

116TH CONGRESS
2D SESSION

S. ■ ■

To provide emergency assistance and health care response for individuals,
families, and businesses affected by the 2020 coronavirus pandemic.

IN THE SENATE OF THE UNITED STATES

■ ■ ■ ■ ■ ■ ■ ■

Mr. McCONNELL (for himself, Mr. ALEXANDER, Mr. CRAPO, Mr. GRASSLEY,
Mr. RUBIO, Mr. SHELBY, and Mr. WICKER) introduced the following bill;
which was read twice and referred to the Committee on
■ ■ ■ ■ ■ ■ ■ ■

A BILL

To provide emergency assistance and health care response
for individuals, families, and businesses affected by the
2020 coronavirus pandemic.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Coronavirus Aid, Re-
5 lief, and Economic Security Act” or the “CARES Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

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1 **DIVISION A—SMALL BUSINESS**
2 **INTERRUPTION LOANS**

3 **SEC. 1101. DEFINITIONS.**

4 In this division—

5 (1) the terms “Administration” and “Adminis-
6 trator” mean the Small Business Administration
7 and the Administrator thereof; and

8 (2) the term “small business concern” has the
9 meaning given the term in section 3 of the Small
10 Business Act (15 U.S.C. 632).

11 **SEC. 1102. 7(a) LOAN PROGRAM.**

12 (a) **DEFINITION OF COVERED PERIOD.**—In this sec-
13 tion, the term “covered period” means the period begin-
14 ning on March 1, 2020 and ending on December 31, 2020.

1 (b) INCREASED ELIGIBILITY FOR CERTAIN SMALL
2 BUSINESSES AND ORGANIZATIONS.—

3 (1) IN GENERAL.—During the covered period,
4 any business concern, private nonprofit organization,
5 or public nonprofit organization which employs not
6 more than 500 employees shall be eligible to receive
7 a loan made under section 7(a) of the Small Busi-
8 ness Act (15 U.S.C. 636(a)), in addition to small
9 business concerns.

10 (2) EXCLUSION OF NONPROFITS RECEIVING
11 MEDICAID EXPENDITURES.—Paragraph (1) shall not
12 apply to a nonprofit entity eligible for payment for
13 items or services furnished under a State plan under
14 title XIX of the Social Security Act (42 U.S.C. 1396
15 et seq.) or under a waiver of such plan.

16 (c) MAXIMUM LOAN AMOUNT.—During the covered
17 period, with respect to any loan guaranteed under section
18 7(a) of the Small Business Act (15 U.S.C. 636(a)) for
19 which an application is approved or pending approval on
20 or after the date of enactment of this Act, the maximum
21 loan amount shall be the lesser of—

22 (1) the product obtained by multiplying—
23 (A) the average total monthly payments by
24 the applicant for payroll, mortgage payments,
25 rent payments, and payments on any other debt

1 obligations incurred during the 1 year period
2 before the date on which the loan is made, ex-
3 cept that, in the case of an applicant that is
4 seasonal employer, as determined by the Ad-
5 ministrator, the average total monthly pay-
6 ments for payroll shall be for the period begin-
7 ning March 1, 2019 and ending June 30, 2019;
8 by

9 (B) 4; or

10 (2) \$10,000,000.

11 (d) ALLOWABLE USES OF PROGRAM LOANS.—

12 (1) IN GENERAL.—During the covered period, a
13 recipient of a loan made under section 7(a) of the
14 Small Business Act (15 U.S.C. 636(a)) (including a
15 recipient of assistance under the Community Advan-
16 tage Pilot Program of the Administration) may, in
17 addition to the allowable uses of such a loan, use the
18 proceeds of the loan for—

19 (A) payroll support, including paid sick,
20 medical, or family leave, and costs related to
21 the continuation of group health care benefits
22 during those periods of leave;

23 (B) employee salaries;

24 (C) mortgage payments;

1 (D) rent (including rent under a lease
2 agreement);

3 (E) utilities; and

4 (F) any other debt obligations that were
5 incurred before the covered period.

6 (2) DELEGATED AUTHORITY.—

7 (A) IN GENERAL.—For purposes of mak-
8 ing loans for the purposes described in para-
9 graph (1), a lender under section 7(a) of the
10 Small Business Act (15 U.S.C. 636(a)) shall be
11 considered to have delegated authority to make
12 and approve loans under such section 7(a)
13 based on an evaluation of the eligibility of the
14 borrower.

15 (B) CONSIDERATIONS.—In evaluating the
16 eligibility of a borrower for a loan under section
17 7(a) of the Small Business Act (15 U.S.C.
18 636(a)) with the terms described in this sub-
19 section and subsection (c), a lender shall only
20 consider whether the borrower—

21 (i) was in operation on March 1,
22 2020; and

23 (ii) had employees for whom the bor-
24 rower paid salaries and payroll taxes.

Comment [dk1]: The terms and cap on this seem pretty good to me. There are risks in a few areas: firms that have high levels of debt now due to poor management can use the loans to continue to plod along and divert capacity from more deserving firms; highly compensated individuals may be able to have their salaries supported by the loans even if they have conflicts of interest as owners and a very wide dispersion in pay rates within the firm; and if the quarantines end quickly the loans may overshoot the needed targets. I'm not that concerned on this last one; it is better to overshoot than undershoot on large and unpredictable macro shocks. Maybe there are things they can add to the language to address the first two risks (or perhaps the existing program does this anyway).

Comment [dk2]: This will expedite disbursements, though seems to lack any reasonable controls. They could do simple ratio tests on the highest and lowest compensated employees to reduce this problem. Such firms could still get loans, but only with reductions in compensation to the top for the period of the crisis. The goal of all of these programs is not to keep operations going exactly as they were, but rather to keep the enterprises functioning through the downturn so they can rebound more quickly for all of us when the quarantines are lifted.

1 (3) LIMITATION.—A borrower that receives as-
2 sistance under section 7(b)(2) of the Small Business
3 Act (15 U.S.C. 636(b)(2)) related to COVID–19 for
4 purposes of paying payroll and providing payroll
5 support shall not be eligible for a loan described in
6 paragraph (1) for the same purpose.

7 (e) FEE WAIVER FOR 7(A) LOANS.—During the cov-
8 ered period, with respect to each loan guaranteed under
9 section 7(a) of the Small Business Act (15 U.S.C.
10 636(a))—

11 (1) in lieu of the fee otherwise applicable under
12 section 7(a)(23)(A) of the Small Business Act (15
13 U.S.C. 636(a)(23)(A)), the Administrator shall col-
14 lect no fee or reduce fees to the maximum extent
15 possible; and

16 (2) for which the application is approved on or
17 after the date of enactment of this Act, the Adminis-
18 trator shall, in lieu of the fee otherwise applicable
19 under section 7(a)(18)(A) of the Small Business Act
20 (15 U.S.C. 636(a)(18)(A)), collect no fee or reduce
21 fees to the maximum extent possible.

22 (f) GUARANTEE AMOUNT FOR 7(A) LOANS.—

23 (1) IN GENERAL.—Section 7(a)(2)(A) of the
24 Small Business Act (15 U.S.C. 636(a)(2)(A)) is
25 amended by striking “equal to—” and all that fol-

1 lows through the end of the subparagraph and in-
 2 sserting “equal to 100 percent of the balance of the
 3 financing outstanding at the time of disbursement of
 4 the loan.”.

5 (2) PROSPECTIVE REPEAL.—Effective on Janu-
 6 ary 1, 2021, section 7(a)(2)(A) of the Small Busi-
 7 ness Act (15 U.S.C. 636(a)(2)(A)) is amended by
 8 striking “equal to 100 percent of the balance of fi-
 9 nancing outstanding at the time of disbursement of
 10 the loan” and inserting “equal to—

11 “(i) 75 percent of the balance of the
 12 financing outstanding at the time of dis-
 13 bursement of the loan, if such balance ex-
 14 ceeds \$150,000; or

15 “(ii) 85 percent of the balance of the
 16 financing outstanding at the time of dis-
 17 bursement of the loan, if such balance is
 18 less than or equal to \$150,000.”.

19 (g) DEFERMENT OF 7(A) LOANS.—

20 (1) DEFINITIONS .—

21 (A) ELIGIBLE BORROWER.—The term “eli-
 22 gible borrower” means—

23 (i) a small business concern; or

24 (ii) an organization made eligible by
 25 subsection (b) of this section for a loan

Comment [dk3]: Makes sense to ramp down the access over time. No idea if the rates are fast enough, or if there will even be any residual capacity in 2021. The framing gives Congress the option to put additional funding into the programs supported by this bill in the future though.

1 under section 7(a) of the Small Business
2 Act (15 U.S.C. 636(a)).

3 (B) IMPACTED BORROWER.—

4 (i) IN GENERAL.—In this subsection,
5 the term “impacted borrower” means an
6 eligible borrower that—

7 (I) is in operation on March 1,
8 2020; and

9 (II) has an application for a loan
10 made under section 7(a) of the Small
11 Business Act (15 U.S.C. 636(a)) that
12 is approved or pending approval on or
13 after the date of enactment of this
14 Act.

15 (ii) PRESUMPTION.—For purposes of
16 this subsection, an impacted borrower is
17 presumed to have been adversely impacted
18 by COVID–19.

19 (2) DEFERRAL.—During the covered period,
20 the Administrator shall—

21 (A) consider each eligible borrower that
22 applies for a loan under section 7(a) of the
23 Small Business Act (15 U.S.C. 636(a)) to be an
24 impacted borrower; and

1 (B) require lenders under such section 7(a)
2 to provide complete payment deferment relief
3 for impacted borrowers with loans guaranteed
4 under such section 7(a) for a period of not
5 more than 1 year.

6 (3) SECONDARY MARKET.—During the covered
7 period, with respect to a loan made under 7(a) of
8 the Small Business Act (15 U.S.C. 636(a)) that is
9 sold on the secondary market, if an investor declines
10 to approve a deferral requested by a lender under
11 paragraph (2), the Administrator shall exercise the
12 authority to purchase the loan so that the impacted
13 borrower may receive a deferral for a period of not
14 more than 1 year.

15 (4) GUIDANCE.—Not later than 30 days after
16 the date of enactment of this Act, the Administrator
17 shall provide guidance to lenders under section 7(a)
18 of the Small Business Act (15 U.S.C. 636(a)) on the
19 deferment process described in this subsection.

20 (h) COMMITMENTS FOR 7(A) LOANS.—During the
21 covered period—

22 (1) there shall be no limitation on the commit-
23 ments for general business loans authorized under
24 section 7(a) of the Small Business Act (15 U.S.C.
25 636(a)); and

Comment [dk4]: I think this would put the feds in the position of buying a huge amount of these pre-existing loans. Seems like potentially huge hits on the Treasury and that could have some adverse selection risks as dumping higher risk loans to the government becomes an option.

Do repurchases on the secondary market drain from the same pool of guarantees authorized by this bill, or from a different pool of funding?

Since they are going for just one year of deferral, I wonder if there is some other financial option or mechanism they could use to avoid bringing all of these loans in full on the Treasury balance sheet while facilitating the term extensions.

Interest rates have also fallen sharply over the past two months, so facilitating a process enabling existing loans to be refinanced would also seem a useful stimulus.

1 (2) the amount authorized for commitments for
2 such loans under the heading “BUSINESS LOANS
3 PROGRAM ACCOUNT” under the heading “SMALL
4 BUSINESS ADMINISTRATION” under title V of the
5 Consolidated Appropriations Act, 2020 (Public Law
6 116–93; 133 Stat. 2475) shall not apply.

7 (i) EXPRESS LOANS.—

8 (1) IN GENERAL.—Section 7(a)(31)(D) of the
9 Small Business Act (15 U.S.C. 636(a)(31)(D)) is
10 amended by striking “\$350,000” and inserting
11 “\$1,000,000”.

12 (2) PROSPECTIVE REPEAL.—Effective on Janu-
13 ary 1, 2021, section 7(a)(31)(D) of the Small Busi-
14 ness Act (15 U.S.C. 636(a)(31)(D)) is amended by
15 striking “\$1,000,000” and inserting “\$350,000”.

16 **SEC. 1103. ENTREPRENEURIAL DEVELOPMENT.**

17 (a) DEFINITIONS.—In this section—

18 (1) the term “covered small business concern”
19 means a small business concern that is located in an
20 area that is substantially affected by the COVID–19;

21 (2) the term “resource partner” means—

22 (A) a small business development center;

23 and

24 (B) a women’s business center;

1 (3) the term “small business development cen-
2 ter” has the meaning given the term in section 3 of
3 the Small Business Act (15 U.S.C. 632);

4 (4) the term “substantially affected by COVID-
5 19” means, with respect to a covered small business
6 concern, that the covered small business concern has
7 experienced—

8 (A) supply chain disruptions, including
9 changes in—

10 (i) quantity and lead time, including
11 the number of shipments of components
12 and delays in shipments;

13 (ii) quality, including shortages in
14 supply for quality control reasons; and

15 (iii) technology, including a com-
16 promised payment network;

17 (B) staffing challenges;

18 (C) a decrease in sales or customers; or

19 (D) shuttered businesses; and

20 (5) the term “women’s business center” means
21 a women’s business center described in section 29 of
22 the Small Business Act (15 U.S.C. 656).

23 (b) EDUCATION, TRAINING, AND ADVISING
24 GRANTS.—

Comment [dk5]: Since pretty much all businesses will meet these criteria, the funding for loans and guarantees laid out in this bill will likely have insufficient capacity to meet demand. When this happens, the funds will be rationed in one way or another; it is useful to think about how the rationing will occur and whether that will lead to the best outcome for the country.

For example, it could be done by who applies first. This will likely favor prior borrowers, larger firms, or more politically connected industries. It could be done by the perspectives of the people or organizations screening the loans – and this opens the door to some political bias in firm or industry selection.

If there are particularly critical sectors or geographic regions they want to ensure get funded, a more narrow definition of top priority firms would be useful. This was effectively done via massive carve outs for airlines. However, industry-specific carveouts will slow and weaken the stimulus. It would be better to focus on core functions in the economy that need to be supported, and tag capacity that way.

1 (1) IN GENERAL.—The Administration may
2 provide financial assistance in the form of grants to
3 resource partners to provide education, training, and
4 advising to covered small business concerns.

5 (2) USE OF FUNDS.—Grants under this sub-
6 section shall be used for the education, training, and
7 advising of covered small business concerns and
8 their employees on—

9 (A) accessing and applying for resources
10 provided by the Administration and other Fed-
11 eral resources relating to access to capital and
12 business resiliency;

13 (B) the hazards and prevention of the
14 transmission and communication of COVID-19
15 and other communicable diseases;

16 (C) the potential effects of COVID-19 on
17 the supply chains, distribution, and sale of
18 products of covered small business concerns and
19 the mitigation of those effects;

20 (D) the management and practice of
21 telework to reduce possible transmission of
22 COVID-19;

23 (E) the management and practice of re-
24 mote customer service by electronic or other
25 means;

1 (F) the risks of and mitigation of cyber
2 threats in remote customer service or telework
3 practices;

4 (G) the mitigation of the effects of reduced
5 travel or outside activities on covered small
6 business concerns during COVID-19 or similar
7 occurrences; and

8 (H) any other relevant business practices
9 necessary to mitigate the economic effects of
10 COVID-19 or similar occurrences.

11 (3) GRANT DETERMINATION.—

12 (A) SMALL BUSINESS DEVELOPMENT CEN-
13 TERS.—The Administration shall award 80 per-
14 cent of funds authorized to carry out this sub-
15 section to small business development centers,
16 which shall be awarded pursuant to a formula
17 jointly developed, negotiated, and agreed upon,
18 with full participation of both parties, between
19 the association formed under section
20 21(a)(3)(A) of the Small Business Act (15
21 U.S.C. 648(a)(3)(A)) and the Administration.

22 (B) WOMEN'S BUSINESS CENTERS.—The
23 Administration shall award 20 percent of funds
24 authorized to carry out this subsection to wom-
25 en's business centers, which shall be awarded

1 pursuant to a process established by the Ad-
2 ministration in consultation with recipients of
3 assistance.

4 (C) NO MATCHING FUNDS REQUIRED.—
5 Matching funds shall not be required for any
6 grant under this subsection.

7 (4) GOALS AND METRICS.—

8 (A) IN GENERAL.—Goals and metrics for
9 the funds made available under this subsection
10 shall be jointly developed, negotiated, and
11 agreed upon, with full participation of both par-
12 ties, between the resource partners and the Ad-
13 ministrator, which shall—

14 (i) take into consideration the extent
15 of the circumstances relating to the spread
16 of COVID-19, or similar occurrences, that
17 affect covered small business concerns lo-
18 cated in the areas covered by the resource
19 partner, particularly in rural areas or eco-
20 nomically distressed areas;

21 (ii) generally follow the use of funds
22 outlined in paragraph (2), but shall not re-
23 strict the activities of resource partners in
24 responding to unique situations; and

1 (iii) encourage resource partners to
2 develop and provide services to covered
3 small business concerns.

4 (B) PUBLIC AVAILABILITY.—The Adminis-
5 trator shall make publicly available the method-
6 ology by which the Administrator and resource
7 partners jointly develop the metrics and goals
8 described in subparagraph (A).

9 (c) RESOURCE PARTNER ASSOCIATION GRANTS.—

10 (1) IN GENERAL.—The Administrator may pro-
11 vide grants to an association or associations rep-
12 resenting resource partners to establish a centralized
13 hub for COVID–19 information, which shall in-
14 clude—

15 (A) an online platform that consolidates
16 resources and information available across mul-
17 tiple Federal agencies for small business con-
18 cerns related to COVID–19; and

19 (B) a training program to educate resource
20 partner counselors on the resources and infor-
21 mation described in subparagraph (A).

22 (2) GOALS AND METRICS.—Goals and metrics
23 for the funds made available under this subsection
24 shall be jointly developed, negotiated, and agreed
25 upon, with full participation of both parties, between

1 the association or associations receiving a grant
2 under this subsection and the Administrator.

3 (d) REPORT.—Not later than 6 months after the date
4 of enactment of this Act, and annually thereafter, the Ad-
5 ministrator shall submit to the Committee on Small Busi-
6 ness and Entrepreneurship of the Senate and the Com-
7 mittee on Small Business of the House of Representatives
8 a report—

9 (1) that describes, with respect to the initial
10 year covered by the report—

11 (A) the programs and services developed
12 and provided by the Administration and re-
13 source partners under subsection (b);

14 (B) the initial efforts to provide those serv-
15 ices under subsection (b); and

16 (C) the online platform and training devel-
17 oped and provided by the Administration and
18 the association or associations under subsection
19 (c); and

20 (2) that describes, with respect to the subse-
21 quent years covered by the report—

22 (A) with respect to the grant program
23 under subsection (b)—

1 (i) the efforts of the Administrator
2 and resource partners to develop services
3 to assist covered small business concerns;

4 (ii) the challenges faced by owners of
5 covered small business concerns in access-
6 ing services provided by the Administration
7 and resource partners;

8 (iii) the number of unique covered
9 small business concerns that were served
10 by the Administration and resource part-
11 ners; and

12 (iv) other relevant outcome perform-
13 ance data with respect to covered small
14 business concerns, including the number of
15 employees affected, the effect on sales, the
16 disruptions of supply chains, and the ef-
17 forts made by the Administration and re-
18 source partners to mitigate these effects;
19 and

20 (B) with respect to the grant program
21 under subsection (c)—

22 (i) the efforts of the Administrator
23 and the association or associations to de-
24 velop and evolve an online resource for
25 small business concerns; and

1 (ii) the efforts of the Administrator
2 and the association or associations to de-
3 velop a training program for resource part-
4 ner counselors, including the number of
5 counselors trained.

6 **SEC. 1104. WAIVER OF MATCHING FUNDS REQUIREMENT**
7 **UNDER THE WOMEN'S BUSINESS CENTER**
8 **PROGRAM.**

9 During the 3-month period beginning on the date of
10 enactment of this Act, the requirement relating to obtain-
11 ing cash contributions from non-Federal sources under
12 section 29(c)(1) of the Small Business Act (15 U.S.C.
13 656(c)(1)) is waived for any recipient of assistance under
14 such section 29.

15 **SEC. 1105. LOAN FORGIVENESS.**

16 (a) **DEFINITIONS.**—In this section—

17 (1) the term “covered 7(a) loan” means a loan
18 guaranteed under section 7(a) of the Small Business
19 Act (15 U.S.C. 636(a)) that is made during the cov-
20 ered period;

21 (2) the term “covered period” means the period
22 beginning on March 1, 2020 and ending on June 30,
23 2020;

24 (3) the term “eligible recipient” means the re-
25 cipient of a covered 7(a) loan; and

1 (4) the term “payroll costs” shall not include—

2 (A) the compensation of an individual em-
3 ployee in excess of \$33,333 during the covered
4 period;

5 (B) qualified sick leave wages for which a
6 credit is allowed under section 7001 of the
7 Families First Coronavirus Response Act; or

8 (C) qualified family leave wages for which
9 a credit is allowed under section 7003 of the
10 Families First Coronavirus Response Act.

11 (b) FORGIVENESS.—An eligible recipient shall be eli-
12 gible for forgiveness of indebtedness on a covered 7(a) loan
13 in an amount equal to the cost of maintaining payroll con-
14 tinuity during the covered period.

15 (c) TREATMENT OF AMOUNTS FORGIVEN.—

16 (1) IN GENERAL.—Amounts which have been
17 forgiven under this section shall be considered can-
18 celed indebtedness by lenders authorized under sec-
19 tion 7(a) of the Small Business Act (15 U.S.C.
20 636(a)).

21 (2) FOR PURPOSES OF REDEMPTION OF GUAR-
22 ANTEES.—For purposes of the redemption of a
23 guarantee by the lender for a covered 7(a) loan,
24 amounts which are forgiven under this section shall
25 be treated as a default, in accordance with the pro-

Comment [dk6]: OK; this is good. The caps reduce the role of wide wage dispersion that I mentioned earlier in terms of determining the size of loan a firm could get. However, I’m not clear that this cap would also restrict the use of proceeds and the ability of firms to use the loans to support very high salaries for top executives.

Comment [dk7]: Effectively the government is paying the full payroll of lower-paid employees through the end of June. It seems like this would quickly exceed the figures being talked about in press reports, even with the cap per firm of \$100k.

1 cedures that are otherwise applicable to a default on
2 a loan guaranteed under section 7(a) of the Small
3 Business Act (15 U.S.C. 636(a)).

4 (d) LIMITS ON AMOUNT OF FORGIVENESS.—

5 (1) IN GENERAL.—The amount of loan forgive-
6 ness under this section for an eligible recipient shall
7 not exceed the sum of—

8 (A) the total payroll costs incurred by the
9 eligible recipient during the covered period; and

10 (B) the amount of payments made during
11 the covered period on debt obligations that were
12 incurred before the covered period.

13 (2) REDUCTION BASED ON REDUCTION IN NUM-
14 BER OF EMPLOYEES.—

15 (A) IN GENERAL.—The amount of loan
16 forgiveness under this section shall be reduced
17 by the percentage equal to the difference ob-
18 tained by subtracting—

19 (i) the quotient obtained by dividing—

20 (I) the average number of full-
21 time equivalent employees per month
22 employed by the eligible recipient dur-
23 ing the covered period; by

24 (II)(aa) the average number of
25 full time equivalent employees per

24

1 month employed by the eligible recipi-
2 ent during the period beginning on
3 March 1, 2019 and ending on June
4 30, 2019; or

5 (bb) in the case of an eligible re-
6 cipient that is seasonal employer, as
7 determined by the Administrator, the
8 average number of full-time equivalent
9 employees per month employed by the
10 eligible recipient during the period be-
11 ginning on March 1, 2019 and ending
12 on June 30, 2019; from

13 (ii) 1.

14 (B) CALCULATION OF AVERAGE NUMBER
15 OF EMPLOYEES.—The average number of full-
16 time equivalent employees shall be determined
17 by calculating the average number of employees
18 for each pay period falling within a month.

19 (3) REDUCTION RELATING TO COMPENSA-
20 TION.—The amount of loan forgiveness under this
21 section shall also be reduced by the amount of any
22 reduction in excess of 25 percent of compensation in
23 the most recent full quarter in which the employee
24 was paid in compensation during the covered period
25 of any employee who was compensated—

1 (A) in an amount less than \$33,333 during
2 the period beginning on March 1, 2019 and
3 ending on June 30, 2019; or

4 (B) not more than \$100,000 on annualized
5 basis during 2019.

6 (4) EXCEPTION FOR TIPPED WORKERS.—An el-
7 igible recipient with tipped employees described in
8 section 3(m)(2)(A) of the Fair Labor Standards Act
9 of 1938 (29 U.S.C. 203(m)(2)(A)) may receive for-
10 giveness for additional wages paid to those employ-
11 ees.

12 (e) APPLICATION.—An eligible recipient seeking loan
13 forgiveness under this section shall submit to the lender
14 that originated the covered 7(a) loan an application, which
15 shall include documentation verifying the number of full-
16 time equivalent employees on payroll and pay rates for the
17 periods described in subsection (d), including—

18 (1) payroll tax filings reported to the Internal
19 Revenue Service;

20 (2) State income, payroll, and unemployment
21 insurance filings;

22 (3) financial statements verifying payment on
23 debt obligations incurred before the covered period;
24 and

Comment [dk8]: Does this mean that the employer gets credit as though these workers were paid at least minimum wage, but the employees themselves don't? If that's the case, since these people can't work anyway with restaurants closed, it would be better to direct the funds to increased unemployment benefits.

1 (4) any other documentation the Administrator
2 determines necessary.

3 (f) CERTIFICATION.—An eligible recipient receiving
4 loan forgiveness under this section shall make a good faith
5 certification that the uncertainty of current economic con-
6 ditions justifies the loan request to support the ongoing
7 operations of the borrower, and acknowledges that funds
8 will be used to retain workers and maintain payroll.

Comment [dk9]: But does not require?
Obviously if the firm still goes bankrupt this would
be moot.

9 (g) PROHIBITION ON FORGIVENESS WITHOUT DOCU-
10 MENTATION.—No eligible recipient shall receive forgive-
11 ness under this section without submitting to the lender
12 that originated the covered 7(a) loan the documentation
13 required under subsection (e).

14 (h) DECISION.—Not later than 15 days after the date
15 on which a lender receives an application for loan forgive-
16 ness under this section from an eligible recipient, the lend-
17 er shall issue a decision on the an application.

18 (i) TAXABILITY.—Canceled indebtedness under this
19 section shall be excluded from gross income for purposes
20 of the Internal Revenue Code of 1986.

21 (j) RULE OF CONSTRUCTION.—The cancellation of
22 indebtedness on a covered 7(a) loan under this section
23 shall not otherwise modify the terms and conditions of the
24 covered 7(a) loan.

1 (k) REGULATIONS.—Not later than 30 days after the
2 date of enactment of this Act, the Administrator shall
3 issue guidance and regulations implementing this section.

