—For the pur-
4 poses of any investigation provided for in this
5 paragraph, the Secretary shall have the sub-
6 poena authority provided for under section 9 of
7 the Fair Labor Standards Act of 1938 (29
8 U.S.C. 209).

9 (3) CIVIL ACTION BY EMPLOYEES OR INDIVID-
10 UALS.—

11 (A) RIGHT OF ACTION.—An action to re-
12 cover the damages or equitable relief prescribed
13 in subparagraph (B) may be maintained
14 against any employer in any Federal or State
15 court of competent jurisdiction by one or more
16 employees or individuals or their representative
17 for and on behalf of—

18 (i) the employees or individuals; or
19 (ii) the employees or individuals and
20 others similarly situated.

21 (B) LIABILITY.—Any employer who vio-
22 lates section 176 (including a violation relating
23 to rights provided under section 174) shall be
24 liable to any employee or individual affected—

25 (i) for damages equal to—

1 (I) the amount of—

2 (aa) any wages, salary, em-
3 ployment benefits, or other com-
4 pensation denied or lost by rea-
5 son of the violation; or

6 (bb) in a case in which
7 wages, salary, employment bene-
8 fits, or other compensation have
9 not been denied or lost, any ac-
10 tual monetary losses sustained as
11 a direct result of the violation up
12 to a sum equal to 56 hours of
13 wages or salary for the employee
14 or individual;

15 (II) the interest on the amount
16 described in subclause (I) calculated
17 at the prevailing rate; and

18 (III) an additional amount as liq-
19 uidated damages; and

20 (ii) for such equitable relief as may be
21 appropriate, including employment, rein-
22 statement, and promotion.

23 (C) FEES AND COSTS.—The court in an
24 action under this paragraph shall, in addition to
25 any judgment awarded to the plaintiff, allow a

1 reasonable attorney's fee, reasonable expert wit-
2 ness fees, and other costs of the action to be
3 paid by the defendant.

4 (4) ACTION BY THE SECRETARY.—

5 (A) ADMINISTRATIVE ACTION.—The Sec-
6 retary shall receive, investigate, and attempt to
7 resolve complaints of violations of section 176
8 (including a violation relating to rights provided
9 under section 174) in the same manner that the
10 Secretary receives, investigates, and attempts to
11 resolve complaints of violations of sections 6
12 and 7 of the Fair Labor Standards Act of 1938
13 (29 U.S.C. 206 and 207).

14 (B) CIVIL ACTION.—The Secretary may
15 bring an action in any court of competent juris-
16 diction to recover the damages described in
17 paragraph (3)(B)(i).

18 (C) SUMS RECOVERED.—Any sums recov-
19 ered by the Secretary pursuant to subparagraph
20 (B) shall be held in a special deposit account
21 and shall be paid, on order of the Secretary, di-
22 rectly to each employee or individual affected.
23 Any such sums not paid to an employee or indi-
24 vidual affected because of inability to do so
25 within a period of 3 years shall be deposited

1 into the Treasury of the United States as mis-
2 cellaneous receipts.

3 (5) LIMITATION.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (B), an action may be brought
6 under paragraph (3), (4), or (6) not later than
7 2 years after the date of the last event consti-
8 tuting the alleged violation for which the action
9 is brought.

10 (B) WILLFUL VIOLATION.—In the case of
11 an action brought for a willful violation of sec-
12 tion 176 (including a willful violation relating to
13 rights provided under section 174), such action
14 may be brought within 3 years of the date of
15 the last event constituting the alleged violation
16 for which such action is brought.

17 (C) COMMENCEMENT.—In determining
18 when an action is commenced under paragraph
19 (3), (4), or (6) for the purposes of this para-
20 graph, it shall be considered to be commenced
21 on the date when the complaint is filed.

22 (6) ACTION FOR INJUNCTION BY SECRETARY.—

23 The district courts of the United States shall have
24 jurisdiction, for cause shown, in an action brought
25 by the Secretary—

1 (A) to restrain violations of section 176
2 (including a violation relating to rights provided
3 under section 174), including the restraint of
4 any withholding of payment of wages, salary,
5 employment benefits, or other compensation,
6 plus interest, found by the court to be due to
7 employees or individuals eligible under this sub-
8 title; or

9 (B) to award such other equitable relief as
10 may be appropriate, including employment, re-
11 instatement, and promotion.

12 (7) SOLICITOR OF LABOR.—The Solicitor of
13 Labor may appear for and represent the Secretary
14 on any litigation brought under paragraph (4) or
15 (6).

16 (8) GOVERNMENT ACCOUNTABILITY OFFICE
17 AND LIBRARY OF CONGRESS.—Notwithstanding any
18 other provision of this subsection, in the case of the
19 Government Accountability Office and the Library of
20 Congress, the authority of the Secretary of Labor
21 under this subsection shall be exercised respectively
22 by the Comptroller General of the United States and
23 the Librarian of Congress.

24 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
25 COUNTABILITY ACT OF 1995.—The powers, remedies, and

1 procedures provided in the Congressional Accountability
2 Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as de-
3 fined in section 101 of that Act (2 U.S.C. 1301)), or any
4 person, alleging a violation of section 202(a)(1) of that
5 Act (2 U.S.C. 1312(a)(1)) shall be the powers, remedies,
6 and procedures this subtitle provides to that Board, or any
7 person, alleging an unlawful employment practice in viola-
8 tion of this subtitle against an employee described in sec-
9 tion 173(3)(C).

10 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
11 3, UNITED STATES CODE.—The powers, remedies, and
12 procedures provided in chapter 5 of title 3, United States
13 Code, to the President, the Merit Systems Protection
14 Board, or any person, alleging a violation of section
15 412(a)(1) of that title, shall be the powers, remedies, and
16 procedures this subtitle provides to the President, that
17 Board, or any person, respectively, alleging an unlawful
18 employment practice in violation of this subtitle against
19 an employee described in section 173(3)(D).

20 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE
21 5, UNITED STATES CODE.—The powers, remedies, and
22 procedures provided in title 5, United States Code, to an
23 employing agency, provided in chapter 12 of that title to
24 the Merit Systems Protection Board, or provided in that
25 title to any person, alleging a violation of chapter 63 of

1 of enactment of this subtitle, on which a State first
2 receives or uses Federal financial assistance for that
3 program or activity.

4 (4) DEFINITION OF PROGRAM OR ACTIVITY.—In
5 this subsection, the term “program or activity” has
6 the meaning given the term in section 606 of the
7 Civil Rights Act of 1964 (42 U.S.C. 2000d–4a).

8 **SEC. 178. COLLECTION OF DATA ON PAID SICK TIME AND**
9 **FURTHER STUDY.**

10 (a) COMPILATION OF INFORMATION.—Effective 90
11 days after the date of enactment of this subtitle, the Com-
12 missioner of Labor Statistics shall annually compile infor-
13 mation on the following:

14 (1) The number of employees who used paid
15 sick time.

16 (2) The number of hours of paid sick time
17 used.

18 (3) The number of employees who used paid
19 sick time for absences necessary due to domestic vio-
20 lence, sexual assault, or stalking.

21 (4) The demographic characteristics of employ-
22 ees who were eligible for and who used paid sick
23 time.

24 (b) GAO STUDY.—

1 ed for the State under this section and for moni-
2 toring entities that receive assistance under such
3 grant.

4 (2) AUDITS.—A State shall require each entity
5 receiving assistance under the grant awarded under
6 this section to conduct an annual audit with respect
7 to the activities of the entity. Such audits shall be
8 submitted to the State.

9 (3) MISUSE OF FUNDS.—

10 (A) REPAYMENT.—If the State determines,
11 through an audit or otherwise, that an entity
12 receiving assistance under a grant awarded
13 under this section has misused the assistance,
14 the State shall notify the Secretary of the mis-
15 use. The Secretary, upon such a notification,
16 may seek from such an entity the repayment of
17 an amount equal to the amount of any such
18 misused assistance plus interest.

19 (B) APPEALS PROCESS.—The Secretary
20 shall by regulation provide for an appeals proc-
21 ess with respect to repayments under this para-
22 graph.

23 (h) REPORTING REQUIREMENTS.—

24 (1) 2-YEAR STUDY.—

1 (A) IN GENERAL.—Not later than 2 years
2 after the date on which the Secretary first
3 awards grants under this section, the Secretary
4 shall conduct a study to determine—

5 (i) the capacity of entities to meet the
6 child care needs of communities within
7 States;

8 (ii) the kinds of partnerships that are
9 being formed with respect to child care at
10 the local level to carry out programs fund-
11 ed under this section; and

12 (iii) who is using the programs funded
13 under this section and the income levels of
14 such individuals.

15 (B) REPORT.—Not later than 28 months
16 after the date on which the Secretary first
17 awards grants under this section, the Secretary
18 shall prepare and submit to the appropriate
19 committees of Congress a report on the results
20 of the study conducted in accordance with sub-
21 paragraph (A).

22 (2) 4-YEAR STUDY.—

23 (A) IN GENERAL.—Not later than 4 years
24 after the date on which the Secretary first
25 awards grants under this section, the Secretary

1 shall conduct a study to determine the number
2 of child care facilities funded through entities
3 that received assistance through a grant award-
4 ed under this section that remain in operation
5 and the extent to which such facilities are meet-
6 ing the child care needs of the individuals
7 served by such facilities.

8 (B) REPORT.—Not later than 52 months
9 after the date on which the Secretary first
10 awards grants under this section, the Secretary
11 shall prepare and submit to the appropriate
12 committees of Congress a report on the results
13 of the study conducted in accordance with sub-
14 paragraph (A).

15 (i) DEFINITION.—In this section, the term “busi-
16 ness” means an employer who employed an average of at
17 least 2 employees on business days during the preceding
18 calendar year.

19 (j) AUTHORIZATION OF APPROPRIATIONS.—

20 (1) IN GENERAL.—There is authorized to be
21 appropriated to carry out this section, \$60,000,000
22 for the period of fiscal years 2012 through 2016.

23 (2) EVALUATIONS AND ADMINISTRATION.—

24 With respect to the total amount appropriated for
25 such period in accordance with this subsection, not

1 more than \$5,000,000 of that amount may be used
2 for expenditures related to conducting evaluations
3 required under, and the administration of, this sec-
4 tion.

5 (k) TERMINATION OF PROGRAM.—The program es-
6 tablished under subsection (a) shall terminate on Sep-
7 tember 30, 2017.

8 **TITLE III—PRE-SCHOOL, IN-**
9 **SCHOOL, AND AFTER SCHOOL**
10 **ASSISTANCE**

11 **Subtitle A—Universal**
12 **Prekindergarten Act**

13 **SEC. 301. SHORT TITLE.**

14 This subtitle may be cited as the “Universal Pre-
15 kindergarten Act”.

16 **SEC. 302. PURPOSE.**

17 The purpose of this subtitle is to ensure that all chil-
18 dren 3, 4, and 5 years old have access to a high-quality
19 full-day, full-calendar-year prekindergarten program by
20 providing grants to States to assist in developing a uni-
21 versal prekindergarten program that is voluntary and free-
22 of-charge.

1 **SEC. 303. PREKINDERGARTEN GRANT PROGRAM AUTHORIZATION.**
2 **IZATION.**

3 The Secretary of Health and Human Services, in consultation with the Secretary of Education, shall provide
4 grants to an agency designated by each State (hereafter
5 in this subtitle referred to as the “designated State agency”) for the development of high-quality full-day, full-calendar-year universal prekindergarten programs for all
6 children 3, 4, and 5 years old in the State.