4 **SEC. 1106. DIRECT APPROPRIATIONS.**

5 (a) IN GENERAL.—There is appropriated, out of
6 amounts in the Treasury not otherwise appropriated, for
7 the fiscal year ending September 30, 2020, to remain
8 available until September 30, 2021, for additional
9 amounts—

10 (1) \$299,400,000,000 under the heading
11 “Small Business Administration—Business Loans
12 Program Account” for the cost of guaranteed loans
13 as authorized under section 7(a) of the Small Busi-
14 ness Act (15 U.S.C. 636(a));

15 (2) \$300,000,000 under the heading “Small
16 Business Administration—Salaries and Expenses”
17 for salaries and expenses of the Administration;

18 (3) \$25,000,000 under the heading “Small
19 Business Administration—Office of Inspector Gen-
20 eral” for necessary expenses of the Office of Inspec-
21 tor General of the Administration in carrying out
22 the provisions of the Inspector General Act of 1978
23 (5 U.S.C. App.);

1 (4) \$265,000,000 under the heading “Small
2 Business Administration—Entrepreneurial Develop-
3 ment Programs”, of which—

4 (A) \$240,000,000 shall be for carrying sec-
5 tion 1103(b) of this Act; and

6 (B) \$25,000,000 shall be for carrying out
7 section 1103(c) of this Act; and

8 (5) \$10,000,000 under the heading “Depart-
9 ment of Commerce—Minority Business Development
10 Agency” for minority business centers of the Minor-
11 ity Business Development Agency to provide tech-
12 nical assistance to small business concerns.

13 (b) REPORTS.—Not later than 180 days after the
14 date of enactment of this Act, the Administrator shall sub-
15 mit to the Committee on Appropriations of the Senate and
16 the Committee on Appropriations of the House of Rep-
17 resentatives a detailed expenditure plan for using the
18 amounts appropriated under subsection (a).

19 **SEC. 1107. MINORITY BUSINESS DEVELOPMENT AGENCY.**

20 (a) DEFINITIONS.—In this section—

21 (1) the term “Agency” means the Minority
22 Business Development Agency of the Department of
23 Commerce;

24 (2) the term “covered small business concern”
25 means a small business concern (as defined in sec-

1 tion 3 of the Small Business Act (15 U.S.C. 632)
2 that is located in an area that is substantially af-
3 fected by the COVID-19;

4 (3) the term “minority business center” means
5 a Business Center of the Agency; and

6 (4) the term “substantially affected by COVID-
7 19” means, with respect to a covered small business
8 concern, that the covered small business concern has
9 experienced—

10 (A) supply chain disruptions, including
11 changes in—

12 (i) quantity and lead time, including
13 the number of shipments of components
14 and delays in shipments;

15 (ii) quality, including shortages in
16 supply for quality control reasons; and

17 (iii) technology, including a com-
18 promised payment network;

19 (B) staffing challenges;

20 (C) a decrease in sales or customers; or

21 (D) shuttered businesses.

22 (b) EDUCATION, TRAINING, AND ADVISING
23 GRANTS.—

24 (1) IN GENERAL.—The Agency may provide fi-
25 nancial assistance in the form of grants to minority

1 business centers to provide education, training, and
2 advising to covered small business concerns.

3 (2) USE OF FUNDS.—Grants under this section
4 shall be used for the education, training, and advis-
5 ing of covered small business concerns and their em-
6 ployees on—

7 (A) accessing and applying for resources
8 provided by the Agency and other Federal re-
9 sources relating to access to capital and busi-
10 ness resiliency;

11 (B) the hazards and prevention of the
12 transmission and communication of COVID–19
13 and other communicable diseases;

14 (C) the potential effects of COVID–19 on
15 the supply chains, distribution, and sale of
16 products of covered small business concerns and
17 the mitigation of those effects;

18 (D) the management and practice of
19 telework to reduce possible transmission of
20 COVID–19;

21 (E) the management and practice of re-
22 mote customer service by electronic or other
23 means;

1 (F) the risks of and mitigation of cyber
2 threats in remote customer service or telework
3 practices;

4 (G) the mitigation of the effects of reduced
5 travel or outside activities on covered small
6 business concerns during COVID-19 or similar
7 occurrences; and

8 (H) any other relevant business practices
9 necessary to mitigate the economic effects of
10 COVID-19 or similar occurrences.

11 (3) NO MATCHING FUNDS REQUIRED.—Match-
12 ing funds shall not be required for any grant under
13 this section.

14 (4) GOALS AND METRICS.—

15 (A) IN GENERAL.—Goals and metrics for
16 the funds made available under this section
17 shall be jointly developed, negotiated, and
18 agreed upon, with full participation of both par-
19 ties, between the minority business centers and
20 the Agency, which shall—

21 (i) take into consideration the extent
22 of the circumstances relating to the spread
23 of COVID-19, or similar occurrences, that
24 affect covered small business concerns lo-
25 cated in the areas covered by the minority

1 business centers, particularly in rural areas
2 or economically distressed areas;

3 (ii) generally follow the use of funds
4 outlined in paragraph (2), but shall not re-
5 strict the activities of minority business
6 centers in responding to unique situations;
7 and

8 (iii) encourage minority business cen-
9 ters to develop and provide services to cov-
10 ered small business concerns.

11 (B) PUBLIC AVAILABILITY.—The Agency
12 shall make publicly available the methodology
13 by which the Agency and minority business cen-
14 ters jointly develop the metrics and goals de-
15 scribed in subparagraph (A).

16 (5) AUTHORIZATION OF APPROPRIATIONS.—
17 There is authorized to be appropriated \$10,000,000
18 to carry out this section, to remain available until
19 expended.

20 **SEC. 1108. WAIVER OF PREPAYMENT PENALTY.**

21 Notwithstanding any other provision of law, for a
22 loan made under the authority under this division or an
23 amendment made by this division, there shall be no pre-
24 payment penalty for any payment on the loan made on
25 or before December 31, 2020.

1 SEC. 1109. UNITED STATES TREASURY PROGRAM MANAGE-
2 MENT AUTHORITY.

3 (a) AUTHORITY TO INCLUDE ADDITIONAL FINAN-
4 CIAL INSTITUTIONS.—The Department of the Treasury,
5 in consultation with the Administration and the other
6 Federal financial regulatory agencies (as defined in section
7 313(r) of title 31, United States Code), shall establish cri-
8 teria for insured depository institutions (as defined in sec-
9 tion 3 of the Federal Deposit Insurance Act (12 U.S.C.
10 1813)) and other specialized lenders, that do not already
11 participate in lending under programs of the Administra-
12 tion, to participate in a small business interruption loans
13 program to provide loans under section 7(a) of the Small
14 Business Act (15 U.S.C. 636(a)) in accordance with this
15 section until the date on which the national emergency de-
16 clared by the President under the National Emergencies
17 Act (50 U.S.C. 1601 et seq.) with respect to the
18 Coronavirus Disease 2019 (COVID–19) expires.

19 (b) CRITERIA.—Due to exigent circumstances, the
20 eligibility criteria that would otherwise be applicable a loan
21 made under section 7(a) of the Small Business Act (15
22 U.S.C. 636(a)) shall not apply to a loan made under this
23 section.

24 (c) SAFETY AND SOUNDNESS.—An insured deposi-
25 tory institution (as defined in section 3 of the Federal De-
26 posit Insurance Act (12 U.S.C. 1813)) or other specialized

1 lender may only participate in the program established
2 under this section if participation does not affect the safe-
3 ty and soundness of the institution or lender.

4 (d) ADDITIONAL REGULATIONS.—The Secretary of
5 the Treasury, in consultation with the Administrator, shall
6 issue regulations and guidance in order to direct addi-
7 tional lenders under this section and establish additional
8 terms that set out compensation, underwriting standards,
9 interest rates, maturity, and other relevant terms and con-
10 ditions.

11 (e) PROGRAM ADMINISTRATION.—Under the infra-
12 structure of the Department of the Treasury and with
13 guidance from the Secretary of the Treasury, the Adminis-
14 tration shall administer the program established under
15 this section until the date on which the national emergency
16 declared by the President under the National Emergencies
17 Act (50 U.S.C. 1601 et seq.) with respect to the
18 Coronavirus Disease 2019 (COVID–19) expires.

1 **DIVISION B—RELIEF FOR INDIVIDUALS, FAMILIES, AND**
 2 **BUSINESSES**
 3 **TITLE I—REBATES AND OTHER**
 4 **INDIVIDUAL PROVISIONS**

5 **SEC. 2101. 2020 RECOVERY REBATES FOR INDIVIDUALS.**

6 (a) IN GENERAL.—Subchapter B of chapter 65 of
 7 subtitle F of the Internal Revenue Code of 1986 is amend-
 8 ed by inserting after section 6427 the following new sec-
 9 tion:
 10

11 **“SEC. 6428. 2020 RECOVERY REBATES FOR INDIVIDUALS.**

12 “(a) IN GENERAL.—In the case of an eligible indi-
 13 vidual, there shall be allowed as a credit against the tax
 14 imposed by subtitle A for the first taxable year beginning
 15 in 2020 an amount equal to the lesser of—

16 “(1) net income tax liability, or

17 “(2) \$1,200 (\$2,400 in the case of a joint re-
 18 turn).

19 “(b) SPECIAL RULES.—

20 “(1) IN GENERAL.—In the case of a taxpayer
 21 described in paragraph (2)—

22 “(A) the amount determined under sub-
 23 section (a) shall not be less than \$600 (\$1,200
 24 in the case of a joint return), and

Comment [dk10]: Not sure I'm following all the ins- and outs of this section. But if it is given in the form of a tax credit, the funds will be delayed too long to be helpful. And if one needs to have taxable income in order to get a rebate, the people who need it most aren't going to get anything.

Based on news reports, it seems like the intent is for this to be a check paid now, not a tax credit. So this language is just addressing lagging tax liability for payments that act as income. But does this mean that if I am very poor and have no tax liability my 2020 filings will count the stimulus check as income, opening me to filing requirements and potential taxes? The goal of this program is rapid infusion of cash to lower income quintiles, and it should be simple both to implement and to track later.

1 “(B) the amount determined under sub-
2 section (a) (after the application of subpara-
3 graph (A)) shall be increased by the product of
4 \$500 multiplied by the number of qualifying
5 children (within the meaning of section 24(c))
6 of the taxpayer.

7 “(2) TAXPAYER DESCRIBED.—A taxpayer is de-
8 scribed in this paragraph if the taxpayer—

9 “(A) has qualifying income of at least
10 \$2,500, or

11 “(B) has—

12 “(i) net income tax liability which is
13 greater than zero, and

14 “(ii) gross income which is greater
15 than the basic standard deduction.

16 “(c) TREATMENT OF CREDIT.—The credit allowed by
17 subsection (a) shall be treated as allowed by subpart C
18 of part IV of subchapter A of chapter 1.

19 “(d) LIMITATION BASED ON ADJUSTED GROSS IN-
20 COME.—The amount of the credit allowed by subsection
21 (a) (determined without regard to this subsection and sub-
22 section (f)) shall be reduced (but not below zero) by 5 per-
23 cent of so much of the taxpayer’s adjusted gross income
24 as exceeds \$75,000 (\$150,000 in the case of a joint re-
25 turn).

Comment [dk11]: It is good that the rebates are means tested. They will still be too small to help many people service their mortgages and living expenses (and any medical care other than COVID-19), but means testing does allow the money to go a bit further to the people who need it. The cost of \$1k to every person in the US is nearly \$400 billion – not exact to what is being proposed but indicative of how expensive even this small transfer is. The economic benefit for each day of shorter quarantine is absolutely massive, and investments into the public health, testing, screening to see who has already had the disease and is no longer contagious so can go back to work, etc. should be commensurately large as a result. The returns on investment in these areas will likely be at least an order of magnitude larger than the economic stimulus.

1 “(e) DEFINITIONS.—For purposes of this section—

2 “(1) QUALIFYING INCOME.—The term ‘quali-
3 fying income’ means—

4 “(A) earned income,

5 “(B) social security benefits (within the
6 meaning of section 86(d)), and

7 “(C) any compensation or pension received
8 under chapter 11, chapter 13, or chapter 15 of
9 title 38, United States Code.

10 “(2) NET INCOME TAX LIABILITY.—The term
11 ‘net income tax liability’ means the excess of—

12 “(A) the sum of the taxpayer’s regular tax
13 liability (within the meaning of section 26(b))
14 and the tax imposed by section 55 for the tax-
15 able year, over

16 “(B) the credits allowed by part IV (other
17 than section 24 and subpart C thereof) of sub-
18 chapter A of chapter 1.

19 “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible
20 individual’ means any individual other than—

21 “(A) any nonresident alien individual,

22 “(B) any individual with respect to whom
23 a deduction under section 151 is allowable to
24 another taxpayer for a taxable year beginning

1 in the calendar year in which the individual's
2 taxable year begins, and

3 “(C) an estate or trust.

4 “(4) EARNED INCOME.—The term ‘earned in-
5 come’ has the meaning set forth in section 32(c)(2)
6 except that such term shall not include net earnings
7 from self-employment which are not taken into ac-
8 count in computing taxable income.

9 “(5) BASIC STANDARD DEDUCTION.—The term
10 ‘basic standard deduction’ shall have the same
11 meaning as when used in section 63 (as modified by
12 subsection (c)(7) of such section).

13 “(f) COORDINATION WITH ADVANCE REFUNDS OF
14 CREDIT.—

15 “(1) IN GENERAL.—The amount of credit
16 which would (but for this paragraph) be allowable
17 under this section shall be reduced (but not below
18 zero) by the aggregate refunds and credits made or
19 allowed to the taxpayer under subsection (g). Any
20 failure to so reduce the credit shall be treated as
21 arising out of a mathematical or clerical error and
22 assessed according to section 6213(b)(1).

23 “(2) JOINT RETURNS.—In the case of a refund
24 or credit made or allowed under subsection (g) with
25 respect to a joint return, half of such refund or cred-

1 it shall be treated as having been made or allowed
2 to each individual filing such return.

3 “(g) ADVANCE REFUNDS AND CREDITS.—

4 “(1) IN GENERAL.—Subject to paragraph (5),
5 each individual who was an eligible individual for
6 such individual’s first taxable year beginning in
7 2018 shall be treated as having made a payment
8 against the tax imposed by chapter 1 for such first
9 taxable year in an amount equal to the advance re-
10 fund amount for such taxable year.

11 “(2) ADVANCE REFUND AMOUNT.—For pur-
12 poses of paragraph (1), the advance refund amount
13 is the amount that would have been allowed as a
14 credit under this section for such first taxable year
15 if this section (other than subsection (f) and this
16 subsection) had applied to such taxable year.

17 “(3) TIMING OF PAYMENTS.—The Secretary
18 shall, subject to the provisions of this title, refund
19 or credit any overpayment attributable to this sec-
20 tion as rapidly as possible. No refund or credit shall
21 be made or allowed under this subsection after De-
22 cember 31, 2020.

23 “(4) NO INTEREST.—No interest shall be al-
24 lowed on any overpayment attributable to this sec-
25 tion.

1 “(5) ALTERNATE TAXABLE YEAR.—In the case
2 of an individual who, at the time of any determina-
3 tion made pursuant to paragraph (3), has not filed
4 a tax return for the year described in paragraph (1),
5 the Secretary may apply such paragraph by sub-
6 stituting ‘2019’ for ‘2018’.

7 “(h) IDENTIFICATION NUMBER REQUIREMENT.—

8 “(1) IN GENERAL.—No credit shall be allowed
9 under subsection (a) to an eligible individual who
10 does not include on the return of tax for the taxable
11 year—

12 “(A) such individual’s valid identification
13 number,

14 “(B) in the case of a joint return, the valid
15 identification number of such individual’s
16 spouse, and

17 “(C) in the case of any qualifying child
18 taken into account under subsection (b)(1)(B),
19 the valid identification number of such quali-
20 fying **child**.

21 “(2) VALID IDENTIFICATION NUMBER.—

22 “(A) IN GENERAL.—For purposes of para-
23 graph (1), the term ‘valid identification num-
24 ber’ means a social security number (as such
25 term is defined in section 24(h)(7)).

Comment [dk12]: I think this language is ensuring that only legal, naturalized, citizens get the rebate, even if minors. Seems to exclude people here with a legal work permit or green card as well, even though I believe they pay their full complement of taxes. Is that even legal?

It also obviously excludes people here illegally – which may not be the best strategy if one is trying to prevent spread of a pandemic by people who are forced by short-term economic pressures to work even if they feel unwell.

1 “(B) ADOPTION TAXPAYER IDENTIFICA-
2 TION NUMBER.—For purposes of paragraph
3 (1)(C), in the case of a qualifying child who is
4 adopted, the term ‘valid identification number’
5 shall include the adoption taxpayer identifica-
6 tion number of such child.

7 “(i) REGULATIONS.—The Secretary shall prescribe
8 such regulations or other guidance as may be necessary
9 to carry out the purposes of this section.”.

10 (b) ADMINISTRATIVE AMENDMENTS.—

11 (1) DEFINITION OF DEFICIENCY.—Section
12 6211(b)(4)(A) of the Internal Revenue Code of 1986
13 is amended by striking “and 36B, 168(k)(4)” and
14 inserting “36B, and 6428”.

15 (2) MATHEMATICAL OR CLERICAL ERROR AU-
16 THORITY.—Section 6213(g)(2)(L) of such Code is
17 amended by striking “or 32” and inserting “32, or
18 6428”.

19 (c) TREATMENT OF POSSESSIONS.—

20 (1) PAYMENTS TO POSSESSIONS.—

21 (A) MIRROR CODE POSSESSION.—The Sec-
22 retary of the Treasury shall pay to each posses-
23 sion of the United States which has a mirror
24 code tax system amounts equal to the loss (if
25 any) to that possession by reason of the amend-

1 ments made by this section. Such amounts shall
2 be determined by the Secretary of the Treasury
3 based on information provided by the govern-
4 ment of the respective possession.

5 (B) OTHER POSSESSIONS.—The Secretary
6 of the Treasury shall pay to each possession of
7 the United States which does not have a mirror
8 code tax system amounts estimated by the Sec-
9 retary of the Treasury as being equal to the ag-
10 gregate benefits (if any) that would have been
11 provided to residents of such possession by rea-
12 son of the amendments made by this section if
13 a mirror code tax system had been in effect in
14 such possession. The preceding sentence shall
15 not apply unless the respective possession has a
16 plan, which has been approved by the Secretary
17 of the Treasury, under which such possession
18 will promptly distribute such payments to its
19 residents.

20 (2) COORDINATION WITH CREDIT ALLOWED
21 AGAINST UNITED STATES INCOME TAXES.—No cred-
22 it shall be allowed against United States income
23 taxes under section 6428 of the Internal Revenue
24 Code of 1986 (as added by this section) to any per-
25 son—

1 (A) to whom a credit is allowed against
2 taxes imposed by the possession by reason of
3 the amendments made by this section, or

4 (B) who is eligible for a payment under a
5 plan described in paragraph (1)(B).

6 (3) DEFINITIONS AND SPECIAL RULES.—

7 (A) POSSESSION OF THE UNITED
8 STATES.—For purposes of this subsection, the
9 term “possession of the United States” includes
10 the Commonwealth of Puerto Rico and the
11 Commonwealth of the Northern Mariana Is-
12 lands.

13 (B) MIRROR CODE TAX SYSTEM.—For pur-
14 poses of this subsection, the term “mirror code
15 tax system” means, with respect to any posses-
16 sion of the United States, the income tax sys-
17 tem of such possession if the income tax liabil-
18 ity of the residents of such possession under
19 such system is determined by reference to the
20 income tax laws of the United States as if such
21 possession were the United States.

22 (C) TREATMENT OF PAYMENTS.—For pur-
23 poses of section 1324 of title 31, United States
24 Code, the payments under this section shall be
25 treated in the same manner as a refund due

1 from a credit provision referred to in subsection
2 (b)(2) of such section.

3 (d) EXCEPTION FROM TREASURY OFFSET PRO-
4 GRAM.—Any credit or refund allowed or made to any indi-
5 vidual by reason of section 6428 of the Internal Revenue
6 Code of 1986 (as added by this section) or by reason of
7 subsection (c) of this section shall not be subject to reduc-
8 tion or offset pursuant to—

9 (1) section 3716 or 3720A of title 31, United
10 States Code, or

11 (2) subsection (d), (e), or (f) of section 6402 of
12 the Internal Revenue Code of 1986.

13 (e) APPROPRIATIONS TO CARRY OUT REBATES.—

14 (1) IN GENERAL.—Immediately upon the enact-
15 ment of this Act, the following sums are appro-
16 priated, out of any money in the Treasury not other-
17 wise appropriated, for the fiscal year ending Sep-
18 tember 30, 2020:

19 (A) DEPARTMENT OF THE TREASURY.—

20 (i) For an additional amount for “De-
21 partment of the Treasury—Bureau of the
22 Fiscal Service—Salaries and Expenses”,
23 \$78,650,000, to remain available until
24 September 30, 2021.

1 (ii) For an additional amount for
2 “Department of the Treasury—Internal
3 Revenue Service—Taxpayer Services”,
4 \$70,200,000, to remain available until
5 September 30, 2021.

6 (iii) For an additional amount for
7 “Department of the Treasury—Internal
8 Revenue Service—Operations Support”,
9 \$209,600,000, to remain available until
10 September 30, 2021.

11 (B) SOCIAL SECURITY ADMINISTRATION.—
12 For an additional amount for “Social Security
13 Administration—Limitation on Administrative
14 Expenses”, \$38,000,000, to remain available
15 until September 30, 2020.

16 (2) REPORTS.—No later than 15 days after en-
17 actment of this Act, the Secretary of the Treasury
18 shall submit a plan to the Committees on Appropria-
19 tions of the House of Representatives and the Sen-
20 ate detailing the expected use of the funds provided
21 by paragraph (1)(A). Beginning 90 days after enact-
22 ment of this Act, the Secretary of the Treasury shall
23 submit a quarterly report to the Committees on Ap-
24 propriations of the House of Representatives and the
25 Senate detailing the actual expenditure of funds pro-

1 vided by paragraph (1)(A) and the expected expendi-
 2 ture of such funds in the subsequent quarter.

3 (f) CONFORMING AMENDMENTS.—

4 (1) Paragraph (2) of section 1324(b) of title
 5 31, United States Code, is amended by inserting
 6 “6428,” after “54B(h),”.

7 (2) The table of sections for subchapter B of
 8 chapter 65 of subtitle F of the Internal Revenue
 9 Code of 1986 is amended by inserting after the item
 10 relating to section 6427 the following:

“Sec. 6428. 2020 Recovery Rebates for individuals.”.

11 SEC. 2102. DELAY OF CERTAIN DEADLINES.

12 (a) FILING DEADLINES FOR 2019.—

13 (1) IN GENERAL.—In the case of returns for
 14 taxable year 2019, including for purposes of section
 15 6151(a) of the Internal Revenue Code of 1986, sec-
 16 tion 6072(a) of such Code shall be applied—

17 (A) by substituting “July” for “April”,
 18 and

19 (B) by substituting “the seventh month”
 20 for “the fourth month”.

21 (2) EFFECTIVE DATE.—Paragraph (1) shall
 22 apply to all returns required to be filed for taxable
 23 year 2019.

24 (b) ESTIMATED TAX PAYMENTS FOR INDIVID-
 25 UALS.—

Comment [dk13]: I had heard that the returns were still due 4/15, but the payments could be delayed through July. I also read in the press that the delays would only be available to smaller tax payers. I don't see language limiting the applicability here. This would mean that all taxpayers, even very wealthy ones, would benefit from the delay. This will increase the cost of the bill to Treasury.

Delaying all payments is simpler, and even the very wealthy have been quite negatively impacted by the massive drop in both stocks and bonds – so payments associated with gains in 2019 that have now evaporated could be challenging to a broader swath of the population. But – for the lower income quintiles this is a problem of cash flow to survive. For wealthier people, it is a liquidity crunch that will resolve over time. So while giving everybody the option to delay payments may make sense, wealthier taxpayers should be able to do so, but to pay interest on the effective loan from the government for the flexibility in payment. The rate doesn't have to be the normal IRS penalty interest rates, but it should be non-zero.

1 (1) IN GENERAL.—In the case of an individual,
2 the due date for any required installment under sec-
3 tion 6654 of the Internal Revenue Code of 1986
4 which (but for the application of this section) would
5 be due during the applicable period shall not be due
6 before October 15, 2020, and all such installments
7 shall be treated as one installment due on such date.
8 The Secretary of the Treasury (or the Secretary’s
9 delegate) shall prescribe such regulations or other
10 guidance as may be necessary to carry out the pur-
11 poses of this subsection.

12 (2) APPLICABLE PERIOD.—For purposes of this
13 subsection, the applicable period is the period begin-
14 ning on the date of the enactment of this Act and
15 ending before October 15, 2020.

16 **SEC. 2103. SPECIAL RULES FOR USE OF RETIREMENT**
17 **FUNDS.**

18 (a) TAX-FAVORED WITHDRAWALS FROM RETIRE-
19 **MENT PLANS.—**

20 (1) IN GENERAL.—Section 72(t) of the Internal
21 Revenue Code of 1986 shall not apply to any
22 coronavirus-related distribution.

23 (2) AGGREGATE DOLLAR LIMITATION.—

24 (A) IN GENERAL.—For purposes of this
25 subsection, the aggregate amount of distribu-

1 tions received by an individual which may be
2 treated as coronavirus-related distributions for
3 any taxable year shall not exceed \$100,000.

4 (B) TREATMENT OF PLAN DISTRIBUTIONS.—If a distribution to an individual would
5 (without regard to subparagraph (A)) be a
6 coronavirus-related distribution, a plan shall not
7 be treated as violating any requirement of the
8 Internal Revenue Code of 1986 merely because
9 the plan treats such distribution as a
10 coronavirus-related distribution, unless the aggregate amount of such distributions from all
11 plans maintained by the employer (and any
12 member of any controlled group which includes
13 the employer) to such individual exceeds
14 \$100,000.
15 \$100,000.

16 (C) CONTROLLED GROUP.—For purposes
17 of subparagraph (B), the term “controlled
18 group” means any group treated as a single
19 employer under subsection (b), (c), (m), or (o)
20 of section 414 of the Internal Revenue Code of
21 1986.
22 1986.

23 (3) AMOUNT DISTRIBUTED MAY BE REPAID.—

24 (A) IN GENERAL.—Any individual who re-
25 ceives a coronavirus-related distribution may, at

any time during the 3-year period beginning on the day after the date on which such distribution was received, make 1 or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), of the Internal Revenue Code of 1986, as the case may be.

(B) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM ELIGIBLE RETIREMENT PLANS OTHER THAN IRAS.—For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to subparagraph (A) with respect to a coronavirus-related distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the coronavirus-related distribution in an eligible rollover distribution (as defined in section 402(c)(4) of such Code) and as having transferred the amount to the eligible retirement

Comment [dk14]: This seems a good plan – allowing use of the retirement assets as an emergency fund with an option to reimburse it (and regain the tax benefits on growth) for up to three years as individual's financial situation stabilizes.

The downside is that this de facto means selling assets in a very depressed financial market, and many people may not be able to replenish their retirement accounts by the time they need them for retirement. It is trading a short-term problem for a longer-term one. Still, probably necessary.