10 **SEC. 304. STATE REQUIREMENTS.**

11 (a) STATE MATCHING FUNDS.—Federal funds made
12 available to a designated State agency under this subtitle
13 shall be matched at least 20 percent by State funds.

14 (b) STATE APPLICATION.—To be eligible to receive
15 funds under this subtitle, a designated State agency shall
16 submit an application at such time, in such manner, and
17 containing such information as the Secretary of Health
18 and Human Services may require. The application shall
19 include the following:

20 (1) How the designated State agency, in overseeing the State’s universal prekindergarten program, will coordinate with other State agencies responsible for early childhood education and health
21 programs, will coordinate with other State agencies responsible for early childhood education and health
22 programs, will coordinate with other State agencies responsible for early childhood education and health
23 programs, will coordinate with other State agencies responsible for early childhood education and health
24 programs.

1 (2) A State plan to establish and implement a
2 statewide universal prekindergarten program, in ac-
3 cordance with subsection (c).

4 (c) STATE PLAN.—The State plan required under
5 subsection (b)(2) shall include each of the following:

6 (1) A description of the universal prekinde-
7 rgarten program that will be established and how it
8 will support children’s cognitive, social, emotional,
9 and physical development.

10 (2) A statement of the goals for universal pre-
11 kindergarten programs and how program outcomes
12 will be measured.

13 (3) A description of—

14 (A) how funding will be distributed to eli-
15 gible prekindergarten program providers based
16 on the need for early childhood education in
17 each geographical area served by such pro-
18 viders; and

19 (B) how the designated State agency will
20 involve representatives of early childhood pro-
21 gram providers (including child care providers,
22 Head Start programs, and State and local
23 agencies) that sponsor programs addressing
24 children 3, 4, and 5 years old.

1 (4) A description of how the designated State
2 agency will coordinate with existing State-funded
3 prekindergarten programs, federally funded pro-
4 grams (such as Head Start programs), public school
5 programs, and child care providers.

6 (5) A description of how an eligible prekindergarten
7 program provider may apply to the designated
8 State agency for funding under this Act.

9 (6) A plan to address the shortages of qualified
10 early childhood education teachers, including how to
11 increase such teachers' compensation to be comparable
12 to that of public school teachers.

13 (7) How the designated State agency will provide
14 ongoing professional development opportunities
15 to help increase the number of teachers in early
16 childhood programs who meet the State's education
17 or credential requirements for prekindergarten
18 teachers.

19 (8) A plan to address how the universal pre-
20 kindergarten program will meet the needs of children
21 with disabilities, limited English proficiency,
22 and other special needs.

23 (9) A plan to provide transportation to children
24 to and from the universal prekindergarten program.

1 (10) A description of how the State will provide
2 the 20 percent match of Federal funds.

3 (d) ADMINISTRATION.—A designated State agency
4 may not use more than 5 percent of a grant under this
5 subtitle for costs associated with State administration of
6 the program under this subtitle.

7 **SEC. 305. LOCAL REQUIREMENTS.**

8 (a) IN GENERAL.—An eligible prekindergarten pro-
9 gram provider receiving funding under this subtitle
10 shall—

11 (1) maintain a maximum class size of 20 chil-
12 dren;

13 (2) maintain a ratio of not more than 10 chil-
14 dren for each member of the teaching staff;

15 (3)(A) ensure that all prekindergarten teachers
16 meet the requirements for teachers at a State-fund-
17 ed prekindergarten program under an applicable
18 State law; and

19 (B) document that the State is demonstrating
20 significant progress in assisting prekindergarten
21 teachers on working toward a bachelor of arts de-
22 gree with training in early childhood development or
23 early childhood education;

1 (4)(A) be accredited by a national organization
2 with demonstrated experience in accrediting pre-
3 kindergarten programs; or

4 (B) provide assurances that it shall obtain such
5 accreditation not later than 3 years after first re-
6 ceiving funding under this subtitle; and

7 (5) meet applicable State and local child care li-
8 censing health and safety standards.

9 (b) LOCAL APPLICATION.—Eligible prekindergarten
10 program providers desiring to receive funding under this
11 subtitle shall submit an application to the designated
12 State agency overseeing funds under this subtitle con-
13 taining the following:

14 (1) A description of the prekindergarten pro-
15 gram.

16 (2) A statement of the demonstrated need for
17 a program, or an enhanced or expanded program, in
18 the area served by the eligible prekindergarten pro-
19 gram provider.

20 (3) A description of the age-appropriate and de-
21 velopmentally appropriate educational curriculum to
22 be provided that will help children be ready for
23 school and assist them in the transition to kinder-
24 garten.

1 (4) A description of how the eligible prekindergarten
2 program provider will collaborate with existing
3 community-based child care providers and Head
4 Start programs.

5 (5) A description of how students and families
6 will be assisted in obtaining supportive services
7 available in their communities.

8 (6) A plan to promote parental involvement in
9 the prekindergarten program.

10 (7) A description of how teachers will receive
11 ongoing professional development in early childhood
12 development and education.

13 (8) An assurance that prekindergarten programs
14 receiving funds under this subtitle provide the
15 data required in section 7(c).

16 **SEC. 306. PROFESSIONAL DEVELOPMENT SET-ASIDE.**

17 (a) **IN GENERAL.**—A designated State agency may
18 set aside up to 5 percent of a grant under this subtitle
19 for ongoing professional development activities for teachers
20 and staff at prekindergarten programs that wish to
21 participate in the universal prekindergarten grant program
22 under this subtitle. A designated State agency using
23 the set-aside for professional development must include in
24 its application the following:

1 (1) A description of how the designated State
2 agency will ensure that eligible prekindergarten pro-
3 gram providers in a range of settings (including
4 child care providers, Head Start programs, and
5 schools) will participate in the professional develop-
6 ment programs.

7 (2) An assurance that, in developing its applica-
8 tion and in carrying out its program, the profes-
9 sional development provider has consulted, and will
10 consult, with relevant agencies, early childhood orga-
11 nizations, early childhood education experts, and
12 early childhood program providers.

13 (3) A description of how the designated State
14 agency will ensure that the professional development
15 is ongoing and accessible to educators in all geo-
16 graphic areas of the State, including by the use of
17 advanced educational technologies.

18 (4) A description of how the designated State
19 agency will ensure that such set-aside funds will be
20 used to pay the cost of additional education and
21 training.

22 (5) A description of how the designated State
23 agency will work with other agencies and institutions
24 of higher education to provide scholarships and
25 other financial assistance to prekindergarten staff.

1 (6) A description of how the State educational
2 agency will provide a financial incentive, such as a
3 financial stipend or a bonus, to educators who par-
4 ticipate in and complete such professional develop-
5 ment.

6 (7) A description of how the professional devel-
7 opment activities will be carried out, including the
8 following:

9 (A) How programs and educators will be
10 selected to participate.

11 (B) How professional development pro-
12 viders will be selected, based on demonstrated
13 experience in providing research-based profes-
14 sional development to early childhood educators.

15 (C) The types of research-based profes-
16 sional development activities that will be carried
17 out in all domains of children’s physical, cog-
18 nitive, social, and emotional development and
19 on early childhood pedagogy.

20 (D) How the program will train early
21 childhood educators to meet the diverse edu-
22 cational needs of children in the community, es-
23 pecially children who have limited English pro-
24 ficiency, disabilities, and other special needs.

1 (E) How the program will coordinate with
2 and build upon, but not supplant or duplicate,
3 early childhood education professional develop-
4 ment activities that exist in the community.

5 (b) USES OF FUNDS.—Funds set aside under this
6 section may be used for ongoing professional develop-
7 ment—

8 (1) to provide prekindergarten teachers and
9 staff with the knowledge and skills for the applica-
10 tion of recent research on child cognitive, social,
11 emotional, and physical development, including lan-
12 guage and literacy development, and on early child-
13 hood pedagogy;

14 (2) to provide the cost of education needed to
15 obtain a credential or degree with specific training
16 in early childhood development or education;

17 (3) to work with children who have limited
18 English proficiency, disabilities, and other special
19 needs; and

20 (4) to select and use developmentally appro-
21 priate screening and diagnostic assessments to im-
22 prove teaching and learning and make appropriate
23 referrals for services to support prekindergarten
24 children's development and learning.

1 **SEC. 307. REPORTING.**

2 (a) **REPORT BY SECRETARY.**—For each year in which
3 funding is provided under this subtitle, the Secretary of
4 Health and Human Services shall submit an annual report
5 to the Congress on the implementation and effectiveness
6 of the universal prekindergarten program under this sub-
7 title.

8 (b) **REPORT BY DESIGNATED STATE AGENCY.**—Each
9 designated State agency that provides grants to eligible
10 prekindergarten program providers under this subtitle
11 shall submit to the Secretary an annual report on the im-
12 plementation and effectiveness of the programs in the
13 State supported under this subtitle. Such report shall con-
14 tain such additional information as the Secretary may rea-
15 sonably require.

16 (c) **REPORT BY GRANT RECIPIENT.**—Each eligible
17 prekindergarten program provider that receives a grant
18 under this subtitle shall submit to the designated State
19 agency an annual report that includes, with respect to the
20 program supported by such grant, the following:

21 (1) A description of the type of program and a
22 statement of the number and ages of children served
23 by the program, as well as the number and ages of
24 children with a disability or a native language other
25 than English.

1 (2) A description of the qualifications of the
2 program staff and the type of ongoing professional
3 development provided to such staff.

4 (3) A statement of all sources of Federal, State,
5 local, and private funds received by the program.

6 (4) A description of the curricula, materials,
7 and activities used by the program to support early
8 childhood development and learning.

9 (5) Such other information as the designated
10 State agency may reasonably require.

11 **SEC. 308. FEDERAL FUNDS SUPPLEMENTARY.**

12 Funds made available under this subtitle may not be
13 used to supplant other Federal, State, local, or private
14 funds that would, in the absence of such Federal funds,
15 be made available for the program assisted under this sub-
16 title.

17 **SEC. 309. DEFINITIONS.**

18 In this subtitle:

19 (1) The term “eligible prekindergarten program
20 provider” means a prekindergarten program pro-
21 vider that is—

22 (A) a school;

23 (B) supported, sponsored, supervised, or
24 carried out by a local educational agency;

25 (C) a Head Start program; or

1 (D) a child care provider.

2 (2) The term “prekindergarten program”
3 means a program serving children 3, 4, and 5 years
4 old that supports children’s cognitive, social, emo-
5 tional, and physical development and helps prepare
6 those children for the transition to kindergarten.

7 (3) The term “local educational agency” has
8 the meaning given that term in the Elementary and
9 Secondary Education Act of 1965 (20 U.S.C. 6301
10 et seq.).

11 (4) The term “prekindergarten teacher” means
12 an individual who has received, or is working to-
13 ward, a bachelor of arts degree in early childhood
14 education.

15 **SEC. 310. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated to carry out
17 this subtitle—

18 (1) \$10,000,000,000 for fiscal year 2012;

19 (2) \$20,000,000,000 for fiscal year 2013;

20 (3) \$30,000,000,000 for fiscal year 2014;

21 (4) \$40,000,000,000 for fiscal year 2015; and

22 (5) \$50,000,000,000 for fiscal year 2016.