Comment [dk15]: This paragraph might mean that individuals can withdraw up to \$100k from their retirement plan – regardless of their financial situation – and not have it treated as taxable income. This type of rule makes sense for lower income quintiles, but not for wealthier individuals who benefitted from IRA tax breaks on investment income up to this point.

Later on there is language saying distributions are treated as part of taxable income ratably over three years – which if applies universally would largely address the above risk.

1 plan in a direct trustee to trustee transfer with-
2 in 60 days of the distribution.

3 (C) TREATMENT OF REPAYMENTS OF DIS-
4 TRIBUTIONS FROM IRAS.—For purposes of the
5 Internal Revenue Code of 1986, if a contribu-
6 tion is made pursuant to subparagraph (A)
7 with respect to a coronavirus-related distribu-
8 tion from an individual retirement plan (as de-
9 fined by section 7701(a)(37) of such Code),
10 then, to the extent of the amount of the con-
11 tribution, the coronavirus-related distribution
12 shall be treated as a distribution described in
13 section 408(d)(3) of such Code and as having
14 been transferred to the eligible retirement plan
15 in a direct trustee to trustee transfer within 60
16 days of the distribution.

17 (4) DEFINITIONS.—For purposes of this sub-
18 section—

19 (A) CORONAVIRUS-RELATED DISTRIBUTION.—Except as provided in paragraph (2),
20 the term “coronavirus-related distribution”
21 means any distribution from an eligible retire-
22 ment plan made—
23

1 (i) on or after the date of the enact-
2 ment of this Act and before December 31,
3 2020,

4 (ii) to an individual—

5 (I) who is diagnosed with the
6 virus SARS-CoV-2 or with
7 coronavirus disease 2019 (COVID-19)
8 by a test approved by the Centers for
9 Disease Control and Prevention,

10 (II) whose spouse or dependent
11 (as defined in section 152 of the In-
12 ternal Revenue Code of 1986) is diag-
13 nosed with such virus or disease by
14 such a test, or

15 (III) who experiences adverse fi-
16 nancial consequences as a result of
17 being quarantined, being furloughed
18 or laid off or having work hours re-
19 duced due to such virus or disease,
20 being unable to work due to lack of
21 child care due to such virus or dis-
22 ease, closing or reducing hours of a
23 business owned or operated by the in-
24 dividual due to such virus or disease,
25 or other factors as determined by the

1 Secretary of the Treasury (or the Sec-
2 retary's delegate).

3 (B) ELIGIBLE RETIREMENT PLAN.—The
4 term “eligible retirement plan” has the meaning
5 given such term by section 402(c)(8)(B) of the
6 Internal Revenue Code of 1986.

7 (5) INCOME INCLUSION SPREAD OVER 3-YEAR
8 PERIOD.—

9 (A) IN GENERAL.—In the case of any
10 coronavirus-related distribution, unless the tax-
11 payer elects not to have this paragraph apply
12 for any taxable year, any amount required to be
13 included in gross income for such taxable year
14 shall be so included ratably over the 3-taxable-
15 year period beginning with such taxable year.

16 (B) SPECIAL RULE.—For purposes of sub-
17 paragraph (A), rules similar to the rules of sub-
18 paragraph (E) of section 408A(d)(3) of the In-
19 ternal Revenue Code of 1986 shall apply.

20 (6) SPECIAL RULES.—

21 (A) EXEMPTION OF DISTRIBUTIONS FROM
22 TRUSTEE TO TRUSTEE TRANSFER AND WITH-
23 HOLDING RULES.—For purposes of sections
24 401(a)(31), 402(f), and 3405 of the Internal
25 Revenue Code of 1986, coronavirus-related dis-

1 tributions shall not be treated as eligible roll-
2 over distributions.

3 (B) CORONAVIRUS-RELATED DISTRIBUTU-
4 TIONS TREATED AS MEETING PLAN DISTRIBUTU-
5 TION REQUIREMENTS.—For purposes of the In-
6 ternal Revenue Code of 1986, a coronavirus-re-
7 lated distribution shall be treated as meeting
8 the requirements of sections 401(k)(2)(B)(i),
9 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A)
10 of such Code.

11 (b) LOANS FROM QUALIFIED PLANS.—

12 (1) INCREASE IN LIMIT ON LOANS NOT TREAT-
13 ED AS DISTRIBUTIONS.—In the case of any loan
14 from a qualified employer plan (as defined under
15 section 72(p)(4) of the Internal Revenue Code of
16 1986) to a qualified individual made during the 180-
17 day period beginning on the date of the enactment
18 of this Act—

19 (A) clause (i) of section 72(p)(2)(A) of
20 such Code shall be applied by substituting
21 “\$100,000” for “\$50,000”, and

22 (B) clause (ii) of such section shall be ap-
23 plied by substituting “the present value of the
24 nonforfeitable accrued benefit of the employee
25 under the plan” for “one-half of the present

1 value of the nonforfeitable accrued benefit of
2 the employee under the plan”.

3 (2) DELAY OF REPAYMENT.—In the case of a
4 qualified individual with an outstanding loan (on or
5 after the date of the enactment of this Act) from a
6 qualified employer plan (as defined in section
7 72(p)(4) of the Internal Revenue Code of 1986)—

8 (A) if the due date pursuant to subpara-
9 graph (B) or (C) of section 72(p)(2) of such
10 Code for any repayment with respect to such
11 loan occurs during the period beginning on the
12 date of the enactment of this Act and ending on
13 December 31, 2020, such due date shall be de-
14 layed for 1 year (or, if later, until the date
15 which is 180 days after the date of the enact-
16 ment of this Act),

17 (B) any subsequent repayments with re-
18 spect to any such loan shall be appropriately
19 adjusted to reflect the delay in the due date
20 under subparagraph (A) and any interest accru-
21 ing during such delay, and

22 (C) in determining the 5-year period and
23 the term of a loan under subparagraph (B) or
24 (C) of section 72(p)(2) of such Code, the period

1 described in subparagraph (A) of this para-
2 graph shall be disregarded.

3 (3) QUALIFIED INDIVIDUAL.—For purposes of
4 this subsection, the term “qualified individual”
5 means any individual who is described in subsection
6 (a)(4)(A)(ii).

7 (c) PROVISIONS RELATING TO PLAN AMEND-
8 MENTS.—

9 (1) IN GENERAL.—If this subsection applies to
10 any amendment to any plan or annuity contract,
11 such plan or contract shall be treated as being oper-
12 ated in accordance with the terms of the plan during
13 the period described in paragraph (2)(B)(i).

14 (2) AMENDMENTS TO WHICH SUBSECTION AP-
15 PLIES.—

16 (A) IN GENERAL.—This subsection shall
17 apply to any amendment to any plan or annuity
18 contract which is made—

19 (i) pursuant to any provision of this
20 section, or pursuant to any regulation
21 issued by the Secretary of the Treasury or
22 the Secretary of Labor (or the delegate of
23 either such Secretary) under any provision
24 of this section, and

1 (ii) on or before the last day of the
2 first plan year beginning on or after Janu-
3 ary 1, 2020, or such later date as the Sec-
4 retary of the Treasury (or the Secretary's
5 delegate) may prescribe.

6 In the case of a governmental plan (as defined
7 in section 414(d) of the Internal Revenue Code
8 of 1986), clause (ii) shall be applied by sub-
9 stituting the date which is 2 years after the
10 date otherwise applied under clause (ii).

11 (B) CONDITIONS.—This subsection shall
12 not apply to any amendment unless—

13 (i) during the period—

14 (I) beginning on the date that
15 this section or the regulation de-
16 scribed in subparagraph (A)(i) takes
17 effect (or in the case of a plan or con-
18 tract amendment not required by this
19 section or such regulation, the effec-
20 tive date specified by the plan), and

21 (II) ending on the date described
22 in subparagraph (A)(ii) (or, if earlier,
23 the date the plan or contract amend-
24 ment is adopted),

1 the plan or contract is operated as if such
 2 plan or contract amendment were in effect,
 3 and

4 (ii) such plan or contract amendment
 5 applies retroactively for such period.

6 **SEC. 2104. ALLOWANCE OF PARTIAL ABOVE THE LINE DE-**
 7 **DUCTION FOR CHARITABLE CONTRIBUTIONS.**

8 (a) IN GENERAL.—Section 62(a) of the Internal Rev-
 9 enue Code of 1986 is amended by inserting after para-
 10 graph (21) the following new paragraph:

11 “(22) CHARITABLE CONTRIBUTIONS.—In the
 12 case of taxable years beginning in 2020, the amount
 13 (not to exceed \$300) of qualified charitable contribu-
 14 tions made by an eligible taxpayer during the tax-
 15 able year .”.

16 (b) DEFINITIONS.—Section 62 of such Code is
 17 amended by adding at the end the following new sub-
 18 section:

19 “(f) DEFINITIONS RELATING TO QUALIFIED CHARI-
 20 TABLE CONTRIBUTIONS.—For purposes of subsection
 21 (a)(22)—

22 “(1) ELIGIBLE TAXPAYER.—The term ‘eligible
 23 taxpayer’ means any individual who does not elect to
 24 itemize deductions.

Comment [dk16]: This seems to be trying to offset the reduced tax benefit of charitable giving ushered in by the TCJA. I suppose it will incur some incremental giving to charity, which will provide some incremental relief to people affected by COVID-19.

It caps out very early and doesn't seem limited to charities focused on COVID-19 fallout. May be good enough though. It also has positive psychological effects and nearly everybody at all income levels feels empowered by being able to contribute to help others who are worse off.

1 “(2) QUALIFIED CHARITABLE CONTRIBU-
2 TIONS.—The term ‘qualified charitable contribution’
3 means a charitable contribution (as defined in sec-
4 tion 170(c))—

5 “(A) which is made in cash,

6 “(B) for which a deduction is allowable
7 under section 170 (determined without regard
8 to subsection (b) thereof), and

9 “(C) which is—

10 “(i) made to an organization de-
11 scribed in section 170(b)(1)(A), and

12 “(ii) not—

13 “(I) to an organization described
14 in section 509(a)(3), or

15 “(II) for the establishment of a
16 new, or maintenance of an existing,
17 donor advised fund (as defined in sec-
18 tion 4966(d)(2)).

19 Such term shall not include any amount
20 which is treated as a charitable contribu-
21 tion made in such taxable year under sub-
22 section (b)(1)(G) or (d)(1) of section
23 170.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2019.

4 SEC. 2105. MODIFICATION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS DURING 2020.

6 (a) TEMPORARY SUSPENSION OF LIMITATIONS ON
7 CERTAIN CASH CONTRIBUTIONS.—

8 (1) IN GENERAL.—Except as otherwise pro-
9 vided in paragraph (2), qualified contributions shall
10 be disregarded in applying subsections (b) and (d) of
11 section 170 of the Internal Revenue Code of 1986.

12 (2) TREATMENT OF EXCESS CONTRIBUTIONS.—
13 For purposes of section 170 of the Internal Revenue
14 Code of 1986—

15 (A) INDIVIDUALS.—In the case of an indi-
16 vidual—

17 (i) LIMITATION.—Any qualified con-
18 tribution shall be allowed as a deduction
19 only to the extent that the aggregate of
20 such contributions does not exceed the ex-
21 cess of the taxpayer's contribution base (as
22 defined in subparagraph (H) of section
23 170(b)(1) of such Code) over the amount
24 of all other charitable contributions allowed
25 under section 170(b)(1) of such Code.

1 (ii) CARRYOVER.—If the aggregate
2 amount of qualified contributions made in
3 the contribution year (within the meaning
4 of section 170(d)(1) of such Code) exceeds
5 the limitation of clause (i), such excess
6 shall be added to the excess described in
7 section 170(b)(1)(G)(ii).

8 (B) CORPORATIONS.—In the case of a cor-
9 poration—

10 (i) LIMITATION.—Any qualified con-
11 tribution shall be allowed as a deduction
12 only to the extent that the aggregate of
13 such contributions does not exceed the ex-
14 cess of 25 percent of the taxpayer's taxable
15 income (as determined under paragraph
16 (2) of section 170(b) of such Code) over
17 the amount of all other charitable con-
18 tributions allowed under such paragraph.

19 (ii) CARRYOVER.—If the aggregate
20 amount of qualified contributions made in
21 the contribution year (within the meaning
22 of section 170(d)(2) of such Code) exceeds
23 the limitation of clause (i), such excess
24 shall be appropriately taken into account

1 under section 170(d)(2) subject to the limi-
2 tations thereof.

3 (3) QUALIFIED CONTRIBUTIONS.—

4 (A) IN GENERAL.—For purposes of this
5 subsection, the term “qualified contribution”
6 means any charitable contribution (as defined
7 in section 170(c) of the Internal Revenue Code
8 of 1986) if—

9 (i) such contribution is paid in cash
10 during calendar year 2020 to an organiza-
11 tion described in section 170(b)(1)(A) of
12 such Code, and

13 (ii) the taxpayer has elected the appli-
14 cation of this section with respect to such
15 contribution.

16 (B) EXCEPTION.—Such term shall not in-
17 clude a contribution by a donor if the contribu-
18 tion is—

19 (i) to an organization described in sec-
20 tion 509(a)(3) of the Internal Revenue
21 Code of 1986, or

22 (ii) for the establishment of a new, or
23 maintenance of an existing, donor advised
24 fund (as defined in section 4966(d)(2) of
25 such Code).

Comment [dk17]: Cash requirement will avoid many of the valuation abuses that could arise with gifts of services or goods. That is good.

1 (C) APPLICATION OF ELECTION TO PART-
2 NERSHIPS AND S CORPORATIONS.—In the case
3 of a partnership or S corporation, the election
4 under subparagraph (A)(ii) shall be made sepa-
5 rately by each partner or shareholder.

6 (b) INCREASE IN LIMITS ON CONTRIBUTIONS OF
7 FOOD INVENTORY.—In the case of any charitable con-
8 tribution of food during 2020 to which section
9 170(e)(3)(C) of the Internal Revenue Code of 1986 ap-
10 plies, subclauses (I) and (II) of clause (ii) thereof shall
11 each be applied by substituting “25 percent” for “15 per-
12 cent.”

13 (c) EFFECTIVE DATE.—This section shall apply to
14 taxable years ending after December 31, 2019.

15 **TITLE II—BUSINESS PROVISIONS**

16 **SEC. 2201. DELAY OF ESTIMATED TAX PAYMENTS FOR COR-** 17 **PORATIONS.**

18 (a) IN GENERAL.—In the case of a corporation, the
19 due date for any required installment under section 6655
20 of the Internal Revenue Code of 1986 which (but for the
21 application of this section) would be due during the appli-
22 cable period shall not be due before October 15, 2020, and
23 all such installments shall be treated as one installment
24 due on such date. The Secretary of the Treasury (or the
25 Secretary’s delegate) shall prescribe such regulations or

Comment [dk18]: Also a good provision. Who is paying attention to the ability of food banks and other providers to ramp up services though?

1 other guidance as may be necessary to carry out the pur-
2 poses of this section.

3 (b) APPLICABLE PERIOD.—For purposes of this sec-
4 tion, the applicable period is the period beginning on the
5 date of the enactment of this Act and ending before Octo-
6 ber 15, 2020.

7 SEC. 2202. DELAY OF PAYMENT OF EMPLOYER PAYROLL

8 TAXES.

Comment [dk19]: Improves the near-term cash flow of employers.

9 (a) IN GENERAL.—

10 (1) TAXES.—Notwithstanding any other provi-
11 sion of law, the payment for applicable employment
12 taxes for the payroll tax deferral period shall not be
13 due before the applicable date.

14 (2) DEPOSITS.—Notwithstanding section 6302
15 of the Internal Revenue Code of 1986, an employer
16 shall be treated as having timely made all deposits
17 of applicable employment taxes that are required to
18 be made (without regard to this section) for such
19 taxes during the payroll tax deferral period if all
20 such deposits are made not later than the applicable
21 date.

22 (3) EXCEPTION.—This subsection shall not
23 apply to any taxpayer if such taxpayer has had in-
24 debtedness forgiven under section 1105 of this Act

1 with respect to a loan under section 7(a) of the
2 Small Business Act (15 U.S.C. 636(a)).

3 (b) SECA.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of law, the payment for 50 percent of the
6 taxes imposed under section 1401(a) of the Internal
7 Revenue Code of 1986 for the payroll tax deferral
8 period shall not be due before the applicable date.

9 (2) ESTIMATED TAXES.—For purposes of ap-
10 plying section 6654 of the Internal Revenue Code of
11 1986 to any taxable year which includes any part of
12 the payroll tax deferral period, 50 percent of the of
13 the taxes imposed under section 1401(a) of such
14 Code for the payroll tax deferral period shall not be
15 treated as taxes to which such section 6654 applies.

16 (c) DEFINITIONS.—For purposes of this section—

17 (1) APPLICABLE EMPLOYMENT TAXES.—The
18 term “applicable employment taxes” means the fol-
19 lowing:

20 (A) The taxes imposed under section
21 3111(a) of the Internal Revenue Code of 1986.

22 (B) So much of the taxes imposed under
23 section 3211(a) of such Code as are attrib-
24 utable to the rate in effect under section
25 3111(a) of such Code.

1 (C) So much of the taxes imposed under
2 section 3221(a) of such Code as are attrib-
3 utable to the rate in effect under section
4 3111(a) of such Code.

5 (2) PAYROLL TAX DEFERRAL PERIOD.—The
6 term “payroll tax deferral period” means the period
7 beginning on the date of the enactment of this Act
8 and ending before January 1, 2021.

9 (3) APPLICABLE DATE.—The term “applicable
10 date” means—

11 (A) December 31, 2021, with respect to 50
12 percent of the amounts to which subsection (a)
13 or (b), as the case may be, apply, and

14 (B) December 31, 2022, with respect to
15 the remaining such amounts.

16 (d) TRUST FUNDS HELD HARMLESS.—There are
17 hereby appropriated (out of any money in the Treasury
18 not otherwise appropriated) for each fiscal year to the
19 Federal Old-Age and Survivors Insurance Trust Fund and
20 the Federal Disability Insurance Trust Fund established
21 under section 201 of the Social Security Act (42 U.S.C.
22 401) and the Social Security Equivalent Benefit Account
23 established under section 15A(a) of the Railroad Retire-
24 ment Act of 1974 (45 U.S.C. 231n–1(a)) an amount equal
25 to the reduction in the transfers to such fund for such

1 fiscal year by reason of this section. Amounts appropriated
 2 by the preceding sentence shall be transferred from the
 3 general fund at such times and in such manner as to rep-
 4 licate to the extent possible the transfers which would have
 5 occurred to such Trust Fund had such amendments not
 6 been enacted.

Comment [dk20]: This makes sense; avoids messing up the long-term actuarial calculations of the core funds – which have enough risks without their collections being diverted.

7 (e) REGULATORY AUTHORITY.—The Secretary of the
 8 Treasury (or the Secretary’s delegate) shall issue such
 9 regulations or other guidance as necessary to carry out
 10 the purposes of this section.

11 SEC. 2203. MODIFICATIONS FOR NET OPERATING LOSSES.

12 (a) TEMPORARY REPEAL OF TAXABLE INCOME LIMI-
 13 TATION.—

14 (1) IN GENERAL.—The first sentence of section
 15 172(a) of the Internal Revenue Code of 1986 is
 16 amended by striking “an amount equal to” and all
 17 that follows and inserting “an amount equal to—

18 “(1) in the case of a taxable year beginning be-
 19 fore January 1, 2021, the aggregate of the net oper-
 20 ating loss carryovers to such year, plus the net oper-
 21 ating loss carrybacks to such year, and

22 “(2) in the case of a taxable year beginning
 23 after December 31, 2020, the sum of—

24 “(A) the aggregate amount of net oper-
 25 ating losses arising in taxable years beginning

1 before January 1, 2018, carried to such taxable
2 year, plus

3 “(B) the lesser of—

4 “(i) the aggregate amount of net op-
5 erating losses arising in taxable years be-
6 ginning after December 31, 2017, carried
7 to such taxable year, or

8 “(ii) 80 percent of the excess (if any)
9 of—

10 “(I) taxable income computed
11 without regard to the deductions
12 under this section and sections 199A
13 and 250, over

14 “(II) the amount determined
15 under subparagraph (A).”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 172(b)(2)(C) of such Code is
18 amended to read as follows:

19 “(C) for taxable years beginning after De-
20 cember 31, 2020, be reduced by 20 percent of
21 the excess (if any) described in subsection
22 (a)(2)(B)(ii) for such taxable year.”.

23 (B) Section 172(d)(6)(C) of such Code is
24 amended by striking “subsection (a)(2)” and
25 inserting “subsection (a)(2)(B)(ii)(I)”.

1 (C) Section 860E(a)(3)(B) of such Code is
2 amended by striking all that follows “for pur-
3 poses of” and inserting “subsection
4 (a)(2)(B)(ii)(I) and the second sentence of sub-
5 section (b)(2) of section 172.”.

6 (b) MODIFICATION OF RULES RELATING TO
7 CARRYBACKS.—

8 (1) IN GENERAL.—Section 172(b)(1) of the In-
9 ternal Revenue Code of 1986 is amended by adding
10 at the end the following new subparagraph:

11 “(D) SPECIAL RULE FOR LOSSES ARISING
12 IN 2018, 2019, AND 2020.—

13 “(i) IN GENERAL.—In the case of any
14 net operating loss arising in a taxable year
15 beginning after December 31, 2017, and
16 before January 1, 2020—

17 “(I) such loss shall be a net oper-
18 ating loss carryback to each of the 5
19 taxable years preceding the taxable
20 year of such loss, and

21 “(II) subparagraphs (B) and
22 (C)(i) shall not apply.

23 “(ii) SPECIAL RULES FOR REIT’S.—
24 For purposes of this subparagraph—

Comment [dk21]: Will this result in many, many companies submitting amended returns for earlier years and getting rebated or taxes already paid? This doesn't seem the most efficient way to support small business; and will likely favor larger more sophisticated enterprises and particular industries known for generating NOLs.

1 “(I) IN GENERAL.—A net oper-
2 ating loss for a REIT year shall not
3 be a net operating loss carryback to
4 any taxable year preceding the taxable
5 year of such loss.

6 “(II) SPECIAL RULE.—In the
7 case of any net operating loss for a
8 taxable year which is not a REIT
9 year, such loss shall not be carried
10 back to any taxable year which is a
11 REIT year.

12 “(III) REIT YEAR.—For pur-
13 poses of this subparagraph, the term
14 ‘REIT year’ means any taxable year
15 for which the provisions of part II of
16 subchapter M (relating to real estate
17 investment trusts) apply to the tax-
18 payer.

19 “(iii) ELECTION.—A taxpayer may
20 elect not to have clause (i) apply for any
21 taxable year. Such election shall be made
22 in such manner as prescribed by the Sec-
23 retary and shall be made—

24 “(I) in the case of any election
25 relating to a net operating loss arising

1 in a taxable year beginning in 2018 or
2 2019, by the due date (including ex-
3 tensions of time) for filing the tax-
4 payer's return for the first taxable
5 year ending after the date of the en-
6 actment of this subparagraph, and

7 “(II) in the case of any election
8 relating to a net operating loss arising
9 in a taxable year beginning in 2020,
10 by the due date (including extensions
11 of time) for such taxable year.

12 Such election, once made for any taxable
13 year, shall be irrevocable for such taxable
14 year.”.

15 (2) CONFORMING AMENDMENT.—Section
16 170(b)(1)(A) of such Code, as amended by sub-
17 section (c)(2), is amended by striking “and (C)(i)”
18 and inserting “, (C)(i), and (D)”.

19 (c) TECHNICAL AMENDMENT RELATING TO SECTION
20 13302 OF PUBLIC LAW 115–97.—

21 (1) Section 13302(e) of Public Law 115–97 is
22 amended to read as follows:

23 “(e) EFFECTIVE DATES.—

1 “(1) NET OPERATING LOSS LIMITATION.—The
2 amendments made by subsections (a) and (d)(2)
3 shall apply to—

4 “(A) taxable years beginning after Decem-
5 ber 31, 2017, and

6 “(B) taxable years beginning on or before
7 December 31, 2017, to which net operating
8 losses arising in taxable years beginning after
9 December 31, 2017, are carried.

10 “(2) CARRYFORWARDS AND CARRYBACKS.—The
11 amendments made by subsections (b), (c), and
12 (d)(1) shall apply to net operating losses arising in
13 taxable years beginning after December 31, 2017.”.

14 (2) Section 172(b)(1)(A) of the Internal Rev-
15 enue Code of 1986 is amended to read as follows:

16 “(A) GENERAL RULE.—A net operating
17 loss for any taxable year—

18 “(i) shall be a net operating loss
19 carryback to the extent provided in sub-
20 paragraphs (B) and (C)(i), and

21 “(ii) except as provided in subpara-
22 graph (C)(ii), shall be a net operating loss
23 carryover—

24 “(I) in the case of a net oper-
25 ating loss arising in a taxable year be-

1 ginning before January 1, 2018, to
2 each of the 20 taxable years following
3 the taxable year of the loss, and

4 “(II) in the case of a net oper-
5 ating loss arising in a taxable year be-
6 ginning after December 31, 2017, to
7 each taxable year following the tax-
8 able year of the loss.”.

9 (d) EFFECTIVE DATES.—

10 (1) NET OPERATING LOSS LIMITATION.—The
11 amendments made by subsection (a) shall apply—

12 (A) to taxable years beginning after De-
13 cember 31, 2017, and

14 (B) taxable years beginning on or before
15 December 31, 2017, to which net operating
16 losses arising in taxable years beginning after
17 December 31, 2017, are carried.

18 (2) CARRYFORWARDS AND CARRYBACKS.—The
19 amendment made by subsection (b) shall apply to
20 net operating losses arising in taxable years begin-
21 ning after December 31, 2017.

22 (3) TECHNICAL AMENDMENTS.—The amend-
23 ments made by subsection (c) shall take effect as if
24 included in the provisions of Public Law 115–97 to
25 which they relate.

1 (4) SPECIAL RULE.—In the case of a net oper-
2 ating loss arising in a taxable year beginning before
3 January 1, 2018, and ending after December 31,
4 2017—

5 (A) an application under section 6411(a)
6 of the Internal Revenue Code of 1986 with re-
7 spect to the carryback of such net operating
8 loss shall not fail to be treated as timely filed
9 if filed not later than the date which is 120
10 days after the date of the enactment of this
11 Act, and

12 (B) an election to—

13 (i) forgo any carryback of such net
14 operating loss,

15 (ii) reduce any period to which such
16 net operating loss may be carried back, or

17 (iii) revoke any election made under
18 section 172(b) to forgo any carryback of
19 such net operating loss,

20 shall not fail to be treated as timely made if
21 made not later than the date which is 120 days
22 after the date of the enactment of this Act.

1 SEC. 2204. MODIFICATION OF LIMITATION ON LOSSES FOR
2 TAXPAYERS OTHER THAN CORPORATIONS.

3 (a) IN GENERAL.—Section 461(l)(1) of the Internal
4 Revenue Code of 1986 is amended by striking “December
5 31, 2017” and inserting “December 31, 2020”.

6 (b) TECHNICAL AMENDMENTS RELATING TO SEC-
7 TION 11012 OF PUBLIC LAW 115–97.—

8 (1) Section 461(l)(2) of the Internal Revenue
9 Code of 1986 is amended by striking “a net oper-
10 ating loss carryover to the following taxable year
11 under section 172” and inserting “a net operating
12 loss for the taxable year for purposes of determining
13 any net operating loss carryover under section
14 172(b) for subsequent taxable years”.

15 (2) Section 461(l)(3)(A) of such Code is
16 amended—

17 (A) in clause (i), by inserting “and without
18 regard to any deduction allowable under section
19 172 or 199A” after “under paragraph (1)”,
20 and

21 (B) by adding at the end the following
22 flush sentence:

23 “Such excess shall be determined without regard to
24 any deductions, gross income, or gains attributable
25 to any trade or business of performing services as an
26 employee.”.

Comment [dk22]: MLPs and private partnerships? Sole proprietorships? Somebody should be modeling out the distribution of all of these changes to treatment of NOLs and who the largest beneficiaries are. They may not correlate well with the most critical industries to protect now. Has the bill been scored by JCT yet?

1 (3) Section 461(l)(3) of such Code is amended
2 by redesignating subparagraph (B) as subparagraph
3 (C) and by inserting after subparagraph (A) the fol-
4 lowing new subparagraph:

5 “(B) TREATMENT OF CAPITAL GAINS AND
6 LOSSES.—

7 “(i) LOSSES.—Deductions for losses
8 from sales or exchanges of capital assets
9 shall not be taken into account under sub-
10 paragraph (A)(i).

11 “(ii) GAINS.—The amount of gains
12 from sales or exchanges of capital assets
13 taken into account under subparagraph
14 (A)(ii) shall not exceed the lesser of—

15 “(I) the capital gain net income
16 determined by taking into account
17 only gains and losses attributable to a
18 trade or business, or

19 “(II) the capital gain net in-
20 come.”.

21 (c) EFFECTIVE DATES.—

22 (1) IN GENERAL.—The amendments made by
23 subsection (a) shall apply to taxable years beginning
24 after December 31, 2017.

1 (2) TECHNICAL AMENDMENTS.—The amend-
2 ments made by subsection (b) shall take effect as if
3 included in the provisions of Public Law 115–97 to
4 which they relate.

5 **SEC. 2205. MODIFICATION OF CREDIT FOR PRIOR YEAR**
6 **MINIMUM TAX LIABILITY OF CORPORATIONS.**

7 (a) IN GENERAL.—Section 53(e) of the Internal Rev-
8 enue Code of 1986 is amended to read as follows:

9 “(e) CREDIT TREATED AS REFUNDABLE FOR CER-
10 TAIN TAXPAYERS.—In the case of the first taxable year
11 of a corporation beginning in 2018—

12 “(1) subsection (c) shall not apply, and

13 “(2) for purposes of this title (other than this
14 section), the credit allowed by reason of this sub-
15 section shall be treated as allowed under subpart C
16 (and not this subpart).”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to taxable years beginning after
19 December 31, 2017.

20 **SEC. 2206. MODIFICATION OF LIMITATION ON BUSINESS IN-**
21 **TEREST.**

22 (a) IN GENERAL.—Section 163(j) of the Internal
23 Revenue Code of 1986 is amended by redesignating para-
24 graph (10) as paragraph (11) and by inserting after para-
25 graph (9) the following new paragraph:

1 “(10) SPECIAL RULE FOR TAXABLE YEARS BE-
2 GINNING IN 2019 AND 2020.—

3 “(A) IN GENERAL.—In the case of any
4 taxable year beginning in 2019 or 2020, para-
5 graph (1)(B) shall be applied by substituting
6 ‘50 percent’ for ‘30 percent’.

7 “(B) ELECTION TO USE 2019 INCOME FOR
8 TAXABLE YEARS BEGINNING IN 2020.—

9 “(i) IN GENERAL.—Subject to clause
10 (ii), in the case of any taxable year begin-
11 ning in 2020, the taxpayer may elect to
12 apply this subsection by substituting the
13 adjusted taxable income of the taxpayer for
14 the last taxable year beginning in 2019 for
15 the adjusted taxable income for such tax-
16 able year.

17 “(ii) SPECIAL RULE FOR SHORT TAX-
18 ABLE YEARS.—No election may be made
19 under clause (i) with respect to any taxable
20 year beginning in 2020 if such taxable
21 year is a short taxable year.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2018.

Comment [dk23]: These sections (not just the one near this comment) should be reviewed by business tax specialists. It seems like in the end very little income, even at larger profitable businesses, would be taxed. That would be a problem.

This bill came out very fast with polished and vetted language. So many of these tax sections must have been floating around the hill for years. Would be useful to know who originally developed it.

1 **SEC. 2207. TECHNICAL AMENDMENTS REGARDING QUALI-**
 2 **FIED IMPROVEMENT PROPERTY.**

3 (a) **IN GENERAL.**—Section 168 of the Internal Rev-
 4 enue Code of 1986 is amended—

5 (1) in subsection (e)—

6 (A) in paragraph (3)(E), by striking “and”
 7 at the end of clause (v), by striking the period
 8 at the end of clause (vi) and inserting “, and”,
 9 and by adding at the end the following new
 10 clause:

11 “(vii) any qualified improvement prop-
 12 erty.”, and

13 (B) in paragraph (6)(A), by inserting
 14 “made by the taxpayer” after “any improve-
 15 ment”, and

16 (2) in the table contained in subsection
 17 (g)(3)(B)—

18 (A) by striking the item relating to sub-
 19 paragraph (D)(v), and

20 (B) by inserting after the item relating to
 21 subparagraph (E)(vi) the following new item:
 “(E)(vii) 20”.

22 (b) **EFFECTIVE DATE.**—The amendments made by
 23 this section shall take effect as if included in section
 24 13204 of Public Law 115–97.

1 **SEC. 2208. INSTALLMENTS NOT TO PREVENT CREDIT OR**
2 **REFUND OF OVERPAYMENTS OR INCREASE**
3 **ESTIMATED TAXES.**

4 (a) IN GENERAL.—Section 965(h) of the Internal
5 Revenue Code of 1986 is amended by adding at the end
6 the following new paragraph:

7 “(7) INSTALLMENTS NOT TO PREVENT CREDIT
8 OR REFUND OF OVERPAYMENTS OR INCREASE ESTI-
9 MATED TAXES.—If an election is made under para-
10 graph (1) to pay the net tax liability under this sec-
11 tion in installments—

12 “(A) no installment of such net tax liabil-
13 ity shall—

14 “(i) in the case of a request for credit
15 or refund, be taken into account as a li-
16 ability for purposes of determining whether
17 an overpayment exists for purposes of sec-
18 tion 6402 before the date on which such
19 installment is due, or

20 “(ii) for purposes of sections 6425,
21 6654, and 6655, be treated as a tax im-
22 posed by section 1, section 11, or sub-
23 chapter L of chapter 1, and

24 “(B) the first sentence of section 6403
25 shall not apply with respect to any such install-
26 ment.”.

1 (b) LIMITATION ON PAYMENT OF INTEREST.—In the
2 case of the portion of any overpayment which exists by
3 reason of the application of section 965(h)(7) of the Inter-
4 nal Revenue Code of 1986 (as added by this section)—

5 (1) if credit or refund of such portion is made
6 on or before the date which is 45 days after the date
7 of the enactment of this Act, no interest shall be al-
8 lowed or paid under section 6611 of such Code with
9 respect to such portion; and

10 (2) if credit or refund of such portion is made
11 after the date which is 45 days after the date of the
12 enactment of this Act, no interest shall be allowed
13 or paid under section 6611 of such Code with re-
14 spect to such portion for any period before the date
15 of the enactment of this Act.

16 (c) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall take effect as if included in section
18 14103 of Public Law 115–97.

19 **SEC. 2209. RESTORATION OF LIMITATION ON DOWNWARD**
20 **ATTRIBUTION OF STOCK OWNERSHIP IN AP-**
21 **PLYING CONSTRUCTIVE OWNERSHIP RULES.**

22 (a) IN GENERAL.—Section 958(b) of the Internal
23 Revenue Code of 1986 is amended—

24 (1) by inserting after paragraph (3) the fol-
25 lowing:

1 “(4) Subparagraphs (A), (B), and (C) of sec-
2 tion 318(a)(3) shall not be applied so as to consider
3 a United States person as owning stock which is
4 owned by a person who is not a United States per-
5 son.”, and

6 (2) by striking “Paragraph (1)” in the last sen-
7 tence and inserting “Paragraphs (1) and (4)”.

8 (b) FOREIGN CONTROLLED UNITED STATES SHARE-
9 HOLDERS.—Subpart F of part III of subchapter N of
10 chapter 1 of such Code is amended by inserting after sec-
11 tion 951A the following new section:

12 “SEC. 951B. AMOUNTS INCLUDED IN GROSS INCOME OF
13 FOREIGN CONTROLLED UNITED STATES
14 SHAREHOLDERS.

15 “(a) IN GENERAL.—In the case of any foreign con-
16 trolled United States shareholder of a foreign controlled
17 foreign corporation—

18 “(1) this subpart (other than sections 951A,
19 951(b), 957, and 965) shall be applied with respect
20 to such shareholder (separately from, and in addi-
21 tion to, the application of this subpart without re-
22 gard to this section)—

23 “(A) by substituting ‘foreign controlled
24 United States shareholder’ for ‘United States
25 shareholder’ each place it appears therein, and

1 “(B) by substituting ‘foreign controlled
2 foreign corporation’ for ‘controlled foreign cor-
3 poration’ each place it appears therein, and

4 “(2) sections 951A and 965 shall be applied
5 with respect to such shareholder —

6 “(A) by treating each reference to ‘United
7 States shareholder’ in such sections as includ-
8 ing a reference to such shareholder, and

9 “(B) by treating each reference to ‘con-
10 trolled foreign corporation’ in such sections as
11 including a reference to such foreign controlled
12 foreign corporation.

13 “(b) FOREIGN CONTROLLED UNITED STATES
14 SHAREHOLDER.—For purposes of this section, the term
15 ‘foreign controlled United States shareholder’ means, with
16 respect to any foreign corporation, any United States per-
17 son which would be a United States shareholder with re-
18 spect to such foreign corporation if—

19 “(1) section 951(b) were applied by substituting
20 ‘more than 50 percent’ for ‘10 percent or more’, and

21 “(2) section 958(b) were applied without regard
22 to paragraph (4) thereof.

23 “(c) FOREIGN CONTROLLED FOREIGN CORPORA-
24 TION.—For purposes of this section, the term ‘foreign con-
25 trolled foreign corporation’ means a foreign corporation,

1 other than a controlled foreign corporation, which would
2 be a controlled foreign corporation if section 957(a) were
3 applied—

4 “(1) by substituting ‘foreign controlled United
5 States shareholders’ for ‘United States share-
6 holders’, and

7 “(2) by substituting ‘section 958(b) (other than
8 paragraph (4) thereof)’ for ‘section 958(b)’.

9 “(d) REGULATIONS.—The Secretary shall prescribe
10 such regulations or other guidance as may be necessary
11 or appropriate to carry out the purposes of this section,
12 including regulations or other guidance—

13 “(1) to treat a foreign controlled United States
14 shareholder or a foreign controlled foreign corpora-
15 tion as a United States shareholder or as a con-
16 trolled foreign corporation, respectively, for purposes
17 of provisions of this title other than this subpart,
18 and

19 “(2) to prevent the avoidance of the purposes of
20 this section.”.

21 (c) CLERICAL AMENDMENT.—The table of sections
22 for subpart F of part III of subchapter N of chapter 1
23 of such Code is amended by inserting after the item relat-
24 ing to section 951A the following new item:

“Sec. 951B. Amounts included in gross income of foreign controlled United
States shareholders.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to—

3 (1) the last taxable year of foreign corporations
4 beginning before January 1, 2018, and each subse-
5 quent taxable year of such foreign corporations, and

6 (2) taxable years of United States persons in
7 which or with which such taxable years of foreign
8 corporations end.

9 **DIVISION C—ASSISTANCE TO SE-**
10 **VERELY DISTRESSED SEC-**
11 **TORS OF THE UNITED STATES**
12 **ECONOMY**

13 **TITLE I—ECONOMIC**
14 **STABILIZATION**

15 **SEC. 3101. SHORT TITLE.**

16 This title may be cited as the “Coronavirus Economic
17 Stabilization Act of 2020”.

18 **SEC. 3102. EMERGENCY RELIEF THROUGH LOANS AND**
19 **LOAN GUARANTEES.**

20 (a) IN GENERAL.—Notwithstanding any other provi-
21 sion of law, to provide liquidity to eligible businesses re-
22 lated to losses incurred as a direct result of coronavirus,
23 the Secretary is authorized to make or guarantee loans
24 to eligible businesses that do not, in the aggregate, exceed
25 \$208,000,000,000 and provide the subsidy amounts nec-

1 essary for such loans and loan guarantees in accordance
 2 with the provisions of the Federal Credit Reform Act of
 3 1990 (2 U.S.C. 661 et seq.).

4 (b) DISTRIBUTION OF LOANS AND LOAN GUARAN-
 5 TEES.—Loans and loan guarantees made pursuant to sub-
 6 section (a) shall be made available to eligible business as
 7 follows:

8 (1) Not more than \$50,000,000,000 shall be
 9 available for passenger air carriers.

10 (2) Not more than \$8,000,000,000 shall be
 11 available for cargo air carriers.

12 (3) Not more than \$150,000,000,000 shall be
 13 available for other eligible businesses.

14 (c) LOANS AND LOAN GUARANTEES.—

15 (1) IN GENERAL.—The Secretary shall review
 16 and decide on applications for loans and loan guar-
 17 antees under this section and may enter into agree-
 18 ments to make or guarantee loans to one or more
 19 obligors if the Secretary determines, in the Sec-
 20 retary's discretion, that—

21 (A) the obligor is a eligible business for
 22 which credit is not reasonably available at the
 23 time of the transaction;

24 (B) the intended obligation by the obligor
 25 is prudently incurred; and

Comment [dk24]: Counter arguments some in Congress have made that profits since the credit crisis have nearly all flowed to stock buybacks are salient.

Also of concern are unfunded pension liabilities for existing carriers. Trying to ensure that any new funding doesn't repeat past patterns but also flows to lower employees and addresses long-term structural problems such as pension security is important.

Keep in mind that this is not a single carrier under distress, but rather a global shock to the entire aviation sector. The good side of the pervasiveness of the shock is that all key players (manufacturers, airlines, plane leasing firms, airport contractors) will be amenable to restructuring leasing and purchase agreements as there are no alternative markets they can benefit from by forcing the current terms and triggering a bankruptcy. They are all in this together.

The implication of this market condition for federal support is that it should be more narrow and rationed, and that haircuts should be expected of all parties in the sector. It is not the feds responsibility to keep them whole; only to protect the ability of an aviation sector to rebound once this shock clears.

Comment [dk25]: Are cargo air carriers actually being hurt? Purchasing is way up, and Chinese supply chains are now starting to recover. The cargo sector has lower fuel costs, workers happy to stay on the job in a socially-distanced way, and no issues with high density packing of people and staff that are so central in the passenger segment.

Comment [dk26]: Well this is pretty wide open. Who and when is coming up with controlling language? How are targets being prioritized?

The Title XVII loan guarantee programs for energy were also done at the discretion of the Secretary (albeit a different agency) – but the program was a black box, with favoritism, decisions hidden even from FOIAs, and really slow deployment of cash. Not something to replicate.

1 (C) the loan is sufficiently secured.

2 (2) TERMS AND LIMITATIONS.—

3 (A) FORMS; TERMS AND CONDITIONS.—A
4 loan or loan guarantee shall be issued under
5 this section in such form and on such terms
6 and conditions and contain such covenants, rep-
7 resentatives, warranties, and requirements (in-
8 cluding requirements for audits) as the Sec-
9 retary determines appropriate. Any loans made
10 by the Secretary under this section shall be at
11 a rate not less than a rate determined by the
12 Secretary taking into consideration the current
13 average yield on outstanding marketable obliga-
14 tions of the United States of comparable matu-
15 rity.

16 (B) PROCEDURES.—As soon as prac-
17 ticable, but in no case later than 10 days after
18 the date of enactment of this Act, the Secretary
19 shall publish procedures for application and
20 minimum requirements, which may be supple-
21 mented by the Secretary in the Secretary's dis-
22 cretion, for the making of loans and loan guar-
23 antees under this section.

24 (d) FINANCIAL PROTECTION OF GOVERNMENT.—

1 (1) IN GENERAL.—To the extent feasible and
 2 practicable, the Secretary shall ensure that the Fed-
 3 eral Government is compensated for the risk as-
 4 sumed in making loans and loan guarantees under
 5 this section.

6 (2) GOVERNMENT PARTICIPATION IN GAINS.—If
 7 an eligible business receives a loan or loan guarantee
 8 from the Federal Government under this section, the
 9 Secretary is authorized to enter into contracts under
 10 which the Federal Government, contingent on the fi-
 11 nancial success of the eligible business, would par-
 12 ticipate in the gains of the eligible business or its se-
 13 curity holders through the use of such instruments
 14 as warrants, stock options, common or preferred
 15 stock, or other appropriate equity instruments.

16 (e) DEPOSIT OF PROCEEDS.—Amounts collected by
 17 the Secretary under this section, including the proceeds
 18 of investments, earnings, and interest collected, shall be
 19 deposited as follows:

20 (1) Amounts collected from eligible businesses
 21 that received loans or loan guarantees under para-
 22 graph (1) or (2) of subsection (b) shall be deposited
 23 in the Airport and Airway Trust Fund under section
 24 9502 of the Internal Revenue Code of 1986.

Comment [dk27]: I think item 1 will be hard to implement since pricing the loan guarantee risk would result in very high interest rates (and is the reason the feds are getting involved in the first place). The high rates would make the loan far less attractive to the potential borrowers. The next section is more likely to happen.

Comment [dk28]: Hallelujah on this one! I've been pushing for gains sharing on bailout interventions for so long, it is nice to see it actually in a bill.

If the government thinks like Warren Buffett in how to structure these and how many warrants to get, the taxpayer is likely to come out much better and the borrower will survive to fight another day. Buffett's deal with Goldman Sachs in 2008 might be a good model.

However, the mere inclusion of language to this effect will not ensure good taxpayer interests are protected, or that political favoritism doesn't make some firms or sectors more equal than others in the gains sharing terms.

Comment [dk29]: No; this is largely funded by ticket fees and taxes on aviation fuel.

Gains from large bailouts could be used to fund these trust funds equal to revenues lost during the sector shutdown (so airports are kept up) — but only after the loans are paid back. And above keeping the trust funds level, extra returns should go into general revenue.

1 (2) Amounts collected from eligible businesses
2 that received loans or loan guarantees under para-
3 graph (3) of subsection (b) shall be deposited in the
4 Treasury as miscellaneous receipts.

5 (f) ADMINISTRATIVE EXPENSES.—Notwithstanding
6 any other provision of law, the Secretary may use
7 \$100,000,000 of the funds made available under this sec-
8 tion to pay costs and administrative expenses associated
9 with the provision of direct loans or guarantees authorized
10 under this section.

11 (g) CONFORMING AMENDMENT.—Section 10(a) of
12 the Gold Reserve Act of 1934 (31 U.S.C. 5302(a)) is
13 amended—

14 (1) by striking “and” before “section 3”; and
15 (2) by inserting “and the Coronavirus Eco-
16 nomic Stabilization Act of 2020,” before “and for
17 investing”.

18 **SEC. 3103. LIMITATION ON CERTAIN EMPLOYEE COM-**
19 **PENSATION.**

20 (a) IN GENERAL.—The Secretary may only enter into
21 a loan or loan agreement under section 3102(a) with an
22 eligible business after the eligible business enters into a
23 legally binding agreement with the Secretary that, during
24 the 2-year period beginning March 1, 2020, and ending
25 March 1, 2022, no officer or employee of the eligible busi-

1 ness whose total compensation exceeded \$425,000 in cal-
 2 endar year 2019 (other than an employee whose com-
 3 pensation is determined through an existing collective bar-
 4 gaining agreement entered into prior to March 1, 2020)—

5 (1) will receive from the eligible business total
 6 compensation which exceeds, during any 12 consecu-
 7 tive months of such 2-year period, the total com-
 8 pensation received by the officer or employee from
 9 the eligible business in calendar year 2019; and

10 (2) will receive from the eligible business sever-
 11 ance pay or other benefits upon termination of em-
 12 ployment with the eligible business which exceeds
 13 twice the maximum total compensation received by
 14 the officer or employee from the eligible business in
 15 calendar year 2019.

16 (b) TOTAL COMPENSATION DEFINED.—In this sec-
 17 tion, the term “total compensation” includes salary, bo-
 18 nuses, awards of stock, and other financial benefits pro-
 19 vided by an eligible business to an officer or employee of
 20 the eligible business.

21 SEC. 3104. CONTINUATION OF CERTAIN AIR SERVICE.

22 The Secretary of Transportation is authorized to re-
 23 quire, to the extent reasonable and practicable, an air car-
 24 rier receiving loans and loan guarantees under section
 25 3102 to maintain scheduled air transportation service as

Comment [dk30]: Why are you letting the highest paid executives continue to earn what they earned during the boom year of 2019? Their companies would be bankrupt absent a government bailout (or that is the case they are making). So the executives should get paid very little in the post bailout years. The firms could structure larger stock awards to executives that arrive in year 3; or after government loans are repaid; etc. That would appropriately recognize the existing market conditions, and align the executive's long term interests with those of the firm and the country.

Bailout money should flow to all levels of the organization, and should also stabilize pension funds for workers. If some airlines were still parking employee pension money in the company's own stock, the bailout ought to be used to eliminate that practice as well so pension funds are in a diversified basket of securities, held outside of the firm.

1 the Secretary of Transportation deems necessary to ensure
2 services to any point served by that carrier before March
3 1, 2020. When considering whether to exercise the author-
4 ity granted by this section, the Secretary of Transpor-
5 tation shall take into consideration the air transportation
6 needs of small and remote communities.

7 **SEC. 3105. REPORTS.**

8 (a) SECRETARY.—The Secretary shall, with respect
9 to the loans and loan guarantees provided under section
10 3102, make such reports as are required under section
11 5302 or title 31, United States Code.

12 (b) GOVERNMENT ACCOUNTABILITY OFFICE.—

13 (1) STUDY.—The Comptroller General of the
14 United States shall conduct a study on the loans
15 and loan guarantees provided under section 3102.

16 (2) REPORT.—Not later than 9 months after
17 the date of enactment of this Act, and annually
18 thereafter through the year succeeding the last year
19 for which loans or loan guarantees provided under
20 section 3102 are in effect, the Comptroller General
21 shall submit to the Committee on Transportation
22 and Infrastructure, the Committee on Appropria-
23 tions, and the Committee on the Budget of the
24 House of Representatives and the Committee on
25 Commerce, Science, and Transportation, the Com-

1 mittee on Appropriations, and the Committee on the
2 Budget of the Senate a report on the loans and loan
3 guarantees provided under section 3102.

4 **SEC. 3106. COORDINATION WITH SECRETARY OF TRANS-**
5 **PORTATION.**

6 In implementing this title with respect to air carriers,
7 the Secretary shall coordinate with the Secretary of
8 Transportation.

9 **SEC. 3107. DEFINITIONS.**

10 In this title:

11 (1) **AIR CARRIER.**—The term “air carrier” has
12 the meaning such term has under section 40102 of
13 title 49, United States Code.

14 (2) **CORONAVIRUS.**—The term “coronavirus”
15 means SARS-CoV-2 or another coronavirus with
16 pandemic potential.

17 (3) **COVERED LOSS.**—The term “covered loss”
18 includes losses, direct or incremental, incurred as a
19 result of coronavirus, as determined by the Sec-
20 retary.

21 (4) **ELIGIBLE BUSINESS.**—The term “eligible
22 business” means—

23 (A) an air carrier; or

24 (B) a United States business that has in-
25 curred covered losses such that the continued

1 operations of the business are jeopardized, as
2 determined by the Secretary, and that has not
3 otherwise applied for or received economic relief
4 in the form of loans or loan guarantees pro-
5 vided under any other provision of law.

6 (5) SECRETARY.—The term “Secretary” means
7 the Secretary of the Treasury, or the designee of the
8 Secretary of the Treasury.

9 **SEC. 3108. RULE OF CONSTRUCTION.**

10 Nothing in this title shall be construed to allow the
11 Secretary to provide relief to eligible businesses except in
12 the form of secured loans and loan guarantees as provided
13 in this title and under terms and conditions that are in
14 the interest of the Federal Government.

15 **TITLE II—AVIATION EXCISE**
16 **TAXES**

17 **SEC. 3201. SUSPENSION OF CERTAIN AVIATION EXCISE**
18 **TAXES.**

19 (a) TRANSPORTATION BY AIR.—In the case of any
20 payment for transportation by air (including any amount
21 treated as paid for transportation by air by reason of sec-
22 tion 4261(e)(3) of the Internal Revenue Code of 1986)
23 during the excise tax holiday period, no tax shall be im-
24 posed under section 4261 or 4271 of such Code. The pre-
25 ceding sentence shall not apply to amounts paid for trans-

1 portation on or before the date of the enactment of this
2 Act.

3 (b) USE OF KEROSENE IN COMMERCIAL AVIATION.—

4 In the case of kerosene used in commercial aviation (as
5 defined in section 4083 of the Internal Revenue Code of
6 1986) during the excise tax holiday period—

7 (1) no tax shall be imposed on such kerosene
8 under—

9 (A) section 4041(c) of the Internal Rev-
10 enue Code of 1986, or

11 (B) section 4081 of such Code (other than
12 at the rate provided in subsection (a)(2)(B)
13 thereof), and

14 (2) section 6427(l) of such Code shall be ap-
15 plied—

16 (A) by treating such use as a nontaxable
17 use, and

18 (B) without regard to paragraph (4)(A)(ii)
19 thereof.

20 (c) EXCISE TAX HOLIDAY PERIOD.—For purposes of
21 section, the term “excise tax holiday period” means the
22 period beginning after the date of the enactment of this
23 section and ending before January 1, 2021.

Comment [dk31]: You want to cut costs? Allow them to stop flying ghost planes to keep their landing slots. But what is the objective of eliminating the excise fees that fund the airports? It already declines dramatically as flights are cut, and doesn't seem a material cost driver in the industry. Plus the fuel itself is far cheaper than it was prior to the meltdown.

Eliminating these fees that fund industry-specific costs and also constitute at least a (very weak) price on carbon is a bad idea and not justified by economics. This provision should be struck.

1 **DIVISION D—HEALTH CARE**
2 **RESPONSE**
3 **TITLE I—HEALTH PROVISIONS**
4 **Subtitle A—Addressing Supply**
5 **Shortages**

Comment [dk32]: Kind of feel like this section should have come first.