1 **Subtitle B—Universal Free School**
2 **Breakfast Program**

3 **SEC. 311. UNIVERSAL FREE SCHOOL BREAKFAST PRO-**
4 **GRAM.**

5 (a) FREE BREAKFAST AND UNIVERSAL ELIGI-
6 BILITY.—Section 4 of the Child Nutrition Act of 1966 (42
7 U.S.C. 1773) is amended to read as follows:

8 **“SEC. 4. SCHOOL BREAKFAST PROGRAM AUTHORIZATION.**

9 “(a) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as are nec-
11 essary to enable the Secretary to carry out a program to
12 assist States and the Department of Defense to initiate,
13 maintain, or expand nonprofit breakfast programs to pro-
14 vide free breakfasts to school children without regard to
15 family income in all schools which make application for
16 participation and agree to carry out a nonprofit free
17 breakfast program in accordance with this Act. Appropria-
18 tions and expenditures for this Act shall be considered
19 Health and Human Services functions for budget purposes
20 rather than functions of Agriculture.

21 “(b) APPORTIONMENT TO STATES.—

22 “(1)(A) IN GENERAL.—The Secretary shall
23 make breakfast payments to each State educational
24 agency each fiscal year, at such times as the Sec-
25 retary may determine, from the sums appropriated

1 for such purpose, in an amount equal to the product
2 obtained by multiplying—

3 “(i) the number of breakfasts served free
4 during such fiscal year to children in schools in
5 such States which participate in the school
6 breakfast program under agreements with such
7 State educational agency; by

8 “(ii) the national breakfast payment as
9 prescribed in paragraph (2) of this subsection.

10 “(B) AGREEMENTS.—The agreements described
11 in subparagraph (A)(i) shall be permanent agree-
12 ments that may be amended as necessary. Nothing
13 in the preceding sentence shall be construed to limit
14 the ability of the State educational agency to sus-
15 pend or terminate any such agreement in accordance
16 with regulations prescribed by the Secretary.

17 “(2) NATIONAL BREAKFAST PAYMENT.—The
18 national payment for each breakfast shall be \$1.40
19 (as adjusted each July 1 pursuant to section
20 11(a)(3)(B) of the Richard B. Russell National
21 School Lunch Act (42 U.S.C. 1759a(a)(3)(B))).

22 “(3) LIMITATION.—No breakfast payment may
23 be made under this subsection for any breakfast
24 served by a school unless such breakfast consists of
25 a combination of foods which meet the minimum nu-

1 nutritional requirements prescribed by the Secretary
2 under subsection (e) of this section.

3 “(4) NUTRITION QUALITY ADJUSTMENT.—The
4 Secretary shall increase by 6 cents the annually ad-
5 justed payment for each breakfast served under this
6 Act and section 17 of the Richard B. Russell Na-
7 tional School Lunch Act. These funds shall be used
8 to assist States, to the extent feasible, in improving
9 the nutritional quality of the breakfasts.

10 “(5) AGRICULTURAL COMMODITIES.—Notwith-
11 standing any other provision of law, whenever stocks
12 of agricultural commodities are acquired by the Sec-
13 retary or the Commodity Credit Corporation and are
14 not likely to be sold by the Secretary or the Com-
15 modity Credit Corporation or otherwise used in pro-
16 grams of commodity sale or distribution, the Sec-
17 retary shall make such commodities available to
18 school food authorities and eligible institutions serv-
19 ing breakfasts under this Act in a quantity equal in
20 value to not less than 3 cents for each breakfast
21 served under this Act.

22 “(6) EFFECT ON EXPENDITURES.—Expendi-
23 tures of funds from State and local sources for the
24 maintenance of the breakfast program shall not be

1 diminished as a result of funds or commodities re-
2 ceived under paragraph (4) or (5).

3 “(c) STATE DISBURSEMENT TO SCHOOLS.—Funds
4 paid to any State during any fiscal year for the purpose
5 of this section shall be disbursed by the State educational
6 agency, in accordance with such agreements approved by
7 the Secretary as may be entered into by such State agency
8 and the schools in the State, to those schools in the State
9 which the State educational agency, determines are eligi-
10 ble to participate in the school breakfast program.

11 “(d) PARTICIPATION BY SCHOOLS.—

12 “(1) REQUIREMENTS FOR PARTICIPATION.—To
13 be eligible to participate in the school breakfast pro-
14 gram under this section, a school food authority
15 shall—

16 “(A) agree to serve all breakfasts at no
17 charge to all students who wish to participate
18 without regard to family income in all partici-
19 pating schools; and

20 “(B) meet all other requirements that the
21 Secretary may reasonably establish.

22 “(2) START-UP ASSISTANCE.—The Secretary is
23 authorized to provide additional assistance to schools
24 not participating in the school breakfast program
25 prior to the enactment of the Family and Workplace

1 Balancing Act of 2011 in order to assist such
2 schools to begin participation in the school breakfast
3 program under this section.

4 “(3) STATE EDUCATIONAL AGENCY ASSIST-
5 ANCE.—Each State educational agency shall assist
6 schools not participating in the school breakfast pro-
7 gram prior to the enactment of the Family and
8 Workplace Balancing Act of 2011 to enter into
9 agreements with such agencies in order to partici-
10 pate in the school breakfast program under this sec-
11 tion.

12 “(e) NUTRITIONAL AND OTHER PROGRAM REQUIRE-
13 MENTS.—

14 “(1) MINIMUM NUTRITIONAL REQUIRE-
15 MENTS.—Breakfasts served by schools participating
16 in the school breakfast program under this section
17 shall consist of a combination of foods and shall
18 meet minimum nutritional requirements prescribed
19 by the Secretary on the basis of tested nutritional
20 research, except that the minimum nutritional re-
21 quirements shall be measured by not less than the
22 weekly average of the nutrient content of school
23 breakfasts.