6 **PART I—MOVING THE STRATEGIC NATIONAL**
7 **STOCKPILE TO ASPR**

8 **SEC. 4101. MOVING THE STRATEGIC NATIONAL STOCKPILE**
9 **TO ASPR.**

10 Section 319F–2(a)(1) of the Public Health Service
11 Act (42 U.S.C. 247d–6b(a)(1)) is amended by striking
12 “The Secretary, in collaboration with the Assistant Sec-
13 retary for Preparedness and Response and the Director
14 of the Centers for Disease Control and Prevention, and
15 in coordination with the Secretary of Homeland Security
16 (referred to in this section as the ‘Homeland Security Sec-
17 retary’), shall maintain” and inserting “The Secretary, in
18 collaboration with the Assistant Secretary for Prepared-
19 ness and Response, and in coordination with the Secretary
20 of Homeland Security (referred to in this section as the
21 ‘Homeland Security Secretary’), shall maintain”.

Comment [dk33]: What is actually in this stockpile? I read that much of the equipment in it was well past its use-by date – always a problem with emergency supplies, but one that should have been better managed.

Where is the stockpile now? And are there any concerns about the move in who is controlling it?

1 **PART II—MEDICAL PRODUCT SUPPLIES**

2 **SEC. 4111. NATIONAL ACADEMIES REPORT ON AMERICA'S**
 3 **MEDICAL PRODUCT SUPPLY CHAIN SECU-**
 4 **RITY.**

5 (a) **IN GENERAL.**—Not later than 60 days after the
 6 date of enactment of this Act, the Secretary of Health and
 7 Human Services shall enter into an agreement with the
 8 National Academies of Sciences, Engineering, and Medi-
 9 cine (referred to in this section as the “National Acad-
 10 emies”) to examine, and, in a manner that does not com-
 11 promise national security, report on, the security of the
 12 United States medical product supply chain.

13 (b) **PURPOSES.**—The report developed under this sec-
 14 tion shall—

15 (1) assess and evaluate the dependence of the
 16 United States, including the private commercial sec-
 17 tor, States, and the Federal Government, on critical
 18 drugs and devices that are sourced or manufactured
 19 outside of the United States, which may include an
 20 analysis of—

21 (A) the supply chain of critical drugs and
 22 devices of greatest priority to providing health
 23 care;

24 (B) any potential public health security or
 25 national security risks associated with reliance
 26 on critical drugs and devices sourced or manu-

Comment [dk34]: Was this study really never done before? Relying on key ingredients for critical goods of any type from a single foreign country (or even a single domestic factory) is idiocy. It is hard to believe that this is somehow a new conclusion. So what broke down in the past?

Similarly, bringing all of this onshore as act of Patriotism is dumb as well. Sure, you want to do that for critical military technology. But medical supplies of critical need during pandemics should be produced in many places around the globe, with either surplus capacity always or a rapid ability to ramp existing capacity (via product shifts, longer operating hours, etc.), and have multiple redundancies.

Clearly there were managerial or political failures that led us to here. Those should also be evaluated. So should issues of stockpile management and rotation and challenges of keeping complex medical equipment such as is need for intensive care surges, functioning and ready during the years of non-use.

We've now had two months of warning on COVID-19 and were VERY slow to ramp up production of critical equipment. This has been a far, far worse screw-up than Hurricane Katrina.

1 factured outside of the United States, which
2 may include responses to previous or existing
3 shortages or public health emergencies, such as
4 infectious disease outbreaks, bioterror attacks,
5 and other public health threats;

6 (C) any existing supply chain information
7 gaps, as applicable; and

8 (D) potential economic impact of increased
9 domestic manufacturing; and

10 (2) provide recommendations, which may in-
11 clude a plan to improve the resiliency of the supply
12 chain for critical drugs and devices as described in
13 paragraph (1), and to address any supply
14 vulnerabilities or potential disruptions of such prod-
15 ucts that would significantly affect or pose a threat
16 to public health security or national security, as ap-
17 propriate, which may include strategies to—

18 (A) promote supply chain redundancy and
19 contingency planning;

20 (B) encourage domestic manufacturing, in-
21 cluding consideration of economic impacts, if
22 any;

23 (C) improve supply chain information
24 gaps;

1 (D) improve planning considerations for
2 medical product supply chain capacity during
3 public health emergencies; and

4 (E) promote the accessibility of such drugs
5 and devices.

6 (c) INPUT.—In conducting the study and developing
7 the report under subsection (b), the National Academies
8 shall—

9 (1) consider input from the Department of
10 Health and Human Services, the Department of
11 Homeland Security, the Department of Defense, the
12 Department of Commerce, the Department of State,
13 the Department of Veterans Affairs, the Department
14 of Justice, and any other Federal agencies as appro-
15 priate; and

16 (2) consult with relevant stakeholders, which
17 may include conducting public meetings and other
18 forms of engagement, as appropriate, with health
19 care providers, medical professional societies, State-
20 based societies, public health experts, State and local
21 public health departments, State medical boards, pa-
22 tient groups, medical product manufacturers, health
23 care distributors, wholesalers and group purchasing
24 organizations, pharmacists, and other entities with

1 experience in health care and public health, as ap-
2 propriate.

3 (d) DEFINITIONS.—In this section, the terms “de-
4 vice” and “drug” have the meanings given such terms in
5 section 201 of the Federal Food, Drug, and Cosmetic Act
6 (21 U.S.C. 321).

7 **SEC. 4112. REQUIRING THE STRATEGIC NATIONAL STOCK-**
8 **PILE TO INCLUDE CERTAIN TYPES OF MED-**
9 **ICAL SUPPLIES.**

10 Section 319F–2(a)(1) of the Public Health Service
11 Act (42 U.S.C. 247d–6b(a)(1)) is amended by inserting
12 “(including personal protective equipment, ancillary med-
13 ical supplies, and other applicable supplies required for the
14 administration of drugs, vaccines and other biological
15 products, medical devices, and diagnostic tests in the
16 stockpile)” after “other supplies”.

17 **SEC. 4113. TREATMENT OF RESPIRATORY PROTECTIVE DE-**
18 **VICES AS COVERED COUNTERMEASURES.**

19 Section 319F–3(i)(1) of the Public Health Service
20 Act (42 U.S.C. 247d–6d(i)(1)) is amended—

21 (1) in subparagraph (B), by striking “or” at
22 the end;

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

25 (3) by adding at the end the following:

Comment [dk35]: Not every problem can be solved with a stockpile. For pandemics driven by emergent diseases, what is needed is flexible medical device, test, vaccine and drug capabilities – likely more possible with DNA techniques than would have been possible in prior generations. There should be an ISO certification for these critical skills, along with speed to develop new tests and to scale production of key tests or agents.

1 “(D) a respiratory protective device that is
2 approved by the National Institute for Occupa-
3 tional Safety and Health under part 84 of title
4 42, Code of Federal Regulations (or any suc-
5 cessor regulations), and that the Secretary de-
6 termines to be a priority for use during a public
7 health emergency declared pursuant to section
8 319.”.

9 **PART III—MITIGATING EMERGENCY DRUG**

10 **SHORTAGES**

11 **SEC. 4121. PRIORITIZE REVIEWS OF DRUG APPLICATIONS;**
12 **INCENTIVES.**

13 Section 506C(g) of the Federal Food, Drug, and Cos-
14 metic Act (21 U.S.C. 356c(g)) is amended—

15 (1) in paragraph (1), by striking “the Secretary
16 may” and inserting “the Secretary shall, as appro-
17 priate”;

18 (2) in paragraph (1), by inserting “prioritize
19 and” before “expedite the review”; and

20 (3) in paragraph (2), by inserting “prioritize
21 and” before “expedite an inspection”.

Comment [dk36]: Is this the liability waiver? If so, maybe necessary now. But the failure in governance happened earlier, and hopefully will be identified in the NAS report. A proper system should be able to generate enough of these, a rapid ability to scale if needed, and also not waive liability (so we ensure good quality masks).

1 SEC. 4122. ADDITIONAL MANUFACTURER REPORTING RE-
2 QUIREMENTS IN RESPONSE TO DRUG SHORT-
3 AGES.

4 (a) EXPANSION TO INCLUDE ACTIVE PHARMA-
5 CEUTICAL INGREDIENTS.—Subsection (a) of section 506C
6 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
7 356c) is amended—

8 (1) in paragraph (1)(C), by inserting “or any
9 such drug that is critical to the public health during
10 a public health emergency determined under section
11 319 of the Public Health Service Act” after “during
12 surgery”; and

13 (2) in the flush text at the end—

14 (A) by inserting “, or a discontinuance or
15 an interruption in the manufacture of the active
16 pharmaceutical ingredients of such drug,” be-
17 fore “that is likely”; and

18 (B) by adding at the end the following:
19 “Notification under this subsection shall include
20 disclosure of reasons for the discontinuation or
21 interruption, as applicable; if an active pharma-
22 ceutical ingredient is a reason for, or risk factor
23 in, such discontinuation or interruption, the
24 source of the active pharmaceutical ingredient
25 and any alternative sources for the active phar-
26 maceutical ingredient known by the manufac-

1 turer; whether any associated medical devices
2 used for preparation or administration included
3 in the finished dosage form is a reason for, or
4 a risk factor in, such discontinuation or inter-
5 ruption; the expected duration of the interrup-
6 tion; and such other information as the Sec-
7 retary may require.”.

8 (b) FOIA EXEMPTION.—Section 506C(d) of the Fed-
9 eral Food, Drug, and Cosmetic Act (21 U.S.C. 356c(d))
10 is amended by adding at the end the following: “Informa-
11 tion provided by a manufacturer to the Secretary under
12 this section shall not be subject to disclosure under section
13 552 of title 5, United States Code.”.

14 (c) MANUFACTURING CONTINGENCY PLANS.—Sec-
15 tion 506C of the Federal Food, Drug, and Cosmetic Act
16 (21 U.S.C. 356c) is amended by adding at the end the
17 following:

18 “(j) MANUFACTURER CONTINGENCY PLANS.—Each
19 manufacturer of a drug described in subsection (a) or of
20 any active pharmaceutical ingredient or any associated
21 medical devices used for preparation or administration in-
22 cluded in the finished dosage form of such a drug, shall
23 maintain contingency and redundancy plans, as applicable,
24 for each establishment in which such drugs or active phar-
25 maceutical ingredients of such drugs are manufactured to

Comment [dk37]: These shortages are not a unidimensional problem. Need also to look at redundant supply capabilities; ability of firms to step in to supplement production of drugs quickly that other plants also made but that are now needed in much greater quantities.

Comment [dk38]: Is such a requirement entirely new? Sometimes the plans get done once and then not looked at for another five years. If this is important, the feds ought to run drills - such as requiring a particular drug order to come from the backup suppliers with little advance warning.

1 help prevent or mitigate interruptions in the supply of the
2 drug or ingredient.’’.

3 (d) ANNUAL NOTIFICATION.—Section 506E of the
4 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356e)
5 is amended by adding at the end the following:

6 “(d) INTERAGENCY NOTIFICATION.—Not later than
7 180 days after the date of enactment of this subsection,
8 and every 90 days thereafter, the Secretary shall transmit
9 a report regarding the drugs of the current drug shortage
10 list under this section to the Administrator of the Centers
11 for Medicare & Medicaid Services.’’.

12 (e) REPORTING AFTER INSPECTIONS.—Section
13 704(b) of the Federal Food, Drug, and Cosmetic Act (21
14 U.S.C. 374(b)) is amended—

15 (1) by redesignating paragraphs (1) and (2)
16 and subparagraphs (A) and (B);

17 (2) by striking “(b) Upon completion’’ and in-
18 serting “(b)(1) Upon completion’’; and

19 (3) by adding at the end the following:

20 “(2) In carrying out this subsection with respect to
21 any establishment manufacturing a drug approved under
22 subsection (c) or (j) of section 505 for which a notification
23 has been submitted in accordance with section 506C is,
24 or has been in the last 5 years, listed on the drug shortage
25 list under section 506E, or that is described in section

1 505(j)(11)(A), a copy of the report shall be sent promptly
2 to the appropriate offices of the Food and Drug Adminis-
3 tration with expertise regarding drug shortages. Such of-
4 fices shall ensure timely and effective coordination regard-
5 ing the reviews of such report and overseeing the align-
6 ment of any feedback regarding such report, or corrective
7 or preventative actions, after consideration of the system-
8 atic benefits and risks to public health, patient safety, the
9 drug supply and drug supply chain, and timely patient ac-
10 cess to such drugs.’’.

11 (f) EFFECTIVE DATE.—The amendments made by
12 this section and section 4121 shall take effect on the date
13 that is 180 days after the date of enactment of this Act.

14 **SEC. 4123. GAO REPORT ON INTRA-AGENCY COORDINA-**
15 **TION.**

16 (a) IN GENERAL.—Not later than 2 years after the
17 date of enactment of this Act, the Comptroller General
18 of the United States shall submit to the Committee on
19 Health, Education, Labor, and Pensions of the Senate and
20 the Committee on Energy and Commerce of the House
21 of Representatives a report examining the Food and Drug
22 Administration’s intra-agency coordination, communica-
23 tion, and decision making in assessing drug shortage risks,
24 and taking corrective action.

25 (b) CONTENT.—The report shall include—

1 (1) consideration of—

2 (A) risks associated with violations of cur-
3 rent good manufacturing practices;

4 (B) corrective and preventative actions
5 with respect to such violations requested by the
6 Food and Drug Administration;

7 (C) the effects of potential manufacturing
8 slow-downs or shut-downs on potential drug
9 shortages, including the discontinuance of drug
10 manufacturing and marketing;

11 (D) efforts to prioritize review of applica-
12 tions for drugs that the Secretary has deter-
13 mined under section 506E of the Federal Food,
14 Drug, and Cosmetic Act (21 U.S.C. 356e) to be
15 in shortage; and

16 (E) efforts to prioritize inspections of fa-
17 cilities necessary for approval of applications for
18 drugs described in subparagraph (D);

19 (2) a description of how the Food and Drug
20 Administration proactively coordinates strategies to
21 mitigate the consequences of the violations, slow-
22 downs, and shut-downs described in paragraph (1)
23 across agencies; and

1 (3) an evaluation of changes in relevant Food
2 and Drug Administration practices that such agency
3 has proposed but not yet implemented.

4 **SEC. 4124. REPORT.**

5 Not later than 2 years after the date of enactment
6 of this Act, the Secretary of Health and Human Services,
7 in coordination with the Commissioner of Food and Drugs
8 and the Administrator of the Centers for Medicare & Med-
9 icaid Services, shall develop and submit to the Committee
10 on Health, Education, Labor, and Pensions of the Senate
11 and the Committee on Energy and Commerce of the
12 House of Representatives a report containing rec-
13 ommendations—

14 (1) for market-based incentives or other appro-
15 prium mechanisms, sufficient to encourage the man-
16 ufacture of drugs in shortage or at risk of shortage;
17 and

18 (2) on how the Emerging Technology Program
19 of the Food and Drug Administration can help fa-
20 cilitate creating or upgrading existing technologies to
21 address drug shortage challenges and promote mod-
22 ern, reliable manufacturing strategies.

1 **SEC. 4125. SAFE HARBOR PROVISION.**

2 (a) IN GENERAL.—The Federal Food, Drug, and
3 Cosmetic Act is amended by inserting after section 502
4 (21 U.S.C. 352) the following:

5 **“SEC. 502A. SAFE HARBOR PROVISION.**

6 “(a) IN GENERAL.—The communication of informa-
7 tion, consistent with subsection (b), with respect to the
8 use of a drug or device authorized under section 564 pro-
9 vided or distributed to a health care provider, shall not—

10 “(1) be a basis for treating such drug or device
11 as misbranded under subsection (a) or (f) of section
12 502, or in violation of section 505, 515, or 564 of
13 this Act or subsection (a) or (k) of section 351(a)(1)
14 of the Public Health Service Act, as applicable; or

15 “(2) be treated as evidence that such drug or
16 device is misbranded under subsection (a) or (f) of
17 section 502, or in violation of section 505, 513, 515,
18 or 564 of this Act or subsection (a) or (k) of section
19 351 of the Public Health Service Act, as applicable.

20 **“(b) PROVISION OF INFORMATION.—**

21 “(1) IN GENERAL.—Any information relating to
22 a use of a drug or device authorized under section
23 564, or for which a submission under section 564
24 has been submitted, that—

1 “(A) is neither false nor misleading, when
2 measured objectively against the information
3 available at the time the statement is made;

4 “(B) is accompanied, as required, by an
5 appropriate disclaimer, as described in para-
6 graph (2); and

7 “(C) is based on competent and reliable
8 scientific evidence, as described in subsection
9 (c).

10 “(2) DISCLAIMERS.—For purposes of para-
11 graph (1), such information shall be accompanied, as
12 necessary, by an appropriate disclaimer, including—

13 “(A) a statement identifying any dif-
14 ferences between the information and any label-
15 ing of the drug or device;

16 “(B) a statement identifying contradictory
17 evidence; and

18 “(C) such other information as may be re-
19 quired by regulation.

20 “(c) COMPETENT AND RELIABLE SCIENTIFIC EVI-
21 DENCE.—In this section, the term ‘competent and reliable
22 scientific evidence’ means evidence established through
23 scientific methods that are widely accepted by experts in
24 the relevant field and followed pursuant to a clear and
25 well-described protocol, as scientifically appropriate. Evi-

1 dence may constitute competent and reliable scientific evi-
2 dence within the meaning of this section—

3 “(1) regardless of whether it is supported by 2
4 adequate and well-controlled clinical studies; and

5 “(2) may include—

6 “(A) information derived from clinical
7 trials, observational studies, clinical studies or
8 bench tests that describe performance, database
9 reviews, registries, patient utilization projec-
10 tions, and modeling techniques, and the data,
11 inputs, and components of such information;

12 “(B) information about the effects of a
13 drug or device in subgroups defined by demo-
14 graphic or other variables, including groups de-
15 fined by race, sex, risk factors, or other vari-
16 ables, such as genomic features or disease se-
17 verity;

18 “(C) information related to the emergency
19 use authorization, as applicable; and

20 “(D) information relating to the safety, ef-
21 fectiveness, or benefit of a use or treatment
22 that is authorized under section 564 for a drug
23 or device, including information regarding—

1 “(i) health outcomes, patient or care-
2 giver experience, or other quality metrics;
3 and

4 “(ii) the comparative effectiveness of
5 a drug or device relative to others prod-
6 ucts, other health care interventions, pro-
7 gram and quality improvement interven-
8 tions, or no intervention.

9 “(d) DISTRIBUTION.—Information pursuant to sub-
10 section (b) may be distributed proactively through written
11 or oral means, or other information platforms, to a health
12 care provider, payor, formulary committee, or other simi-
13 lar entity carrying out responsibilities for making drug
14 coverage, reimbursement, or usage decisions on a popu-
15 lation basis.

16 “(e) COVERAGE NOT EXCLUDED.—The distribution
17 of information that otherwise meets the requirements of
18 this section shall not fail to meet the requirements of sub-
19 section (a) because the manufacturer or distributor of the
20 drug or device about which information is being distrib-
21 uted has—

22 “(1) knowledge that such drug or device is
23 being used by patients or health care practitioners in
24 a manner not described in any labeling of the drug
25 or device, as applicable; or

1 “(2) objective or subjective intent that such
2 drug or device be used in a manner inconsistent with
3 any labeling, as applicable, of such drug or device.

4 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
5 tion shall be construed—

6 “(1) to limit communication not specifically
7 permitted by this section; or

8 “(2) to alter or expand the authority of the Sec-
9 retary to enforce the provisions of this Act, except
10 to the extent that the communication of information
11 in accordance with this section is permitted.”.

12 **PART IV—PREVENTING ESSENTIAL MEDICAL**
13 **DEVICE SHORTAGES**

14 **SEC. 4131. DISCONTINUANCE OR INTERRUPTION IN THE**
15 **PRODUCTION OF MEDICAL DEVICES.**

16 Chapter V of the Federal Food, Drug, and Cosmetic
17 Act (21 U.S.C. 351 et seq.) is amended by inserting after
18 section 506I the following:

19 **“SEC. 506J. DISCONTINUANCE OR INTERRUPTION IN THE**
20 **PRODUCTION OF MEDICAL DEVICES.**

21 “(a) IN GENERAL.—A manufacturer of a device
22 that—

23 “(1) is critical to public health during a public
24 health emergency, including devices that are life-sup-

1 porting, life-sustaining, or intended for use in emer-
2 gency medical care or during surgery; or

3 “(2) for which the Secretary determines that in-
4 formation on potential meaningful supply disrup-
5 tions of such device is needed during, or in advance
6 of, a public health emergency;

7 shall, during, or in advance of, a public health emergency
8 determined by the Secretary pursuant to section 319, no-
9 tify the Secretary, in accordance with subsection (b), of
10 a permanent discontinuance in the manufacture of the de-
11 vice (except for discontinuances as a result of an approved
12 modification of the device) or an interruption of the manu-
13 facture of the device that is likely to lead to a meaningful
14 disruption in the supply of that device in the United
15 States, and the reasons for such discontinuance or inter-
16 ruption.

17 “(b) TIMING.—A notice required under subsection (a)
18 shall be submitted to the Secretary—

19 “(1) at least 6 months prior to the date of the
20 discontinuance or interruption; or

21 “(2) if compliance with paragraph (1) is not
22 possible, as soon as practicable.

23 “(c) DISTRIBUTION.—

24 “(1) PUBLIC AVAILABILITY.—To the maximum
25 extent practicable, subject to paragraph (2), the Sec-

1 retary shall distribute, through such means as the
2 Secretary determines appropriate, information on
3 the discontinuance or interruption of the manufac-
4 ture of devices reported under subsection (a) to ap-
5 propriate organizations, including physician, health
6 provider, patient organizations, and supply chain
7 partners, as appropriate and applicable.

8 “(2) PUBLIC HEALTH EXCEPTION.—The Sec-
9 retary may choose not to make information collected
10 under this section publicly available pursuant to this
11 section if the Secretary determines that disclosure of
12 such information would adversely affect the public
13 health, such as by increasing the possibility of un-
14 necessary over purchase of product or other disrup-
15 tion of the availability of medical products to pa-
16 tients.

17 “(d) CONFIDENTIALITY.—Nothing in this section
18 shall be construed as authorizing the Secretary to disclose
19 any information that is a trade secret or confidential infor-
20 mation subject to section 552(b)(4) of title 5, United
21 States Code, or section 1905 of title 18, United States
22 Code.

23 “(e) FAILURE TO MEET REQUIREMENTS.—If a per-
24 son fails to submit information required under subsection
25 (a) in accordance with subsection (b)—

1 “(1) the Secretary shall issue a letter to such
2 person informing such person of such failure;

3 “(2) not later than 30 calendar days after the
4 issuance of a letter under paragraph (1), the person
5 who receives such letter shall submit to the Sec-
6 retary a written response to such letter setting forth
7 the basis for noncompliance and providing informa-
8 tion required under subsection (a); and

9 “(3) not later than 45 calendar days after the
10 issuance of a letter under paragraph (1), the Sec-
11 retary shall make such letter and any response to
12 such letter under paragraph (2) available to the pub-
13 lic on the internet website of the Food and Drug Ad-
14 ministration, with appropriate redactions made to
15 protect information described in subsection (d), ex-
16 cept that, if the Secretary determines that the letter
17 under paragraph (1) was issued in error or, after re-
18 view of such response, the person had a reasonable
19 basis for not notifying as required under subsection
20 (a), the requirements of this paragraph shall not
21 apply.

22 “(f) EXPEDITED INSPECTIONS AND REVIEWS.—If,
23 based on notifications described in subsection (a) or any
24 other relevant information, the Secretary concludes that

1 there is, or is likely to be, a shortage of an device, the
2 Secretary shall, as appropriate—

3 “(1) prioritize and expedite the review of a sub-
4 mission under section 513(f)(2), 515, review of a no-
5 tification under section 510(k), or 520(m) for a de-
6 vice that could help mitigate or prevent such short-
7 age; or

8 “(2) prioritize and expedite an inspection or re-
9 inspection of an establishment that could help miti-
10 gate or prevent such shortage.

11 “(g) DEVICE SHORTAGE LIST.—

12 “(1) ESTABLISHMENT.—The Secretary shall es-
13 tablish and maintain an up-to-date list of devices
14 that are determined by the Secretary to be in short-
15 age in the United States.

16 “(2) CONTENTS.—For each device included on
17 the list under paragraph (1), the Secretary shall in-
18 clude the following information:

19 “(A) The category or name of the device in
20 shortage.

21 “(B) The name of each manufacturer of
22 such device.

23 “(C) The reason for the shortage, as deter-
24 mined by the Secretary, selecting from the fol-
25 lowing categories:

1 “(i) Requirements related to com-
2 plying with good manufacturing practices.

3 “(ii) Regulatory delay.

4 “(iii) Shortage or discontinuance of a
5 component or part.

6 “(iv) Discontinuance of the manufac-
7 ture of the device.

8 “(v) Delay in shipping of the device.

9 “(vi) Delay in sterilization of the de-
10 vice.

11 “(vii) Demand increase for the device.

12 “(D) The estimated duration of the short-
13 age as determined by the Secretary.

14 “(3) PUBLIC AVAILABILITY.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graphs (B) and (C), the Secretary shall make
17 the information in the list under paragraph (1)
18 publicly available.

19 “(B) TRADE SECRETS AND CONFIDENTIAL
20 INFORMATION.—Nothing in this subsection
21 shall be construed to alter or amend section
22 1905 of title 18, United States Code, or section
23 552(b)(4) of title 5 of such Code.

24 “(C) PUBLIC HEALTH EXCEPTION.—The
25 Secretary may elect not to make information

1 collected under this subsection publicly available
2 if the Secretary determines that disclosure of
3 such information would adversely affect the
4 public health (such as by increasing the possi-
5 bility of hoarding or other disruption of the
6 availability of the device to patients).

7 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
8 tion shall be construed to affect the authority of the Sec-
9 retary on the date of enactment of this section to expedite
10 the review of devices under section 515 of the Federal
11 Food, Drug, and Cosmetic Act, section 515B of such Act
12 relating to the priority review program for devices, and
13 section 564 of such Act relating to the emergency use au-
14 thorization authorities.

15 “(i) DEFINITIONS.—In this section:

16 “(1) DEVICE.—The term ‘device’ means a de-
17 vice (as defined in section 201(h)) that is intended
18 for human use and is subject to sections 510(k),
19 513(f)(2), 515, or 520(m).

20 “(2) MEANINGFUL DISRUPTION.—The term
21 ‘meaningful disruption’—

22 “(A) means a change in production that is
23 reasonably likely to lead to a reduction in the
24 supply of a device by a manufacturer that is
25 more than negligible and affects the ability of

1 the manufacturer to fill orders or meet expected
2 demand for its product;

3 “(B) does not include interruptions in
4 manufacturing due to matters such as routine
5 maintenance or insignificant changes in manu-
6 facturing so long as the manufacturer expects
7 to resume operations in a reasonable or short
8 period of time; and

9 “(C) does not include interruptions in
10 manufacturing of components or raw materials
11 so long as such interruptions do not result in
12 a shortage of finished product and the manu-
13 facturer expects to resume operations in a rea-
14 sonable or short period of time.