24 “(2) TECHNICAL ASSISTANCE AND TRAINING.—
25 The Secretary shall provide through State edu-

1 cational agencies technical assistance and training,
 2 including technical assistance and training in the
 3 preparation of foods high in complex carbohydrates
 4 and lower-fat versions of foods commonly used in the
 5 school breakfast program established under this sec-
 6 tion, to schools participating in the school breakfast
 7 program to assist the schools in complying with the
 8 nutritional requirements prescribed by the Secretary
 9 pursuant to paragraph (1) and in providing appro-
 10 priate meals to children with medically certified spe-
 11 cial dietary needs.

12 “(3) OPTION VERSUS SERVE.—At the option of
 13 a local school food authority, a student in a school
 14 under the authority that participates in the school
 15 breakfast program under this Act may be allowed to
 16 refuse not more than one item of a breakfast that
 17 the student does not intend to consume. A refusal of
 18 an offered food item shall not affect the amount of
 19 payments made under this Act to a school for the
 20 breakfast.”.

21 (b) TECHNICAL AMENDMENTS.—

22 (1) CHILD NUTRITION ACT OF 1966.—Section
 23 20 of the Child Nutrition Act of 1966 (42 U.S.C.
 24 1789) is amended by striking subsection (b) and re-

1 designating subsections (c) through (e) as sub-
2 sections (b) through (d), respectively.

3 (2) RICHARD B. RUSSELL NATIONAL SCHOOL
4 LUNCH ACT.—The Richard B. Russell National
5 School Lunch Act is amended—

6 (A) in section 11(a)(1)—

7 (i) in subparagraph (C), by striking
8 “or breakfasts” each place it appears;

9 (ii) in subparagraph (C)(i)(I), by
10 striking “or in the case of a school” and
11 all that follows through “4 successive
12 school years”;

13 (iii) in subparagraph (D)(iii), by strik-
14 ing “, or for free and reduced price lunches
15 and breakfasts,”;

16 (iv) in subparagraph (D)(iv), by strik-
17 ing “or school breakfast”;

18 (v) in subparagraph (E)(i)(I), by
19 striking “or in the case of a school” and
20 all that follows through “4 successive
21 school years”; and

22 (vi) in subparagraph (E)(i)(II)—

23 (I) by striking “or breakfasts”
24 both places it appears; and

1 (II) by striking “or school break-
2 fast”;

3 (B) in section 11(a)(3)(A)—

4 (i) by striking clause (iii); and

5 (ii) by redesignating clause (iv) as
6 clause (iii);

7 (C) in section 13(a)(1)(C), by striking “or
8 breakfasts”; and

9 (D) in section 17—

10 (i) in subsection (c), by striking para-
11 graph (2), and redesignating paragraphs
12 (3) through (6) as paragraphs (2) through
13 (5), respectively; and

14 (ii) in subsection (f)(3)(E)(ii)(I), by
15 striking “meals” and inserting “lunches”.

16 **Subtitle C—Afterschool Education** 17 **Enhancement Act**

18 **SEC. 341. SHORT TITLE.**

19 This subtitle may be cited as the “Afterschool Edu-
20 cation Enhancement Act”.

21 **SEC. 342. AMENDMENTS REGARDING 21ST CENTURY COM-** 22 **MUNITY LEARNING CENTERS.**

23 Part B of title IV of the Elementary and Secondary
24 Education Act of 1965 (20 U.S.C. 7171 et seq.) is amend-
25 ed—

- 1 (1) in subsection (a) of section 4203—
2 (A) by striking paragraph (3); and
3 (B) by redesignating paragraphs (4)
4 through (14) as paragraphs (3) through (13),
5 respectively; and
6 (2) in section 4204—
7 (A) in paragraph (2) of subsection (b)—
8 (i) by striking subparagraph (F); and
9 (ii) by redesignating subparagraphs
10 (G) through (N) as subparagraphs (F)
11 through (M), respectively; and
12 (B) by amending paragraph (1) of sub-
13 section (i) to read as follows:
14 “(1) IN GENERAL.—In awarding grants under
15 this part, a State educational agency shall give pri-
16 ority to applications submitted jointly by eligible en-
17 tities consisting of not less than—
18 “(A) 1 local educational agency receiving
19 funds under part A of title I; and
20 “(B) 1 community-based organization or
21 other public or private entity.”.

1 **TITLE IV—IMPROVING THE**
2 **WORKPLACE FOR FAMILIES**
3 **Subtitle A—Part-Time and**
4 **Temporary Workers Benefits**

5 **SEC. 401. TREATMENT OF EMPLOYEES WORKING AT LESS**
6 **THAN FULL-TIME UNDER PARTICIPATION,**
7 **VESTING, AND ACCRUAL RULES GOVERNING**
8 **PENSION PLANS.**

9 (a) PARTICIPATION RULES.—

10 (1) IN GENERAL.—Section 202(a)(3) of the
11 Employee Retirement Income Security Act of 1974
12 (29 U.S.C. 1052(a)(3)) is amended by adding at the
13 end the following new subparagraph:

14 “(E)(i) For purposes of this paragraph, in the case
15 of any employee who, as of the beginning of the 12-month
16 period referred to in subparagraph (A)—

17 “(I) has customarily completed 500 or more
18 hours of service per year but less than 1,000 hours
19 of service per year, or

20 “(II) is employed in a type of position in which
21 employment customarily constitutes 500 or more
22 hours of service per year but less than 1,000 hours
23 of service per year,

24 completion of 500 hours of service within such period shall
25 be treated as completion of 1,000 hours of service.

1 “(ii) For purposes of this subparagraph, the extent
2 to which employment in any type of position customarily
3 constitutes less than 1,000 hours of service per year shall
4 be determined with respect to each pension plan in accord-
5 ance with such regulations as the Secretary may prescribe
6 providing for consideration of facts and circumstances pe-
7 culiar to the work-force constituting the participants in
8 such plan.”.

9 (2) CONFORMING AMENDMENT.—Section
10 204(b)(1)(E) of such Act (29 U.S.C. 1054(b)(1)(E))
11 is amended by striking “section 202(a)(3)(A)” and
12 inserting “subparagraphs (A) and (E) of section
13 202(a)(3)”.