15 “(3) SHORTAGE.—The term ‘shortage’, with re-
16 spect to a device, means a period of time when the
17 demand or projected demand for the device within
18 the United States exceeds the supply of the device.”.

19 **SEC. 4132. GAO REPORT ON INTRA-AGENCY COORDINA-**
20 **TION.**

21 (a) IN GENERAL.—Not later than 18 months after
22 the date of enactment of this Act, the Comptroller General
23 of the United States shall submit to the Committee on
24 Health, Education, Labor, and Pensions of the Senate and
25 the Committee on Energy and Commerce of the House

1 of Representatives a report examining the Food and Drug
2 Administration's intra-agency coordination, communica-
3 tion, and decision-making in assessing device shortages
4 and risks associated with the supply of devices, and any
5 efforts by the Food and Drug Administration to mitigate
6 any device shortages or to take corrective actions.

7 (b) CONTENT.—The report shall include—

8 (1) consideration of—

9 (A) risks of creating, worsening, or extend-
10 ing a shortage of a device associated with viola-
11 tions of current good manufacturing practices;

12 (B) corrective and preventative actions
13 with respect to such violations requested by the
14 Food and Drug Administration;

15 (C) the effects of potential manufacturing
16 disruptions or shut-downs on potential device
17 shortages, which may include the discontinu-
18 ance of device manufacturing and marketing, or
19 the manufacturing of device components or
20 parts;

21 (D) efforts to prioritize and expedite the
22 review of submissions for devices that the Sec-
23 retary has determined under section 506J(g) of
24 the Federal Food, Drug, and Cosmetic Act (21
25 U.S.C. 356j) to be in shortage; and

1 (E) efforts to prioritize inspections of fa-
2 cilities necessary for approval or clearance of
3 devices described in subparagraph (D);

4 (2) a description of how the Food and Drug
5 Administration proactively coordinates strategies to
6 mitigate the consequences of the violations, slow-
7 downs, and shut-downs described in paragraph (1)
8 across agencies; and

9 (3) an evaluation of changes in relevant Food
10 and Drug Administration practices that such agency
11 has proposed but not yet implemented.

12 (c) DEFINITION.—In this section, the term “device”
13 has the meaning given such term under section 506J(i)(1)
14 of the Federal Food, Drug, and Cosmetic Act, as added
15 by section 4131.

16 **PART V—EMERGENCY USE OF LABORATORY**
17 **DEVELOPED TESTS**

18 **SEC. 4141. EMERGENCY USE OF LABORATORY DEVELOPED**
19 **TESTS.**

20 (a) IN GENERAL.—For the time in which the public
21 health emergency under section 319 of the Public Health
22 Service Act (42 U.S.C. 247d) related to the coronavirus
23 (COVID-19), declared by the Secretary of Health and
24 Human Services (referred to in this section as the “Sec-
25 retary”) on January 31, 2020, is in place (or such other

1 period of time determined by the Secretary), tests in-
2 tended to diagnose COVID-19 that are described in sub-
3 section (b) may be lawfully marketed in accordance with
4 this section.

5 (b) CRITERIA.—Tests described in subsection (a)
6 may be lawfully marketed, during the period described in
7 such subsection, if such test—

8 (1) is developed in a State that has notified the
9 Secretary of its intention to review tests intended to
10 diagnose COVID-19;

11 (2) is developed in a laboratory with a certifi-
12 cate to conduct high-complexity testing pursuant to
13 section 353 of the Public Health Service Act (42
14 U.S.C. 263a), and the developer of such test—

15 (A) is pursuing an emergency use author-
16 ization under section 564 of the Federal Food,
17 Drug, and Cosmetic Act (21 U.S.C. 360bbb-3)
18 and provides updates to the Secretary on efforts
19 to pursue such authorization;

20 (B) validates such test prior to use;

21 (C) notifies the Secretary of the assay vali-
22 dation; and

23 (D) includes a statement together with the
24 results of the test that reads: “This test was
25 developed for use as a part of a response to the

1 public health emergency declared to address the
2 outbreak of COVID-19. This test has not been
3 reviewed by the Food and Drug Administra-
4 tion.”; or

5 (3) is an in vitro diagnostic test for which the
6 developer of such test meets all of the requirements
7 of subparagraphs (A) through (D) of paragraph (2)
8 with respect to the test.

9 (c) DISPOSITION OF PRODUCT.—Notwithstanding
10 the termination of a declaration under subsection (b) of
11 section 564 of the Federal Food, Drug, and Cosmetic Act,
12 or a revocation under subsection (g) of such section with
13 respect to a product described in subsection (a), the Sec-
14 retary shall consult with the developer of such in vitro di-
15 agnostic test with respect to the appropriate disposition
16 of such test to ensure that authorization of any in vitro
17 diagnostic test under this section shall continue to be ef-
18 fective to provide for continued use of such product to pre-
19 vent or detect COVID–19.

20 (d) IN VITRO DIAGNOSTIC TEST.—In this section,
21 the term “in vitro diagnostic test” has the meaning given
22 the term “in vitro diagnostic product” in section 809.3(a)
23 of title 21, Code of Federal Regulations (or successor reg-
24 ulations).

Comment [dk39]: These terms all make sense. But were they the cause of the abysmal failure to scale up COVID-19 test availability? China did it (and by a firm that also has a footprint in the US). So did South Korea and a number of European countries. In the past week, a number of US firms have ramped up test kits on EUAs, and are claiming they can produce millions of units per week.

This language is useful, but insufficient if the bureaucratic problems that led the US to be unable to test for the virus when the exposed population was small are not also identified and eliminated.

1 **Subtitle B—Access to Health Care**
2 **for COVID-19 Patients**

3 **PART I—COVERAGE OF TESTING AND**
4 **PREVENTIVE SERVICES**

5 **SEC. 4201. COVERAGE OF DIAGNOSTIC TESTING FOR**
6 **COVID-19.**

7 (a) IN GENERAL.—A group health plan and a health
8 insurance issuer offering group or individual health insur-
9 ance coverage (including a grandfathered health plan (as
10 defined in section 1251(e) of the Patient Protection and
11 Affordable Care Act (42 U.S.C. 18011(b))) shall provide
12 coverage, and shall not impose any cost-sharing (including
13 deductibles, copayments, and coinsurance) requirements
14 or prior authorization or other medical management re-
15 quirements, for the following items and services furnished
16 during any portion of the public health emergency de-
17 clared by the Secretary of Health and Human Services
18 pursuant to section 319 of the Public Health Service Act
19 on January 31, 2020, with respect to COVID-19, begin-
20 ning on or after the date of the enactment of this Act:

21 (1) An in vitro diagnostic product (as defined
22 in section 809.3(a) of title 21, Code of Federal Reg-
23 ulations) for the detection of SARS-CoV-2 or the
24 diagnosis of the virus that causes COVID-19, and

Comment [dk40]: Are any groups left out of free access to testing? For a pandemic, you want testing to be widespread, rapid, accurate, and free to all – even uninsured people, or homeless people, or non-citizens living in the country. Does this bill do that, or are there known gaps now?

1 the administration of such an in vitro diagnostic
2 product, that—

3 (A) is approved, cleared, or authorized
4 under section 510(k), 513, 515, or 564 of the
5 Federal Food, Drug, and Cosmetic Act (21
6 U.S.C. 360(k), 360c, 360e, 360bbb–3);

7 (B) is a clinical laboratory service per-
8 formed in a laboratory (including a public
9 health laboratory) certified to conduct high-
10 complexity testing pursuant to section 353 of
11 the Public Health Service Act (42 U.S.C. 253a)
12 for which the developer has requested, or in-
13 tends to request, emergency use authorization
14 under section 564 of the Federal Food, Drug,
15 and Cosmetic Act (21 U.S.C. 360bbb–3), unless
16 and until the emergency use authorization re-
17 quest under such section 564 has been denied
18 or the developer of such test does not submit a
19 request under such section within a reasonable
20 timeframe; or

21 (C) is developed in a State that has noti-
22 fied the Secretary of Health and Human Serv-
23 ices of its intention to review tests intended to
24 diagnose COVID-19.

1 (2) Items and services furnished to an indi-
2 vidual during health care provider office visits, ur-
3 gent care center visits, and emergency room visits
4 that result in an order for or administration of an
5 in vitro diagnostic product described in paragraph
6 (1), but only to the extent such items and services
7 relate to the furnishing or administration of such
8 product or to the evaluation of such individual for
9 purposes of determining the need of such individual
10 for such product.

11 **SEC. 4202. PRICING OF DIAGNOSTIC TESTING.**

12 (a) **REIMBURSEMENT RATES.**—A group health plan
13 or a health insurance issuer providing coverage of items
14 and services described in section 201(a) with respect to
15 an enrollee shall reimburse the provider of the diagnostic
16 testing as follows:

17 (1) If the health plan or issuer has a negotiated
18 rate for such service with such provider, such nego-
19 tiated rate shall apply.

20 (2) If the health plan or issuer does not have
21 a negotiated rate for such service with such provider,
22 such plan or issuer shall reimburse the provider in
23 an amount that equals the cash price for such serv-
24 ice as listed by the provider on a public internet
25 website.

1 (b) REQUIREMENT TO PUBLICIZE CASH PRICE FOR
2 DIAGNOSTIC TESTING FOR COVID-19.—

3 (1) IN GENERAL.—Each provider of a diag-
4 nostic test for COVID-19 shall make public the cash
5 price for such test on a public internet website of
6 such provider.

Comment [dk41]: Great idea, and should start to apply to a bunch of medical services that are largely generic.

7 (2) CIVIL MONETARY PENALTIES.—The Sec-
8 retary of Health and Human Services may impose a
9 civil monetary penalty on any provider of a diag-
10 nostic test for COVID-19 that is not in compliance
11 with paragraph (1) and has not completed a correc-
12 tive action plan to comply with the requirements of
13 such paragraph, in an amount not to exceed \$300
14 per day that the violation is ongoing.

15 SEC. 4203. RAPID COVERAGE OF PREVENTIVE SERVICES
16 AND VACCINES FOR CORONAVIRUS.

17 (a) IN GENERAL.—Notwithstanding 2713(b) of the
18 Public Health Service Act (42 U.S.C. 300gg–13), the Sec-
19 retary of Health and Human Services, the Secretary of
20 Labor, and the Secretary of the Treasury shall require
21 group health plans and health insurance issuers offering
22 group or individual health insurance to cover any quali-
23 fying coronavirus preventive service, pursuant to section
24 2713(a) of the Public Health Service Act (42 U.S.C.
25 300gg–13(a)). The requirement described in this sub-

1 section shall take effect with respect to a qualifying
2 coronavirus prevention service on the specified date de-
3 scribed in subsection (b)(2).

4 (b) DEFINITIONS.—For purposes of this section:

5 (1) QUALIFYING CORONAVIRUS PREVENTIVE
6 SERVICE.—The term “qualifying coronavirus preven-
7 tive service” means an item, service, or immuniza-
8 tion that is intended to prevent or mitigate
9 coronavirus disease 2019 and that is—

10 (A) an evidence-based item or service that
11 has in effect a rating of “A” or “B” in the cur-
12 rent recommendations of the United States Pre-
13 ventive Services Task Force; or

14 (B) an immunization that has in effect a
15 recommendation from the Advisory Committee
16 on Immunization Practices of the Centers for
17 Disease Control and Prevention with respect to
18 the individual involved.

19 (2) SPECIFIED DATE.—The term “specified
20 date” means the date that is 15 business days after
21 the date on which a recommendation is made relat-
22 ing to the immunization as described in such para-
23 graph.

24 (3) HEALTH INSURANCE TERMS.—In this sec-
25 tion, the terms “group health plan”, “health insur-

Comment [dk42]: I think this is adequate to get coverage quickly.

1 ance issuer”, “group health insurance coverage”,
2 and “individual health insurance coverage” have the
3 meanings given such terms in section 2791 of the
4 Public Health Service Act (42 U.S.C. 300gg–91).

5 **PART II—SUPPORT FOR HEALTH CARE**

6 **PROVIDERS**

7 **SEC. 4211. SUPPLEMENTAL AWARDS FOR HEALTH CEN-**
8 **TERS.**

9 (a) SUPPLEMENTAL AWARDS.—Section 330(r) of the
10 Public Health Service Act (42 U.S.C. 254b(r)) is amended
11 by adding at the end the following:

12 “(6) ADDITIONAL AMOUNTS FOR SUPPLE-
13 MENTAL AWARDS.—In addition to any amounts
14 made available pursuant to this subsection, section
15 402A of this Act, or section 10503 of the Patient
16 Protection and Affordable Care Act, there is author-
17 ized to be appropriated, and there is appropriated,
18 out of any monies in the Treasury not otherwise ap-
19 propriated, \$1,320,000,000 for fiscal year 2020 for
20 supplemental awards under subsection (d) for the
21 detection of SARS-CoV-2 or the prevention, diag-
22 nosis, and treatment of COVID-19.”.

23 (b) APPLICATION OF PROVISIONS.—Amounts appro-
24 priated pursuant to the amendment made by subsection
25 (a) for fiscal year 2020 shall be subject to the require-

Comment [dk43]: So we have a pandemic that risks overwhelming hospitals, and the resultant quarantines are now wrecking the economy. And you have a trillion dollar stimulus bill (more with tax expenditures and other impacts included) that provides only \$1.3 billion more to help the hospitals pay for pandemic-related care? This is in comparison to \$8 billion in loans for air freight companies and \$50 billion in loans to passenger airlines? I like my FedEx too, but this just seems absurd.

1 ments contained in Public Law 116–94 for funds for pro-
2 grams authorized under sections 330 through 340 of the
3 Public Health Service Act (42 U.S.C. 254 through 256).

4 **SEC. 4212. ALLOWING PERMANENT DIRECT HIRE OF NDMS**
5 **HEALTH CARE PROFESSIONALS.**

6 Section 2812(c)(4) of the Public Health Service Act
7 (42 U.S.C. 300hh–11(c)(4)) is amended to read as follows:

8 “(4) CERTAIN APPOINTMENTS.—If the Sec-
9 retary determines that the number of intermittent
10 disaster response personnel within the National Dis-
11 aster Medical System under this section is insuffi-
12 cient to address a public health emergency or poten-
13 tial public health emergency, the Secretary may ap-
14 point candidates directly to personnel positions for
15 intermittent disaster response within such system.
16 The Secretary shall provide updates on the number
17 of vacant or unfilled positions within such system to
18 the congressional committees of jurisdiction each
19 quarter for which this authority is in effect.”.

20 **SEC. 4213. TELEHEALTH NETWORK AND TELEHEALTH RE-**
21 **SOURCE CENTERS GRANT PROGRAMS.**

22 Section 330I of the Public Health Service Act (42
23 U.S.C. 254c–14) is amended—

24 (1) in subsection (d)—

25 (A) in paragraph (1)—

1 (i) in the matter preceding subpara-
2 graph (A), by striking “projects to dem-
3 onstrate how telehealth technologies can be
4 used through telehealth networks” and in-
5 serting “evidence-based projects that uti-
6 lize telehealth technologies through tele-
7 health networks”;

8 (ii) in subparagraph (A)—

9 (I) by striking “the quality of”
10 and inserting “access to, and the
11 quality of,”; and

12 (II) by inserting “and” after the
13 semicolon;

14 (iii) by striking subparagraph (B);

15 (iv) by redesignating subparagraph
16 (C) as subparagraph (B); and

17 (v) in subparagraph (B), as so redes-
18 ignated, by striking “and patients and
19 their families, for decisionmaking” and in-
20 serting “, patients, and their families”;
21 and

22 (B) in paragraph (2)—

23 (i) by striking “demonstrate how tele-
24 health technologies can be used” and in-

1 serting “support initiatives that utilize
2 telehealth technologies”; and
3 (ii) by striking “, to establish tele-
4 health resource centers”;
5 (2) in subsection (e), by striking “4 years” and
6 inserting “5 years”;
7 (3) in subsection (f)—
8 (A) by striking paragraph (2);
9 (B) in paragraph (1)(B)—
10 (i) by redesignating clauses (i)
11 through (iii) as paragraphs (1) through
12 (3), respectively, and adjusting the mar-
13 gins accordingly;
14 (ii) in paragraph (3), as so redesign-
15 ated by clause (i), by redesignating sub-
16 clauses (I) through (XII) as subparagraphs
17 (A) through (L), respectively, and adjust-
18 ing the margins accordingly; and
19 (iii) by striking “(1) TELEHEALTH
20 NETWORK GRANTS—” and all that follows
21 through “(B) TELEHEALTH NETWORKS—
22 ”; and
23 (C) in paragraph (3)(I), as so redesign-
24 ated, by inserting “and substance use dis-

1 order” after “mental health” each place such
2 term appears;
3 (4) in subsection (g)(2), by striking “or im-
4 prove” and inserting “and improve”;
5 (5) by striking subsection (h);
6 (6) by redesignating subsections (i) through (p)
7 as subsection (h) through (o), respectively;
8 (7) in subsection (h), as so redesignated—
9 (A) in paragraph (1)—
10 (i) in subparagraph (B), by striking
11 “mental health, public health, long-term
12 care, home care, preventive” and inserting
13 “mental health care, public health services,
14 long-term care, home care, preventive
15 care”;
16 (ii) in subparagraph (E), by inserting
17 “and regional” after “local”; and
18 (iii) by striking subparagraph (F);
19 and
20 (B) in paragraph (2)(A), by striking
21 “medically underserved areas or” and inserting
22 “rural areas, medically underserved areas, or”;
23 (8) in paragraph (2) of subsection (i), as so re-
24 designated, by striking “ensure that—” and all that
25 follows through the end of subparagraph (B) and in-

1 serting “ensure that not less than 50 percent of the
2 funds awarded shall be awarded for projects in rural
3 areas.”;

4 (9) in subsection (j), as so redesignated—

5 (A) in paragraph (1)(B), by striking “com-
6 puter hardware and software, audio and video
7 equipment, computer network equipment, inter-
8 active equipment, data terminal equipment, and
9 other”; and

10 (B) in paragraph (2)(F), by striking
11 “health care providers and”;

12 (10) in subsection (k), as so redesignated—

13 (A) in paragraph (2), by striking “40 per-
14 cent” and inserting “20 percent”; and

15 (B) in paragraph (3), by striking “(such as
16 laying cable or telephone lines, or purchasing or
17 installing microwave towers, satellite dishes,
18 amplifiers, or digital switching equipment)”;

19 (11) by striking subsections (q) and (r) and in-
20 serting the following:

21 “(p) REPORT.—Not later than 4 years after the date
22 of enactment of the CARES Act, and every 5 years there-
23 after, the Secretary shall prepare and submit to the Com-
24 mittee on Health, Education, Labor, and Pensions of the
25 Senate and the Committee on Energy and Commerce of

1 the House of Representatives a report on the activities and
2 outcomes of the grant programs under subsection (b).”;

3 (12) by redesignating subsection (s) as sub-
4 section (q); and

5 (13) in subsection (q), as so redesignated, by
6 striking “this section—” and all that follows
7 through the end of paragraph (2) and inserting
8 “this section \$29,000,000 for each of fiscal years
9 2021 through 2025.”.

10 **SEC. 4214. RURAL HEALTH CARE SERVICES OUTREACH,**
11 **RURAL HEALTH NETWORK DEVELOPMENT,**
12 **AND SMALL HEALTH CARE PROVIDER QUAL-**
13 **ITY IMPROVEMENT GRANT PROGRAMS.**

14 Section 330A of the Public Health Service Act (42
15 U.S.C. 254c) is amended—

16 (1) in subsection (d)(2)—

17 (A) in subparagraph (A), by striking “es-
18 sential” and inserting “basic”; and

19 (B) in subparagraph (B)—

20 (i) in the matter preceding clause (i),
21 by inserting “to” after “grants”; and

22 (ii) in clauses (i), (ii), and (iii), by
23 striking “to” each place such term ap-
24 pears;

25 (2) in subsection (e)—

1 (A) in paragraph (1)—

2 (i) by inserting “improving and” after
3 “outreach by”;

4 (ii) by inserting “, through community
5 engagement and evidence-based or innova-
6 tive, evidence-informed models” before the
7 period of the first sentence; and

8 (iii) by striking “3 years” and insert-
9 ing “5 years”;

10 (B) in paragraph (2)—

11 (i) in the matter preceding subpara-
12 graph (A), by inserting “shall” after “enti-
13 ty”;

14 (ii) in subparagraph (A), by striking
15 “shall be a rural public or rural nonprofit
16 private entity” and inserting “be an entity
17 with demonstrated experience serving, or
18 the capacity to serve, rural underserved
19 populations”;

20 (iii) in subparagraphs (B) and (C), by
21 striking “shall” each place such term ap-
22 pears; and

23 (iv) in subparagraph (B)—

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1 (I) in the matter preceding clause
2 (i), by inserting “that” after “mem-
3 bers”; and

4 (II) in clauses (i) and (ii), by
5 striking “that” each place such term
6 appears; and

7 (C) in paragraph (3)(C), by striking “the
8 local community or region” and inserting “the
9 rural underserved populations in the local com-
10 munity or region”;

11 (3) in subsection (f)—

12 (A) in paragraph (1)—

13 (i) in subparagraph (A)—

14 (I) in the matter preceding clause
15 (i), by striking “promote, through
16 planning and implementation, the de-
17 velopment of integrated health care
18 networks that have combined the
19 functions of the entities participating
20 in the networks” and inserting “plan,
21 develop, and implement integrated
22 health care networks that collabo-
23 rate”; and

24 (II) in clause (ii), by striking
25 “essential health care services” and

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1 inserting “basic health care services
2 and associated health outcomes”; and
3 (ii) by amending subparagraph (B) to
4 read as follows:

5 “(B) GRANT PERIODS.—The Director may
6 award grants under this subsection for periods
7 of not more than 5 years.”;

8 (B) in paragraph (2)—

9 (i) in the matter preceding subpara-
10 graph (A), by inserting “shall” after “enti-
11 ty”;

12 (ii) in subparagraph (A), by striking
13 “shall be a rural public or rural nonprofit
14 private entity” and inserting “be an entity
15 with demonstrated experience serving, or
16 the capacity to serve, rural underserved
17 populations”;

18 (iii) in subparagraph (B)—

19 (I) in the matter preceding clause

20 (i)—

21 (aa) by striking “shall”; and

22 (bb) by inserting “that”

23 after “participants”; and

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1 (II) in clauses (i) and (ii), by
2 striking “that” each place such term
3 appears; and

4 (iv) in subparagraph (C), by striking
5 “shall”; and

6 (C) in paragraph (3)—

7 (i) by amending clause (iii) of sub-
8 paragraph (C) to read as follows:

9 “(iii) how the rural underserved popu-
10 lations in the local community or region to
11 be served will benefit from and be involved
12 in the development and ongoing operations
13 of the network;” and

14 (ii) in subparagraph (D), by striking
15 “the local community or region” and in-
16 serting “the rural underserved populations
17 in the local community or region”;

18 (4) in subsection (g)—

19 (A) in paragraph (1)—

20 (i) by inserting “, including activities
21 related to increasing care coordination, en-
22 hancing chronic disease management, and
23 improving patient health outcomes” before
24 the period of the first sentence; and

1 (ii) by striking “3 years” and insert-
2 ing “5 years”;
3 (B) in paragraph (2)—

4 (i) in the matter preceding subpara-
5 graph (A), by inserting “shall” after “enti-
6 ty”;

7 (ii) in subparagraphs (A) and (B), by
8 striking “shall” each place such term ap-
9 pears; and

10 (iii) in subparagraph (A)(ii), by in-
11 serting “or regional” after “local”; and

12 (C) in paragraph (3)(D), by striking “the
13 local community or region” and inserting “the
14 rural underserved populations in the local com-
15 munity or region”;

16 (5) in subsection (h)(3), in the matter pre-
17 ceding subparagraph (A), by inserting “, as appro-
18 priate,” after “the Secretary”;

19 (6) by amending subsection (i) to read as fol-
20 lows:

21 “(i) REPORT.—Not later than 4 years after the date
22 of enactment of the CARES Act, and every 5 years there-
23 after, the Secretary shall prepare and submit to the Com-
24 mittee on Health, Education, Labor, and Pensions of the
25 Senate and the Committee on Energy and Commerce of

1 the House of Representatives a report on the activities and
2 outcomes of the grant programs under subsections (e), (f),
3 and (g), including the impact of projects funded under
4 such programs on the health status of rural residents with
5 chronic conditions.”; and

6 (7) in subsection (j), by striking “\$45,000,000
7 for each of fiscal years 2008 through 2012” and in-
8 serting “\$79,500,000 for each of fiscal years 2021
9 through 2025”.

10 **SEC. 4215. UNITED STATES PUBLIC HEALTH SERVICE MOD-**
11 **ERNIZATION.**

12 (a) COMMISSIONED CORPS AND READY RESERVE
13 CORPS.—Section 203 of the Public Health Service Act (42
14 U.S.C. 204) is amended—

15 (1) in subsection (a)(1), by striking “a Ready
16 Reserve Corps for service in time of national emer-
17 gency” and inserting “, for service in time of a pub-
18 lic health or national emergency, a Ready Reserve
19 Corps”; and

20 (2) in subsection (c)—

21 (A) in the heading, by striking “RE-
22 SEARCH” and inserting “RESERVE CORPS”;

23 (B) in paragraph (1), by inserting “during
24 public health or national emergencies” before
25 the period;

1 (C) in paragraph (2)—

2 (i) in the matter preceding subpara-
3 graph (A), by inserting “, consistent with
4 paragraph (1)” after “shall”;

5 (ii) in subparagraph (C), by inserting
6 “during such emergencies” after “mem-
7 bers”; and

8 (iii) in subparagraph (D), by inserting
9 “, consistent with subparagraph (C)” be-
10 fore the period; and

11 (D) by adding at the end the following:

12 “(3) STATUTORY REFERENCES TO RESERVE.—

13 A reference in any Federal statute, except in the
14 case of subsection (b), to the ‘Reserve Corps’ of the
15 Public Health Service or to the ‘reserve’ of the Pub-
16 lic Health Service shall be deemed to be a reference
17 to the Ready Reserve Corps.”.

18 (b) DEPLOYMENT READINESS.—Section
19 203A(a)(1)(B) of the Public Health Service Act (42
20 U.S.C. 204a(a)(1)(B)) is amended by striking “Active Re-
21 serves” and inserting “Ready Reserve Corps”.

22 (c) RETIREMENT OF COMMISSIONED OFFICERS.—
23 Section 211 of the Public Health Service Act (42 U.S.C.
24 212) is amended—

1 (1) by striking “the Service” each place it ap-
2 pears and inserting “the Regular Corps”;

3 (2) in subsection (a)(4), by striking “(in the
4 case of an officer in the Reserve Corps)”;

5 (3) in subsection (c)—

6 (A) in paragraph (1)—

7 (i) by striking “or an officer of the
8 Reserve Corps”; and

9 (ii) by inserting “or under section
10 221(a)(19)” after “subsection (a)”; and

11 (B) in paragraph (2), by striking “Regular
12 or Reserve Corps” and inserting “Regular
13 Corps or Ready Reserve Corps”; and

14 (4) in subsection (f), by striking “the Regular
15 or Reserve Corps of”.

16 (d) RIGHTS, PRIVILEGES, ETC. OF OFFICERS AND
17 SURVIVING BENEFICIARIES.—Section 221 of the Public
18 Health Service Act (42 U.S.C. 213a) is amended—

19 (1) in subsection (a), by adding at the end the
20 following:

21 “(19) Chapter 1223, Retired Pay for Non-Reg-
22 ular Service.

23 “(20) Section 12601, Compensation: Reserve on
24 active duty accepting from any person.

1 “(21) Section 12684, Reserves: separation for
2 absence without authority or sentence to imprison-
3 ment.”; and

4 (2) in subsection (b)—

5 (A) by striking “Secretary of Health, Edu-
6 cation, and Welfare or his designee” and insert-
7 ing “Secretary of Health and Human Services
8 or the designee of such secretary”;

9 (B) by striking “(b) The authority vested”
10 and inserting the following:

11 “(b)(1) The authority vested”;

12 (C) by striking “For purposes of” and in-
13 serting the following:

14 “(2) For purposes of”; and

15 (D) by adding at the end the following:

16 “(3) For purposes of paragraph (19) of subsection
17 (a), the terms ‘Military department’, ‘Secretary con-
18 cerned’, and ‘Armed forces’ in such title 10 shall be
19 deemed to include, respectively, the Department of Health
20 and Human Services, the Secretary of Health and Human
21 Services, and the Commissioned Corps.”.

22 (e) TECHNICAL AMENDMENTS.—Title II of the Pub-
23 lic Health Service Act (42 U.S.C. 202 et seq.) is amend-
24 ed—

1 (1) in sections 204 and 207(c), by striking
2 “Regular or Reserve Corps” each place it appears
3 and inserting “Regular Corps or Ready Reserve
4 Corps”;

5 (2) in section 208(a), by striking “Regular and
6 Reserve Corps” each place it appears and inserting
7 “Regular Corps and Ready Reserve Corps”; and

8 (3) in section 205(c), 206(c), 210, and 219,
9 and in subsections (a), (b), and (d) of section 207,
10 by striking “Reserve Corps” each place it appears
11 and inserting “Ready Reserve Corps”.

12 **SEC. 4216. LIMITATION ON LIABILITY FOR VOLUNTEER**
13 **HEALTH CARE PROFESSIONALS DURING**
14 **COVID-19 EMERGENCY RESPONSE.**

15 (a) **LIMITATION ON LIABILITY.**—Except as provided
16 in subsection (b), a health care professional shall not be
17 liable under Federal or State law for any harm caused
18 by an act or omission of the professional in the provision
19 of health care services during the public health emergency
20 declared by the Secretary of Health and Human Services
21 (referred to in this section as the “Secretary”) pursuant
22 to section 319 of the Public Health Service Act (42 U.S.C.
23 247d) on January 31, 2020 with respect to COVID-19,
24 if—

1 (1) the professional is providing health care
2 services in response to such public health emergency,
3 as a volunteer; and

4 (2) the act or omission occurs—

5 (A) in the course of providing health care
6 services;

7 (B) in the health care professional's capac-
8 ity as a volunteer;

9 (C) in the course of providing health care
10 services that are within the scope of the license,
11 registration, or certification of the volunteer, as
12 defined by the State of licensure, registration,
13 or certification; and

14 (D) in a good faith belief that the indi-
15 vidual being treated is in need of health care
16 services.

17 (b) EXCEPTIONS.—Subsection (a) does not apply if—

18 (1) the harm was caused by an act or omission
19 constituting willful or criminal misconduct, gross
20 negligence, reckless misconduct, or a conscious fla-
21 grant indifference to the rights or safety of the indi-
22 vidual harmed by the health care professional; or

23 (2) the health care professional rendered the
24 health care services under the influence (as deter-

1 mined pursuant to applicable State law) of alcohol
2 or an intoxicating drug.

3 (c) PREEMPTION.—

4 (1) IN GENERAL.—This section preempts the
5 laws of a State or any political subdivision of a State
6 to the extent that such laws are inconsistent with
7 this section, unless such laws provide greater protec-
8 tion from liability.

9 (2) VOLUNTEER PROTECTION ACT.—Protec-
10 tions afforded by this section are in addition to those
11 provided by the Volunteer Protection Act of 1997
12 (Public Law 105–19).

13 (d) DEFINITIONS.—In this section—

14 (1) the term “harm” includes physical, non-
15 physical, economic, and noneconomic losses;

16 (2) the term “health care professional” means
17 an individual who is licensed, registered, or certified
18 under Federal or State law to provide health care
19 services;

20 (3) the term “health care services” means any
21 services provided by a health care professional, or by
22 any individual working under the supervision of a
23 health care professional that relate to—

24 (A) the diagnosis, prevention, or treatment
25 of COVID-19; or

1 (B) the assessment or care of the health of
2 a human being; and

3 (4) the term “volunteer” means a health care
4 professional who, with respect to the health care
5 services rendered, does not receive compensation or
6 any other thing of value in lieu of compensation,
7 which compensation—

8 (A) includes a payment under any insur-
9 ance policy or health plan, or under any Fed-
10 eral or State health benefits program; and

11 (B) excludes receipt of items to be used ex-
12 clusively for rendering health care services in
13 the health care professional’s capacity as a vol-
14 unteer described in subsection (a)(1).

15 (e) EFFECTIVE DATE.—This section shall take effect
16 upon the date of enactment of this Act, and applies to
17 a claim for harm only if the act or omission that caused
18 such harm occurred on or after the date of enactment.

19 (f) SUNSET.—This section shall be in effect only for
20 the length of the public health emergency declared by the
21 Secretary of Health and Human Services (referred to in
22 this section as the “Secretary”) pursuant to section 319
23 of the Public Health Service Act (42 U.S.C. 247d) on Jan-
24 uary 31, 2020 with respect to COVID-19.

1 **PART III—MISCELLANEOUS PROVISIONS**

2 **SEC. 4221. CONFIDENTIALITY AND DISCLOSURE OF**
3 **RECORDS RELATING TO SUBSTANCE USE DIS-**
4 **ORDER.**

5 (a) CONFORMING CHANGES RELATING TO SUB-
6 STANCE USE DISORDER.—Subsections (a) and (h) of sec-
7 tion 543 of the Public Health Service Act (42 U.S.C.
8 290dd–2) are each amended by striking “substance
9 abuse” and inserting “substance use disorder”.

10 (b) DISCLOSURES TO COVERED ENTITIES CON-
11 SISTENT WITH HIPAA.—Paragraph (1) of section 543(b)
12 of the Public Health Service Act (42 U.S.C. 290dd–2(b))
13 is amended to read as follows:

14 “(1) CONSENT.—The following shall apply with
15 respect to the contents of any record referred to in
16 subsection (a):

17 “(A) Such contents may be used or dis-
18 closed in accordance with the prior written con-
19 sent of the patient with respect to whom such
20 record is maintained.

21 “(B) Once prior written consent of the pa-
22 tient has been obtained, such contents may be
23 used or disclosed by a covered entity, business
24 associate, or a program subject to this section
25 for purposes of treatment, payment, and health
26 care operations as permitted by the HIPAA

1 regulations. Any information so disclosed may
2 then be redisclosed in accordance with the
3 HIPAA regulations. Section 13405(c) of the
4 Health Information Technology and Clinical
5 Health Act (42 U.S.C. 17935(c)) shall apply to
6 all disclosures pursuant to subsection (b)(1) of
7 this section.

8 “(C) It shall be permissible for a patient’s
9 prior written consent to be given once for all
10 such future uses or disclosures for purposes of
11 treatment, payment, and health care operations,
12 until such time as the patient revokes such con-
13 sent in writing.

14 “(D) Section 13405(a) of the Health In-
15 formation Technology and Clinical Health Act
16 (42 U.S.C. 17935(a)) shall apply to all disclo-
17 sures pursuant to subsection (b)(1) of this sec-
18 tion.”.

19 (c) DISCLOSURES OF DE-IDENTIFIED HEALTH IN-
20 FORMATION TO PUBLIC HEALTH AUTHORITIES.—Para-
21 graph (2) of section 543(b) of the Public Health Service
22 Act (42 U.S.C. 290dd–2(b)), is amended by adding at the
23 end the following:

24 “(D) To a public health authority, so long
25 as such content meets the standards established

1 in section 164.514(b) of title 45, Code of Fed-
2 eral Regulations (or successor regulations) for
3 creating de-identified information.”.

4 (d) DEFINITIONS.—Section 543 of the Public Health
5 Service Act (42 U.S.C. 290dd-2) is amended by adding
6 at the end the following:

7 “(k) DEFINITIONS.—For purposes of this section:

8 “(1) BREACH.—The term ‘breach’ has the
9 meaning given such term for purposes of the HIPAA
10 regulations.

11 “(2) BUSINESS ASSOCIATE.—The term ‘busi-
12 ness associate’ has the meaning given such term for
13 purposes of the HIPAA regulations.

14 “(3) COVERED ENTITY.—The term ‘covered en-
15 tity’ has the meaning given such term for purposes
16 of the HIPAA regulations.

17 “(4) HEALTH CARE OPERATIONS.—The term
18 ‘health care operations’ has the meaning given such
19 term for purposes of the HIPAA regulations.

20 “(5) HIPPA REGULATIONS.—The term
21 ‘HIPAA regulations’ has the meaning given such
22 term for purposes of parts 160 and 164 of title 45,
23 Code of Federal Regulations.

1 “(6) PAYMENT.—The term ‘payment’ has the
2 meaning given such term for purposes of the HIPAA
3 regulations.

4 “(7) PUBLIC HEALTH AUTHORITY.—The term
5 ‘public health authority’ has the meaning given such
6 term for purposes of the HIPAA regulations.

7 “(8) TREATMENT.—The term ‘treatment’ has
8 the meaning given such term for purposes of the
9 HIPAA regulations.

10 “(9) UNSECURED PROTECTED HEALTH INFOR-
11 MATION.—The term ‘unprotected health information’
12 has the meaning given such term for purposes of the
13 HIPAA regulations.”.

14 (e) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-
15 MINISTRATIVE INVESTIGATIONS, ACTIONS, OR PRO-
16 CEEDINGS.—Subsection (c) of section 543 of the Public
17 Health Service Act (42 U.S.C. 290dd–2(c)) is amended
18 to read as follows:

19 “(c) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-
20 MINISTRATIVE CONTEXTS.—Except as otherwise author-
21 ized by a court order under subsection (b)(2)(C) or by the
22 consent of the patient, a record referred to in subsection
23 (a), or testimony relaying the information contained there-
24 in, may not be disclosed or used in any civil, criminal, ad-
25 ministrative, or legislative proceedings conducted by any

1 Federal, State, or local authority, including with respect
2 to the following activities:

3 “(1) Such record or testimony shall not be en-
4 tered into evidence in any criminal prosecution or
5 civil action before a Federal or State court.

6 “(2) Such record or testimony shall not form
7 part of the record for decision or otherwise be taken
8 into account in any proceeding before a Federal,
9 State, or local agency.

10 “(3) Such record or testimony shall not be used
11 by any Federal, State, or local agency for a law en-
12 forcement purpose or to conduct any law enforce-
13 ment investigation.

14 “(4) Such record or testimony shall not be used
15 in any application for a warrant.”.

16 (f) PENALTIES.—Subsection (f) of section 543 of the
17 Public Health Service Act (42 U.S.C. 290dd–2) is amend-
18 ed to read as follows:

19 “(f) PENALTIES.—The provisions of sections 1176
20 and 1177 of the Social Security Act shall apply to a viola-
21 tion of this section to the extent and in the same manner
22 as such provisions apply to a violation of part C of title
23 XI of such Act. In applying the previous sentence—

24 “(1) the reference to ‘this subsection’ in sub-
25 section (a)(2) of such section 1176 shall be treated

1 as a reference to ‘this subsection (including as ap-
2 plied pursuant to section 543(f) of the Public Health
3 Service Act)’; and

4 “(2) in subsection (b) of such section 1176—

5 “(A) each reference to ‘a penalty imposed
6 under subsection (a)’ shall be treated as a ref-
7 erence to ‘a penalty imposed under subsection
8 (a) (including as applied pursuant to section
9 543(f) of the Public Health Service Act)’; and

10 “(B) each reference to ‘no damages ob-
11 tained under subsection (d)’ shall be treated as
12 a reference to ‘no damages obtained under sub-
13 section (d) (including as applied pursuant to
14 section 543(f) of the Public Health Service
15 Act)’.”.

16 (g) ANTIDISCRIMINATION.—Section 543 of the Public
17 Health Service Act (42 U.S.C. 290dd–2) is amended by
18 inserting after subsection (h) the following:

19 “(i) ANTIDISCRIMINATION.—

20 “(1) IN GENERAL.—No entity shall discrimi-
21 nate against an individual on the basis of informa-
22 tion received by such entity pursuant to an inad-
23 vertent or intentional disclosure of records, or infor-
24 mation contained in records, described in subsection
25 (a) in—

1 “(A) admission, access to, or treatment for
2 health care;

3 “(B) hiring, firing, or terms of employ-
4 ment, or receipt of worker’s compensation;

5 “(C) the sale, rental, or continued rental of
6 housing;

7 “(D) access to Federal, State, or local
8 courts; or

9 “(E) access to, approval of, or mainte-
10 nance of social services and benefits provided or
11 funded by Federal, State, or local governments.

12 “(2) RECIPIENTS OF FEDERAL FUNDS.—No re-
13 cipient of Federal funds shall discriminate against
14 an individual on the basis of information received by
15 such recipient pursuant to an intentional or inad-
16 vertent disclosure of such records or information
17 contained in records described in subsection (a) in
18 affording access to the services provided with such
19 funds.”.

20 (h) NOTIFICATION IN CASE OF BREACH.—Section
21 543 of the Public Health Service Act (42 U.S.C. 290dd–
22 2), as amended by subsection (g), is further amended by
23 inserting after subsection (i) the following:

24 “(j) NOTIFICATION IN CASE OF BREACH.—The pro-
25 visions of section 13402 of the HITECH Act (42 U.S.C.

1 17932) shall apply to a program or activity described in
2 subsection (a), in case of a breach of records described
3 in subsection (a), to the same extent and in the same man-
4 ner as such provisions apply to a covered entity in the
5 case of a breach of unsecured protected health informa-
6 tion.”.

7 (i) REGULATIONS.—

8 (1) IN GENERAL.—The Secretary of Health and
9 Human Services, in consultation with appropriate
10 Federal agencies, shall make such revisions to regu-
11 lations as may be necessary for implementing and
12 enforcing the amendments made by this section,
13 such that such amendments shall apply with respect
14 to uses and disclosures of information occurring on
15 or after the date that is 12 months after the date
16 of enactment of this Act.

17 (2) EASILY UNDERSTANDABLE NOTICE OF PRI-
18 VACY PRACTICES.—Not later than 1 year after the
19 date of enactment of this Act, the Secretary of
20 Health and Human Services, in consultation with
21 appropriate legal, clinical, privacy, and civil rights
22 experts, shall update section 164.520 of title 45,
23 Code of Federal Regulations, so that covered entities
24 and entities creating or maintaining the records de-
25 scribed in subsection (a) provide notice, written in

1 plain language, of privacy practices regarding pa-
2 tient records referred to in section 543(a) of the
3 Public Health Service Act (42 U.S.C. 290dd-2(a)),
4 including—

5 (A) a statement of the patient's rights, in-
6 cluding self-pay patients, with respect to pro-
7 tected health information and a brief descrip-
8 tion of how the individual may exercise these
9 rights (as required by subsection (b)(1)(iv) of
10 such section 164.520); and

11 (B) a description of each purpose for
12 which the covered entity is permitted or re-
13 quired to use or disclose protected health infor-
14 mation without the patient's written authoriza-
15 tion (as required by subsection (b)(2) of such
16 section 164.520).

17 (j) RULES OF CONSTRUCTION.—Nothing in this title
18 or the amendments made by this title shall be construed
19 to limit—

20 (1) a patient's right, as described in section
21 164.522 of title 45, Code of Federal Regulations, or
22 any successor regulation, to request a restriction on
23 the use or disclosure of a record referred to in sec-
24 tion 543(a) of the Public Health Service Act (42

1 U.S.C. 290dd–2(a)) for purposes of treatment, pay-
2 ment, or health care operations; or

3 (2) a covered entity’s choice, as described in
4 section 164.506 of title 45, Code of Federal Regula-
5 tions, or any successor regulation, to obtain the con-
6 sent of the individual to use or disclose a record re-
7 ferred to in such section 543(a) to carry out treat-
8 ment, payment, or health care operation.

9 (k) SENSE OF CONGRESS.—It is the sense of the
10 Congress that—

11 (1) any person treating a patient through a
12 program or activity with respect to which the con-
13 fidentiality requirements of section 543 of the Public
14 Health Service Act (42 U.S.C. 290dd–2) apply is en-
15 couraged to access the applicable State-based pre-
16 scription drug monitoring program when clinically
17 appropriate;

18 (2) patients have the right to request a restric-
19 tion on the use or disclosure of a record referred to
20 in section 543(a) of the Public Health Service Act
21 (42 U.S.C. 290dd–2(a)) for treatment, payment, or
22 health care operations;

23 (3) covered entities should make every reason-
24 able effort to the extent feasible to comply with a

1 patient's request for a restriction regarding such use
2 or disclosure;

3 (4) for purposes of applying section 164.501 of
4 title 45, Code of Federal Regulations, the definition
5 of health care operations shall have the meaning
6 given such term in such section, except that clause
7 (v) of paragraph (6) shall not apply; and

8 (5) programs creating records referred to in
9 section 543(a) of the Public Health Service Act (42
10 U.S.C. 290dd-2(a)) should receive positive incen-
11 tives for discussing with their patients the benefits
12 to consenting to share such records.

13 **SEC. 4222. NUTRITION SERVICES.**

14 (a) **DEFINITIONS.**—In this section, the terms “As-
15 sistant Secretary”, “Secretary”, “State agency”, and
16 “area agency on aging” have the meanings given the
17 terms in section 102 of the Older Americans Act of 1965
18 (42 U.S.C. 3002).

19 (b) **NUTRITION SERVICES TRANSFER CRITERIA.**—
20 During any portion of the COVID-19 public health emer-
21 gency declared under section 319 of the Public Health
22 Service Act (42 U.S.C. 247d), the Secretary shall allow
23 a State agency or an area agency on aging, without prior
24 approval, to transfer not more than 100 percent of the
25 funds received by the State agency or area agency on

1 aging, respectively, and attributable to funds appropriated
2 under paragraph (1) or (2) of section 303(b) of the Older
3 Americans Act of 1965 (42 U.S.C. 3023(b)), between sub-
4 part 1 and subpart 2 of part C (42 U.S.C. 3030d–2 et
5 seq.) for such use as the State agency or area agency on
6 aging, respectively, considers appropriate to meet the
7 needs of the State or area served.

8 (c) HOME-DELIVERED NUTRITION SERVICES WAIV-
9 ER.—For purposes of State agencies determining the de-
10 livery of nutrition services under section 337 of the Older
11 Americans Act of 1965 (42 U.S.C. 3030g), during the pe-
12 riod of the COVID–19 public health emergency declared
13 under section 319 of the Public Health Service Act (42
14 U.S.C. 247d), the same meaning shall be given to an indi-
15 vidual who is unable to obtain nutrition because the indi-
16 vidual is practicing social distancing due to the emergency
17 as is given to an individual who is homebound by reason
18 of illness.

Comment [dk44]: Good provision.

19 (d) DIETARY GUIDELINES WAIVER.—To facilitate
20 implementation of subparts 1 and 2 of part C of title III
21 of the Older Americans Act of 1965 (42 U.S.C. 3030d–
22 2 et seq.) during any portion of the COVID-19 public
23 health emergency declared under section 319 of the Public
24 Health Service Act (42 U.S.C. 247d), the Assistant Sec-
25 retary shall waive the requirements for meals provided

1 under those subparts to comply with the requirements of
2 clauses (i) and (ii) of section 339(2)(A) of such Act (42
3 U.S.C. 3030g–21(2)(A)).

4 **SEC. 4223. GUIDANCE ON PROTECTED HEALTH INFORMA-**
5 **TION.**

6 Not later than 180 days after the date of enactment
7 of this Act, the Secretary of Health and Human Services
8 shall issue guidance on the sharing of patients' protected
9 health information pursuant to section 160.103 of title 45,
10 Code of Federal Regulations (or any successor regula-
11 tions) during the public health emergency declared by the
12 Secretary of Health and Human Services under section
13 319 of the Public Health Service Act (42 U.S.C. 247d)
14 with respect to COVID-19, during the emergency involv-
15 ing Federal primary responsibility determined to exist by
16 the President under section 501(b) of the Robert T. Staf-
17 ford Disaster Relief and Emergency Assistance Act (42
18 U.S.C. 5191(b)) with respect to COVID-19, and during
19 the national emergency declared by the President under
20 the National Emergencies Act (50 U.S.C. 1601 et seq.)
21 with respect to COVID-19. Such guidance shall include
22 information on compliance with the regulations promul-
23 gated pursuant to section 264(c) of the Health Insurance
24 Portability and Accountability Act of 1996 (42 U.S.C.

1 1320d–2 note) and applicable policies, including such poli-
2 cies that may come into effect during such emergencies.

3 **SEC. 4224. REAUTHORIZATION OF HEALTHY START PRO-**
4 **GRAM.**

5 Section 330H of the Public Health Service Act (42
6 U.S.C. 254c–8) is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (1), by striking “, during
9 fiscal year 2001 and subsequent years,”; and

10 (B) in paragraph (2), by inserting “or in-
11 creasing above the national average” after
12 “areas with high”;

13 (2) in subsection (b)—

14 (A) in paragraph (1), by striking “con-
15 sumers of project services, public health depart-
16 ments, hospitals, health centers under section
17 330” and inserting “participants and former
18 participants of project services, public health
19 departments, hospitals, health centers under
20 section 330, State substance abuse agencies”;
21 and

22 (B) in paragraph (2)—

23 (i) in subparagraph (A), by striking
24 “such as low birthweight” and inserting
25 “including poor birth outcomes (such as

1 1320d–2 note) and applicable policies, including such poli-
2 cies that may come into effect during such emergencies.

3 (ii) by redesignating subparagraph
4 (B) as subparagraph (C);

5 (iii) by inserting after subparagraph
6 (A), the following:

7 “(B) Communities with—

8 “(i) high rates of infant mortality or
9 poor perinatal outcomes; or

10 “(ii) high rates of infant mortality or
11 poor perinatal outcomes in specific sub-
12 populations within the community.”; and

13 (iv) in subparagraph (C) (as so redes-
14 ignated)—

15 (I) by redesignating clauses (i)
16 and (ii) as clauses (ii) and (iii), re-
17 spectively;

18 (II) by inserting before clause (ii)
19 (as so redesignated) the following:

20 “(i) collaboration with the local com-
21 munity in the development of the project;”;

22 (III) in clause (ii) (as so redesign-
23 ated), by striking “and” at the end;

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1 (IV) in clause (iii) (as so redesignated), by striking the period and inserting “; and”; and

4 (V) by adding at the end the following:

6 “(iv) the use and collection of data demonstrating the effectiveness of such program in decreasing infant mortality rates and improving perinatal outcomes, as applicable, or the process by which new applicants plan to collect this data.”;

12 (3) in subsection (c)—

13 (A) by striking “Recipients of grants” and inserting the following:

15 “(1) IN GENERAL.—Recipients of grants”; and

16 (B) by adding at the end the following:

17 “(2) OTHER PROGRAMS.—The Secretary shall ensure coordination of the program carried out pursuant to this section with other programs and activities related to the reduction of the rate of infant mortality and improved perinatal and infant health outcomes supported by the Department.”;

23 (4) in subsection (e)—

24 (A) in paragraph (1), by striking “appropriated—” and all that follows through the end

1 and inserting “appropriated \$122,500,000 for
2 each of fiscal years 2020 through 2024.”; and

3 (B) in paragraph (2)(B), by adding at the
4 end the following: “Evaluations may also in-
5 clude, to the extent practicable, information re-
6 lated to—

7 “(i) progress toward achieving any
8 grant metrics or outcomes related to re-
9 ducing infant mortality rates, improving
10 perinatal outcomes, or reducing the dis-
11 parity in health status;

12 “(ii) recommendations on potential
13 improvements that may assist with ad-
14 dressing gaps, as applicable and appro-
15 priate; and

16 “(iii) the extent to which the grantee
17 coordinated with the community in which
18 the grantee is located in the development
19 of the project and delivery of services, in-
20 cluding with respect to technical assistance
21 and mentorship programs.”; and

22 (5) by adding at the end the following:

23 “(f) GAO REPORT.—

24 “(1) IN GENERAL.—Not later than 4 years
25 after the date of the enactment of this subsection,

1 the Comptroller General of the United States shall
2 conduct an independent evaluation, and submit to
3 the appropriate Committees of Congress a report,
4 concerning the Healthy Start program under this
5 section.

6 “(2) EVALUATION.—In conducting the evalua-
7 tion under paragraph (1), the Comptroller General
8 shall consider, as applicable and appropriate, infor-
9 mation from the evaluations under subsection
10 (e)(2)(B).

11 “(3) REPORT.—The report described in para-
12 graph (1) shall review, assess, and provide rec-
13 ommendations, as appropriate, on the following:

14 “(A) The allocation of Healthy Start pro-
15 gram grants by the Health Resources and Serv-
16 ices Administration, including considerations
17 made by such Administration regarding dispari-
18 ties in infant mortality or perinatal outcomes
19 among urban and rural areas in making such
20 awards.

21 “(B) Trends in the progress made toward
22 meeting the evaluation criteria pursuant to sub-
23 section (e)(2)(B), including programs which de-
24 crease infant mortality rates and improve
25 perinatal outcomes, programs that have not de-

1 creased infant mortality rates or improved
2 perinatal outcomes, and programs that have
3 made an impact on disparities in infant mor-
4 tality or perinatal outcomes.

5 “(C) The ability of grantees to improve
6 health outcomes for project participants, pro-
7 mote the awareness of the Healthy Start pro-
8 gram services, incorporate and promote family
9 participation, facilitate coordination with the
10 community in which the grantee is located, and
11 increase grantee accountability through quality
12 improvement, performance monitoring, evalua-
13 tion, and the effect such metrics may have to-
14 ward decreasing the rate of infant mortality
15 and improving perinatal outcomes.

16 “(D) The extent to which such Federal
17 programs are coordinated across agencies and
18 the identification of opportunities for improved
19 coordination in such Federal programs and ac-
20 tivities.”.

21 **Subtitle C—Innovation**

22 **SEC. 4301. REMOVING THE CAP ON OTA.**

23 Section 319L(c)(5)(A)(ii) of the Public Health Serv-
24 ice Act (42 U.S.C. 247d–7e(c)(5)(A)(ii)) is amended to
25 read as follows:

1 “(ii) LIMITATIONS ON AUTHORITY.—

2 To the maximum extent practicable, com-
3 petitive procedures shall be used when en-
4 tering into transactions to carry out
5 projects under this subsection.”.