14 (b) VESTING RULES.—

15 (1) IN GENERAL.—Section 203(b)(2) of such
16 Act (29 U.S.C. 1053(b)(2)) is amended by adding at
17 the end the following new subparagraph:

18 “(E)(i) For purposes of this paragraph, in the case
19 of any employee who, as of the beginning of the period
20 designated by the plan pursuant to subparagraph (A)—

21 “(I) has customarily completed 500 or more
22 hours of service per year but less than 1,000 hours
23 of service per year, or

24 “(II) is employed in a type of position in which
25 employment customarily constitutes 500 or more

1 hours of service per year but less than 1,000 hours
 2 of service per year,
 3 completion of 500 hours of service within such period shall
 4 be treated as completion of 1,000 hours of service.

5 “(ii) For purposes of this subparagraph, the extent
 6 to which employment in any type of position customarily
 7 constitutes less than 1,000 hours of service per year shall
 8 be determined with respect to each pension plan in accord-
 9 ance with such regulations as the Secretary may prescribe
 10 providing for consideration of facts and circumstances pe-
 11 culiar to the work-force constituting the participants in
 12 such plan.”.

13 (2) 1-YEAR BREAKS IN SERVICE.—Section
 14 203(b)(3) of such Act (29 U.S.C. 1053(b)(3)) is
 15 amended by adding at the end the following new
 16 subparagraph:

17 “(F)(i) For purposes of this paragraph, in the case
 18 of any employee who, as of the beginning of the period
 19 designated by the plan pursuant to subparagraph (A)—

20 “(I) has customarily completed 500 or more
 21 hours of service per year but less than 1,000 hours
 22 of service per year, or

23 “(II) is employed in a type of position in which
 24 employment customarily constitutes 500 or more

1 hours of service per year but less than 1,000 hours
2 of service per year,
3 completion of 250 hours of service within such period shall
4 be treated as completion of 500 hours of service.

5 “(ii) For purposes of this subparagraph, the extent
6 to which employment in any type of position customarily
7 constitutes less than 1,000 hours of service per year shall
8 be determined with respect to each pension plan in accord-
9 ance with such regulations as the Secretary may prescribe
10 providing for consideration of facts and circumstances pe-
11 culiar to the work-force constituting the participants in
12 such plan.”.

13 (c) ACCRUAL RULES.—Section 204(b)(4)(C) of such
14 Act (29 U.S.C. 1054(b)(4)(C)) is amended—

15 (1) by inserting “(i)” after “(C)”; and

16 (2) by adding at the end the following new
17 clauses:

18 “(ii) For purposes of this subparagraph, in the case
19 of any employee who, as of the beginning of the period
20 designated by the plan pursuant to clause (i)—

21 “(I) has customarily completed 500 or more
22 hours of service per year but less than 1,000 hours
23 of service per year, or

24 “(II) is employed in a type of position in which
25 employment customarily constitutes 500 or more

1 hours of service per year but less than 1,000 hours
2 of service per year,
3 completion of 500 hours of service within such period shall
4 be treated as completion of 1,000 hours of service.

5 “(iii) For purposes of clause (ii), the extent to which
6 employment in any type of position customarily constitutes
7 less than 1,000 hours of service per year shall be deter-
8 mined with respect to each pension plan in accordance
9 with such regulations as the Secretary may prescribe pro-
10 viding for consideration of facts and circumstances pecu-
11 liar to the work-force constituting the participants in such
12 plan.”.

13 **SEC. 402. TREATMENT OF EMPLOYEES WORKING AT LESS**
14 **THAN FULL-TIME UNDER GROUP HEALTH**
15 **PLANS.**

16 (a) IN GENERAL.—Part 2 of subtitle B of title I of
17 the Employee Retirement Income Security Act of 1974 is
18 amended—

19 (1) by redesignating section 211 (29 U.S.C.
20 1061) as section 212; and

21 (2) by inserting after section 210 (29 U.S.C.
22 1060) the following new section:

1 **“SEC. 211. TREATMENT OF PART-TIME WORKERS UNDER**
2 **GROUP HEALTH PLANS.**

3 “(a) **IN GENERAL.**—A reduction in the employer-pro-
4 vided premium under a group health plan with respect to
5 any employee for any period of coverage solely because the
6 employee’s customary employment is less than full-time
7 may be provided under such plan only if the employee is
8 described in subsection (b) and only to the extent per-
9 mitted under subsection (c).

10 “(b) **REDUCTIONS APPLICABLE TO EMPLOYEES**
11 **WORKING LESS THAN FULL-TIME.**—

12 “(1) **IN GENERAL.**—An employee is described in
13 this subsection if such employee, as of the beginning
14 of the period of coverage referred to in subsection
15 (a)—

16 “(A) has customarily completed less than
17 30 hours of service per week, or

18 “(B) is employed in a type of position in
19 which employment customarily constitutes less
20 than 30 hours of service per week.

21 “(2) **REGULATIONS.**—For purposes of para-
22 graph (1), whether employment in any type of posi-
23 tion customarily constitutes less than 30 hours of
24 service per week shall be determined with respect to
25 each group health plan in accordance with such reg-
26 ulations as the Secretary may prescribe providing

1 for consideration of facts and circumstances peculiar
2 to the work-force constituting the participants in
3 such plan.

4 “(c) AMOUNT OF PERMISSIBLE REDUCTION.—The
5 employer-provided premium under a group health plan
6 with respect to any employee for any period of coverage,
7 after the reduction permitted under subsection (a), shall
8 not be less than a ratable portion of the employer-provided
9 premium which would be provided under such plan for
10 such period of coverage with respect to an employee who
11 completes 30 hours of service per week.

12 “(d) DEFINITIONS.—For purposes of this section—

13 “(1) GROUP HEALTH PLAN.—The term ‘group
14 health plan’ has the meaning provided such term in
15 section 607(1).

16 “(2) EMPLOYER-PROVIDED PREMIUM.—

17 “(A) IN GENERAL.—The term ‘employer-
18 provided premium’ under a plan for any period
19 of coverage means the portion of the applicable
20 premium under the plan for such period of cov-
21 erage which is attributable under the plan to
22 employer contributions.

23 “(B) APPLICABLE PREMIUM.—For pur-
24 poses of subparagraph (A), in determining the
25 applicable premium of a group health plan,

1 principles similar to the principles applicable
2 under section 604 shall apply.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 201(1) of such Act (29 U.S.C.
5 1051(1)) is amended by inserting “, except with re-
6 spect to section 211” before the semicolon.

7 (2) The table of contents in section 1 of such
8 Act is amended by striking the item relating to sec-
9 tion 211 and inserting the following new items:

“211. Treatment of part-time workers under group health plans.

“212. Effective date.”.

10 **SEC. 403. EXPANSION OF DEFINITION OF EMPLOYEE TO IN-**
11 **CLUDE CERTAIN INDIVIDUALS WHOSE SERV-**
12 **ICES ARE LEASED OR CONTRACTED FOR.**

13 Paragraph (6) of section 3 of the Employee Retire-
14 ment Income Security Act of 1974 (29 U.S.C. 1002(6))
15 is amended—

16 (1) by inserting “(A)” after “(6)”; and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(B) Such term includes, with respect to any em-
20 ployer, any person who is not an employee (within the
21 meaning of subparagraph (A)) of such employer and who
22 provides services to such employer, if—

23 “(i) such person has (pursuant to an agreement
24 with such employer or any other person) performed

1 such services for such employer (or for such em-
2 ployer and related persons (within the meaning of
3 section 144(a)(3) of the Internal Revenue Code of
4 1986)) for a period of at least 1 year (6 months in
5 the case of core health benefits) at the rate of at
6 least 500 hours of service per year, and

7 “(ii) such services are of a type historically per-
8 formed, in the business field of the employer, by em-
9 ployees (within the meaning of subparagraph (A)).”.

10 **SEC. 404. EFFECTIVE DATES.**

11 (a) IN GENERAL.—Except as provided in subsection
12 (b), the amendments made by this subtitle shall apply with
13 respect to plan years beginning on or after January 1,
14 2012.

15 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
16 PLANS.—In the case of a plan maintained pursuant to 1
17 or more collective bargaining agreements between em-
18 ployee representatives and 1 or more employers ratified
19 on or before the date of the enactment of this Act, sub-
20 section (a) shall be applied to benefits pursuant to, and
21 individuals covered by, any such agreement by substituting
22 for “January 1, 2012” the date of the commencement of
23 the first plan year beginning on or after the earlier of—

24 (1) the later of—

25 (A) January 1, 2012, or

1 (B) the date on which the last of such col-
2 lective bargaining agreements terminates (de-
3 termined without regard to any extension there-
4 of after the date of the enactment of this Act),
5 or
6 (2) January 1, 2014.

7 (c) PLAN AMENDMENTS.—If any amendment made
8 by this subtitle requires an amendment to any plan, such
9 plan amendment shall not be required to be made before
10 the first plan year beginning on or after January 1, 2012,
11 if—

12 (1) during the period after such amendment
13 made by this Act takes effect and before such first
14 plan year, the plan is operated in accordance with
15 the requirements of such amendment made by this
16 subtitle, and

17 (2) such plan amendment applies retroactively
18 to the period after such amendment made by this
19 subtitle takes effect and such first plan year.

20 A plan shall not be treated as failing to provide definitely
21 determinable benefits or contributions, or to be operated
22 in accordance with the provisions of the plan, merely be-
23 cause it operates in accordance with this subsection.

1 **Subtitle B—United States Business**
 2 **Telework Act**

3 **SEC. 411. SHORT TITLE.**

4 This subtitle may be cited as the “United States
 5 Business Telework Act”.

6 **SEC. 412. TELEWORK PILOT PROGRAM.**

7 (a) PROGRAM.—In accordance with this subtitle, the
 8 Secretary of Labor shall conduct, in not more than 5
 9 States, a pilot program to raise awareness about telework
 10 among employers and to encourage such employers to
 11 offer telework options to employees.

12 (b) PERMISSIBLE ACTIVITIES.—In carrying out the
 13 pilot program, the Secretary is encouraged to—

14 (1) produce educational materials and conduct
 15 presentations designed to raise awareness of the
 16 benefits and the ease of telework;

17 (2) conduct outreach to businesses that are con-
 18 sidering offering telework options;

19 (3) acquire telework technologies and equip-
 20 ment to be used for demonstration purposes; and

21 (4) ensure that expectant and new mothers who
 22 are employed by businesses that participate in the
 23 pilot program are given the option to telework dur-
 24 ing the 1-year period after the date of birth.

1 **SEC. 413. REPORT TO CONGRESS.**

2 Not later than 2 years after the first date on which
3 funds are appropriated to carry out this subtitle, the Sec-
4 retary shall transmit to the Congress a report containing
5 the results of an evaluation of the pilot program and any
6 recommendations as to whether the pilot program, with
7 or without modification, should be expanded.

8 **SEC. 414. DEFINITION.**

9 In this subtitle, the term “telework” means the per-
10 formance of any portion of work functions by an employee
11 outside the normal place of business under circumstances
12 which reduce or eliminate the need to commute.

13 **SEC. 415. TERMINATION.**

14 The pilot program shall terminate 2 years after the
15 first date on which funds are appropriated to carry out
16 this subtitle.

17 **SEC. 416. AUTHORIZATION OF APPROPRIATIONS.**

18 There is authorized to be appropriated \$5,000,000 to
19 carry out this subtitle.

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