6 **SEC. 4302. EXTENDING THE PRIORITY REVIEW PROGRAM**
7 **FOR AGENTS THAT PRESENT NATIONAL SE-**
8 **CURITY THREATS.**

9 Section 565A of the Federal Food, Drug, and Cos-
10 metic Act (21 U.S.C. 360bbb–4a) is amended by striking
11 subsection (g).

12 **SEC. 4303. PRIORITY ZOONOTIC ANIMAL DRUGS.**

13 Chapter V of the Federal Food, Drug, and Cosmetic
14 Act (21 U.S.C. 351 et seq.) is amended by inserting after
15 section 512 the following:

16 **“SEC. 512A. PRIORITY ZOONOTIC ANIMAL DRUGS.**

17 **“(a) IN GENERAL.—**The Secretary shall, at the re-
18 quest of the sponsor intending to submit an application
19 for approval of a new animal drug under section 512(b)(1)
20 or an application for conditional approval of a new animal
21 drug under section 571, expedite the development and re-
22 view of such new animal drug if preliminary clinical evi-
23 dence indicates that the new animal drug, alone or in com-
24 bination with 1 or more other animal drugs, has the poten-
25 tial to prevent or treat a zoonotic disease in animals, in-

cluding a vector borne-disease, that has the potential to
cause serious adverse health consequences for, or serious
or life-threatening diseases in, humans.

“(b) REQUEST FOR DESIGNATION.—The sponsor of
a new animal drug may request the Secretary to designate
a new animal drug described in subsection (a) as a priority
zoonotic animal drug. A request for the designation may
be made concurrently with, or at any time after, the open-
ing of an investigational new animal drug file under sec-
tion 512(j) or the filing of an application under section
512(b)(1) or 571.

“(c) DESIGNATION.—

“(1) IN GENERAL.—Not later than 60 calendar
days after the receipt of a request under subsection
(b), the Secretary shall determine whether the new
animal drug that is the subject of the request meets
the criteria described in subsection (a). If the Sec-
retary determines that the new animal drug meets
the criteria, the Secretary shall designate the new
animal drug as a priority zoonotic animal drug and
shall take such actions as are appropriate to expe-
dite the development and review of the application
for approval or conditional approval of such new ani-
mal drug.

Comment [dk45]: Also seems a good provision. Can the probability of transfer to humans and the associated damage to use be assessed ahead of time with sufficient accuracy to target this spending? If not, then the bottleneck in the US is not research like this but developing better monitoring, risk assessment, and threat evaluation for pandemics overall. My understanding was that we did this fairly well after 9/11 (due to concerns over bioterrorism) – so maybe those structures could be reviewed now.

1 “(2) ACTIONS.—The actions to expedite the de-
2 velopment and review of an application under para-
3 graph (1) may include, as appropriate—

4 “(A) taking steps to ensure that the design
5 of clinical trials is as efficient as practicable,
6 when scientifically appropriate, such as by uti-
7 lizing novel trial designs or drug development
8 tools (including biomarkers) that may reduce
9 the number of animals needed for studies;

10 “(B) providing timely advice to, and inter-
11 active communication with, the sponsor (which
12 may include meetings with the sponsor and re-
13 view team) regarding the development of the
14 new animal drug to ensure that the develop-
15 ment program to gather the nonclinical and
16 clinical data necessary for approval is as effi-
17 cient as practicable;

18 “(C) involving senior managers and review
19 staff with experience in zoonotic or vector-borne
20 disease to facilitate collaborative, cross-discipli-
21 nary review, including, as appropriate, across
22 agency centers; and

23 “(D) implementing additional administra-
24 tive or process enhancements, as necessary, to

1 facilitate an efficient review and development
2 program.”.

3 **Subtitle D—Finance Committee**

4 **SEC. 4401. EXEMPTION FOR TELEHEALTH SERVICES.**

5 (a) IN GENERAL.—Paragraph (2) of section 223(c)
6 of the Internal Revenue Code of 1986 is amended by add-
7 ing at the end the following new subparagraph:

8 “(E) SAFE HARBOR FOR ABSENCE OF DE-
9 DUCTIBLE FOR TELEHEALTH.—In the case of
10 plan years beginning on or before December 31,
11 2021, a plan shall not fail to be treated as a
12 high deductible health plan by reason of failing
13 to have a deductible for telehealth and other re-
14 mote care services.”.

15 (b) CERTAIN COVERAGE DISREGARDED.—Clause (ii)
16 of section 223(c)(1)(B) of the Internal Revenue Code of
17 1986 is amended by striking “or long-term care” and in-
18 serting “long-term care, or (in the case of plan years be-
19 ginning on or before December 31, 2021) telehealth and
20 other remote care”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date of the enactment
23 of this Act.

1 **SEC. 4402. INCLUSION OF CERTAIN OVER-THE-COUNTER**
2 **MEDICAL PRODUCTS AS QUALIFIED MEDICAL**
3 **EXPENSES.**

4 (a) HSAs.—Section 223(d)(2) of the Internal Rev-
5 enue Code of 1986 is amended—

6 (1) by striking the last sentence of subpara-
7 graph (A) and inserting the following: “For pur-
8 poses of this subparagraph, amounts paid for men-
9 strual care products shall be treated as paid for
10 medical care.”; and

11 (2) by adding at the end the following new sub-
12 paragraph:

13 “(D) MENSTRUAL CARE PRODUCT.—For
14 purposes of this paragraph, the term ‘menstrual
15 care product’ means a tampon, pad, liner, cup,
16 sponge, or similar product used by individuals
17 with respect to menstruation or other genital-
18 tract secretions.”.

19 (b) ARCHER MSAs.—Section 220(d)(2)(A) of such
20 Code is amended by striking the last sentence and insert-
21 ing the following: “For purposes of this subparagraph,
22 amounts paid for menstrual care products (as defined in
23 section 223(d)(2)(D)) shall be treated as paid for medical
24 care.”.

25 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
26 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-

tion 106 of such Code is amended by striking subsection (f) and inserting the following new subsection:

“(f) REIMBURSEMENTS FOR MENSTRUAL CARE PRODUCTS.—For purposes of this section and section 105, expenses incurred for menstrual care products (as defined in section 223(d)(2)(D)) shall be treated as incurred for medical care.”.

(d) EFFECTIVE DATES.—

(1) DISTRIBUTIONS FROM SAVINGS ACCOUNTS.—The amendment made by subsections (a) and (b) shall apply to amounts paid after December 31, 2019.

(2) REIMBURSEMENTS.—The amendment made by subsection (c) shall apply to expenses incurred after December 31, 2019.

SEC. 4403. TREATMENT OF DIRECT PRIMARY CARE SERVICE ARRANGEMENTS.

(a) IN GENERAL.—Section 223(c)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(D) TREATMENT OF DIRECT PRIMARY CARE SERVICE ARRANGEMENTS.—

“(i) IN GENERAL.—A direct primary care service arrangement shall not be

1 treated as a health plan for purposes of
2 subparagraph (A)(ii).

3 “(ii) DIRECT PRIMARY CARE SERVICE
4 ARRANGEMENT.—For purposes of this
5 paragraph—

6 “(I) IN GENERAL.—The term ‘di-
7 rect primary care service arrange-
8 ment’ means, with respect to any indi-
9 vidual, an arrangement under which
10 such individual is provided medical
11 care (as defined in section 213(d))
12 consisting solely of primary care serv-
13 ices provided by primary care practi-
14 tioners (as defined in section
15 1833(x)(2)(A) of the Social Security
16 Act, determined without regard to
17 clause (ii) thereof), if the sole com-
18 pensation for such care is a fixed peri-
19 odic fee.

20 “(II) LIMITATION.—With respect
21 to any individual for any month, such
22 term shall not include any arrange-
23 ment if the aggregate fees for all di-
24 rect primary care service arrange-
25 ments (determined without regard to

1 this subclause) with respect to such
2 individual for such month exceed
3 \$150 (twice such dollar amount in the
4 case of an individual with any direct
5 primary care service arrangement (as
6 so determined) that covers more than
7 one individual).

8 “(iii) CERTAIN SERVICES SPECIFI-
9 CALLY EXCLUDED FROM TREATMENT AS
10 PRIMARY CARE SERVICES.—For purposes
11 of this paragraph, the term ‘primary care
12 services’ shall not include—

13 “(I) procedures that require the
14 use of general anesthesia, and

15 “(II) laboratory services not typi-
16 cally administered in an ambulatory
17 primary care setting.

18 The Secretary, after consultation with the
19 Secretary of Health and Human Services,
20 shall issue regulations or other guidance
21 regarding the application of this clause.”.

22 (b) DIRECT PRIMARY CARE SERVICE ARRANGEMENT
23 FEES TREATED AS MEDICAL EXPENSES.—Section
24 223(d)(2)(C) is amended by striking “or” at the end of
25 clause (iii), by striking the period at the end of clause (iv)

1 and inserting “, or”, and by adding at the end the fol-
2 lowing new clause:

3 “(v) any direct primary care service arrangement.”.

4 (c) INFLATION ADJUSTMENT.—Section 223(g)(1) of
5 such Code is amended—

6 (1) by inserting “, (c)(1)(D)(ii)(II),” after
7 “(b)(2),” each place such term appears, and

8 (2) in subparagraph (B), by inserting “and
9 (iii)” after “clause (ii)” in clause (i), by striking
10 “and” at the end of clause (i), by striking the period
11 at the end of clause (ii) and inserting “, and”, and
12 by inserting after clause (ii) the following new
13 clause:

14 “(iii) in the case of the dollar amount
15 in subsection (c)(1)(D)(ii)(II) for taxable
16 years beginning in calendar years after
17 2020, ‘calendar year 2019.’ ”.

18 (d) REPORTING OF DIRECT PRIMARY CARE SERVICE
19 ARRANGEMENT FEES ON W-2.—Section 6051(a) of such
20 Code is amended by striking “and” at the end of para-
21 graph (16), by striking the period at the end of paragraph
22 (17) and inserting “, and”, and by inserting after para-
23 graph (17) the following new paragraph:

24 “(18) in the case of a direct primary care serv-
25 ice arrangement (as defined in section

1 223(c)(1)(D)(ii)) which is provided in connection
2 with employment, the aggregate fees for such ar-
3 rangement for such employee.”.

4 (e) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to months beginning after Decem-
6 ber 31, 2019, in taxable years ending after such date.

7 **SEC. 4404. INCREASING MEDICARE TELEHEALTH FLEXI-**
8 **BILITIES DURING EMERGENCY PERIOD.**

9 Section 1135 of the Social Security Act (42 U.S.C.
10 1320b–5) is amended—

11 (1) in subsection (b)(8), by striking “to an indi-
12 vidual by a qualified provider (as defined in sub-
13 section (g)(3))” and all that follows through the pe-
14 riod and inserting “, the requirements of section
15 1834(m).”; and

16 (2) in subsection (g), by striking paragraph (3).

17 **SEC. 4405. ENHANCING MEDICARE TELEHEALTH SERVICES**
18 **FOR FEDERALLY QUALIFIED HEALTH CEN-**
19 **TERS AND RURAL HEALTH CLINICS DURING**
20 **EMERGENCY PERIOD.**

21 Section 1834(m) of the Social Security Act (42
22 U.S.C. 1395m(m)) is amended—

23 (1) in the first sentence of paragraph (1), by
24 striking “The Secretary” and inserting “Subject to
25 paragraph (8), the Secretary”;

1 (2) in paragraph (2)(A), by striking “The Sec-
2 retary” and inserting “Subject to paragraph (8), the
3 Secretary”;

4 (3) in paragraph (4)—

5 (A) in subparagraph (A), by striking “The
6 term” and inserting “Subject to paragraph (8),
7 the term”; and

8 (B) in subparagraph (F)(i), by striking
9 “The term” and inserting “Subject to para-
10 graph (8), the term”; and

11 (4) by adding at the end the following new
12 paragraph:

13 “(8) ENHANCING TELEHEALTH SERVICES FOR
14 FEDERALLY QUALIFIED HEALTH CENTERS AND
15 RURAL HEALTH CLINICS DURING EMERGENCY PE-
16 RIOD.—

17 “(A) IN GENERAL.—During the emergency
18 period described in section 1135(g)(1)(B)—

19 “(i) the Secretary shall pay for tele-
20 health services that are furnished via a
21 telecommunications system by a Federally
22 qualified health center or a rural health
23 clinic to an eligible telehealth individual en-
24 rolled under this part notwithstanding that
25 the Federally qualified health center or

1 rural clinic providing the telehealth service
2 is not at the same location as the bene-
3 ficiary;

4 “(ii) the amount of payment to a Fed-
5 erally qualified health center or rural
6 health clinic that serves as a distant site
7 for such a telehealth service shall be deter-
8 mined under subparagraph (B); and

9 “(iii) for purposes of this subsection—

10 “(I) the term ‘distant site’ in-
11 cludes a Federally qualified health
12 center or rural health clinic that fur-
13 nishes a telehealth service to an eligi-
14 ble telehealth individual; and

15 “(II) the term ‘telehealth serv-
16 ices’ includes a rural health clinic
17 service or Federally qualified health
18 center service that is furnished using
19 telehealth to the extent that payment
20 codes corresponding to services identi-
21 fied by the Secretary under clause (i)
22 or (ii) of paragraph (4)(F) are listed
23 on the corresponding claim for such
24 rural health clinic service or Federally
25 qualified health center service.

1 “(B) SPECIAL PAYMENT RULE.—The Sec-
2 retary shall develop and implement payment
3 methods that apply under this subsection to a
4 Federally qualified health center or rural health
5 clinic that serves as a distant site that furnishes
6 a telehealth service to an eligible telehealth indi-
7 vidual during such emergency period. Such pay-
8 ment methods shall be based on a composite
9 rate that is similar to the payment that applies
10 to payment for comparable telehealth services
11 under the physician fee schedule under section
12 1848. Notwithstanding any other provision of
13 law, the Secretary may implement such pay-
14 ment methods through program instruction or
15 otherwise.”.

16 **SEC. 4406. TEMPORARY WAIVER OF REQUIREMENT FOR**
17 **FACE-TO-FACE VISITS BETWEEN HOME DI-**
18 **ALYSIS PATIENTS AND PHYSICIANS.**

19 Section 1881(b)(3)(B) of the Social Security Act (42
20 U.S.C. 1395rr(b)(3)(B)) is amended—

21 (1) in clause (i), by striking “clause (ii)” and
22 inserting “clauses (ii) and (iii)”;

23 (2) in clause (ii), in the matter preceding sub-
24 clause (I), by striking “Clause (i)” and inserting
25 “Except as provided in clause (iii), clause (i)”;

1 (3) by adding at the end the following new
2 clause:

3 “(iii) The Secretary may waive the
4 provisions of clause (ii) during the emer-
5 gency period described in section
6 1135(g)(1)(B).”.

7 **SEC. 4407. IMPROVING CARE PLANNING FOR MEDICARE**
8 **HOME HEALTH SERVICES.**

9 (a) **PART A PROVISIONS.**—Section 1814(a) of the So-
10 cial Security Act (42 U.S.C. 1395f(a)) is amended—

11 (1) in paragraph (2)—

12 (A) in the matter preceding subparagraph
13 (A), by inserting “, a nurse practitioner or clin-
14 ical nurse specialist (as such terms are defined
15 in section 1861(aa)(5)) who is working in ac-
16 cordance with State law, or a physician assist-
17 ant (as defined in section 1861(aa)(5)) under
18 the supervision of a physician, who is” after “in
19 the case of services described in subparagraph
20 (C), a physician”; and

21 (B) in subparagraph (C)—

22 (i) by inserting “, a nurse practi-
23 tioner, a clinical nurse specialist, or a phy-
24 sician assistant (as the case may be)” after

1 “physician” the first 2 times it appears;
2 and

3 (ii) by striking “, and, in the case of
4 a certification made by a physician” and
5 all that follows through “face-to-face en-
6 counter” and inserting “, and, in the case
7 of a certification made by a physician after
8 January 1, 2010, or by a nurse practi-
9 tioner, clinical nurse specialist, or physi-
10 cian assistant (as the case may be) after a
11 date specified by the Secretary (but in no
12 case later than the date that is 6 months
13 after the date of the enactment of the
14 CARES Act), prior to making such certifi-
15 cation a physician, nurse practitioner, clin-
16 ical nurse specialist, or physician assistant
17 must document that a physician, nurse
18 practitioner, clinical nurse specialist, or
19 physician assistant has had a face-to-face
20 encounter”;

21 (2) in the third sentence—

22 (A) by striking “physician certification”
23 and inserting “certification”;

24 (B) by inserting “(or in the case of regula-
25 tions to implement the amendments made by

1 section 4407 of the CARES Act, the Secretary
2 shall prescribe regulations, which shall become
3 effective no later than 6 months after the enact-
4 ment of such Act))” after “1981”; and

5 (C) by striking “a physician who” and in-
6 serting “a physician, nurse practitioner, clinical
7 nurse specialist, certified nurse-midwife, or phy-
8 sician assistant who”; and

9 (3) in the fourth sentence, by inserting “, nurse
10 practitioner, clinical nurse specialist, certified nurse-
11 midwife, or physician assistant” after “physician”;
12 and

13 (4) in the fifth sentence—

14 (A) by inserting “or no later than six
15 months after the enactment of this legislation
16 for purposes of documentation for certification
17 and recertification made under paragraph (2)
18 by a nurse practitioner, clinical nurse specialist,
19 certified nurse-midwife, or physician assist-
20 ant,”; and

21 (B) by inserting “, nurse practitioner, clin-
22 ical nurse specialist, certified nurse-midwife, or
23 physician assistant” after “of the physician”.

24 (b) PART B PROVISIONS.—Section 1835(a) of the So-
25 cial Security Act (42 U.S.C. 1395n(a)) is amended—

1 (1) in paragraph (2)—

2 (A) in the matter preceding subparagraph
3 (A), by inserting “, a nurse practitioner or clin-
4 ical nurse specialist (as those terms are defined
5 in section 1861(aa)(5)) who is working in ac-
6 cordance with State law, or a physician assist-
7 ant (as defined in section 1861(aa)(5)) under
8 the supervision of a physician, who is” after “in
9 the case of services described in subparagraph
10 (C), a physician”; and

11 (B) in subparagraph (A)—

12 (i) in each of clauses (ii) and (iii) of
13 subparagraph (A) by inserting “, a nurse
14 practitioner, a clinical nurse specialist, or a
15 physician assistant (as the case may be)”
16 after “physician”; and

17 (ii) in clause (iv), by striking “after
18 January 1, 2010” and all that follows
19 through “face-to-face encounter” and in-
20 serting “made by a physician after Janu-
21 ary 1, 2010, or by a nurse practitioner,
22 clinical nurse specialist, or physician as-
23 sistant (as the case may be) after a date
24 specified by the Secretary (but in no case
25 later than the date that is 6 months after

1 the date of the enactment of the CARES
2 Act), prior to making such certification a
3 physician, nurse practitioner, clinical nurse
4 specialist, certified nurse-midwife, or physi-
5 cian assistant must document that a physi-
6 cian, nurse practitioner, clinical nurse spe-
7 cialist, or physician assistant has had a
8 face-to-face encounter”;

9 (2) in the third sentence, by inserting “, nurse
10 practitioner, clinical nurse specialist, or physician as-
11 sistant (as the case may be)” after physician;

12 (3) in the fourth sentence—

13 (A) by striking “physician certification”
14 and inserting “certification”;

15 (B) by inserting “(or in the case of regula-
16 tions to implement the amendments made by
17 section 4407 of the CARES Act the Secretary
18 shall prescribe regulations which shall become
19 effective no later than 6 months after the enact-
20 ment of such Act))” after “1981”; and

21 (C) by striking “a physician who” and in-
22 serting “a physician, nurse practitioner, clinical
23 nurse specialist, or physician assistant who”;

1 (4) in the fifth sentence, by inserting “, nurse
2 practitioner, clinical nurse specialist, or physician as-
3 sistant” after “physician”; and

4 (5) in the sixth sentence—

5 (A) by inserting “or no later than six
6 months after the enactment of this legislation
7 for purposes of documentation for certification
8 and recerification made under paragraph (2) by
9 a nurse practitioner, clinical nurse specialist,
10 certified nurse-midwife, or physician assistant,”
11 after “January 1, 2019”; and

12 (B) by inserting “, nurse practitioner, clin-
13 ical nurse specialist, certified nurse-midwife, or
14 physician assistant” after “of the physician”.

15 (c) DEFINITION PROVISIONS.—

16 (1) HOME HEALTH SERVICES.—Section
17 1861(m) of the Social Security Act (42 U.S.C.
18 1395x(m)) is amended—

19 (A) in the matter preceding paragraph

20 (1)—

21 (i) by inserting “, a nurse practitioner
22 or a clinical nurse specialist (as those
23 terms are defined in subsection (aa)(5)), or
24 a physician assistant (as defined in sub-

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1 section (aa)(5))” after “physician” the
2 first place it appears; and

3 (ii) by inserting “, a nurse practi-
4 tioner, a clinical nurse specialist, or a phy-
5 sician assistant” after “physician” the sec-
6 ond place it appears; and

7 (B) in paragraph (3), by inserting “, a
8 nurse practitioner, a clinical nurse specialist, or
9 a physician assistant” after “physician”.

10 (2) HOME HEALTH AGENCY.—Section
11 1861(o)(2) of the Social Security Act (42 U.S.C.
12 1395x(o)(2)) is amended—

13 (A) by inserting “, nurse practitioners or
14 clinical nurse specialists (as those terms are de-
15 fined in subsection (aa)(5)), certified nurse-mid-
16 wives (as defined in subsection (gg)), or physi-
17 cian assistants (as defined in subsection
18 (aa)(5))” after “physicians”; and

19 (B) by inserting “, nurse practitioner, clin-
20 ical nurse specialist, certified nurse-midwife,
21 physician assistant,” after “physician”.

22 (3) COVERED OSTEOPOROSIS DRUG.—Section
23 1861(kk)(1) of the Social Security Act (42 U.S.C.
24 1395x(kk)(1)) is amended by inserting “, nurse
25 practitioner or clinical nurse specialist (as those

1 terms are defined in subsection (aa)(5)), certified
2 nurse-midwife (as defined in subsection (gg)), or
3 physician assistant (as defined in subsection
4 1820(aa)(5))” after “attending physician”.

5 (d) HOME HEALTH PROSPECTIVE PAYMENT SYSTEM
6 PROVISIONS.—Section 1895 of the Social Security Act (42
7 U.S.C. 1395fff) is amended—

8 (1) in subsection (c)(1)—

9 (A) by striking “(provided under section
10 1842(r))”; and

11 (B) by inserting “the 1 nurse practitioner
12 or clinical nurse specialist (as those terms are
13 defined in section 1861(aa)(5)), or the physi-
14 cian assistant (as defined in section
15 1861(aa)(5))” after “physician”; and

16 (2) in subsection (e)—

17 (A) in paragraph (1)(A), by inserting “or
18 a nurse practitioner or clinical nurse specialist
19 (as those terms are defined in section
20 1861(aa)(5))” after “physician”; and

21 (B) in paragraph (2)—

22 (i) in the heading, by striking “PHY-
23 SICIAN CERTIFICATION” and inserting
24 “RULE OF CONSTRUCTION REGARDING RE-
25 QUIREMENT FOR CERTIFICATION”; and

1 (ii) by striking “physician”.

2 (e) APPLICATION TO MEDICAID.—The amendments
3 made under this section shall apply under title XIX of the
4 Social Security Act in the same manner and to the same
5 extent as such requirements apply under title XVIII of
6 such Act or regulations promulgated thereunder.

7 (f) EFFECTIVE DATE.—The Secretary of Health and
8 Human Services shall prescribe regulations to apply the
9 amendments made by this section to items and services
10 furnished, which shall become effective no later than six
11 months after the enactment of this legislation. The Sec-
12 retary shall promulgate an interim final rule if necessary,
13 to comply with the required effective date.

14 **SEC. 4408. ADJUSTMENT OF SEQUESTRATION.**

15 (a) TEMPORARY SUSPENSION OF MEDICARE SE-
16 QUESTRATION.—During the period beginning on May 1,
17 2020 and ending on December 31, 2020, the Medicare
18 programs under title XVIII of the Social Security Act (42
19 U.S.C. 1395 et seq.) shall be exempt from reduction under
20 any sequestration order issued before, on, or after the date
21 of enactment of this Act.

22 (b) EXTENSION OF DIRECT SPENDING REDUCTIONS
23 THROUGH FISCAL YEAR 2030.—Section 251A(6) of the
24 Balanced Budget and Emergency Deficit Control Act of
25 1985 (2 U.S.C. 901a(6)) is amended—

1 (1) in subparagraph (B), in the matter pre-
2 ceding clause (i), by striking “through 2029” and
3 inserting “through 2030”; and

4 (2) in subparagraph (C), in the matter pre-
5 ceding clause (i), by striking “fiscal year 2029” and
6 inserting “fiscal year 2030”.

7 **SEC. 4409. MEDICARE HOSPITAL INPATIENT PROSPECTIVE**
8 **PAYMENT SYSTEM ADD-ON PAYMENT FOR**
9 **COVID-19 PATIENTS DURING EMERGENCY PE-**
10 **RIOD.**

11 (a) IN GENERAL.—Section 1886(d)(4)(C) of the So-
12 cial Security Act (42 U.S.C. 1395ww(d)(4)(C)) is amend-
13 ed by adding at the end the following new clause:

14 “(iv)(I) For discharges occurring during the emer-
15 gency period described in section 1135(g)(1)(B), in the
16 case of a discharge that has a principal or secondary diag-
17 nosis of COVID-19, the Secretary shall increase the
18 weighting factor for each diagnosis-related group (with
19 such a principal or secondary diagnosis) by 15 percent.

20 “(II) Any adjustment under subclause (I) shall not
21 be taken into account in applying budget neutrality under
22 clause (iii).”.

23 (b) IMPLEMENTATION.—Notwithstanding any other
24 provision of law, the Secretary may implement the amend-

1 ment made by subsection (a) by program instruction or
2 otherwise.

3 **SEC. 4410. REVISING PAYMENT RATES FOR DURABLE MED-**
4 **ICAL EQUIPMENT UNDER THE MEDICARE**
5 **PROGRAM THROUGH DURATION OF EMER-**
6 **GENCY PERIOD.**

7 (a) RURAL AND NONCONTIGUOUS AREAS.—The Sec-
8 retary of Health and Human Services shall implement sec-
9 tion 414.210(g)(9)(iii) of title 42, Code of Federal Regula-
10 tions (or any successor regulation), to apply the transition
11 rule described in such section to all applicable items and
12 services furnished in rural areas and noncontiguous areas
13 (as such terms are defined for purposes of such section)
14 as planned through December 31, 2020, and through the
15 duration of the emergency period described in section
16 1135(g)(1)(B) of the Social Security Act (42 U.S.C.
17 1320b–5(g)(1)(B)), if longer.

18 (b) AREAS OTHER THAN RURAL AND NONCONTIG-
19 UOUS AREAS.—With respect to items and services fur-
20 nished on or after the date that is 30 days after the date
21 of the enactment of this Act, the Secretary of Health and
22 Human Services shall apply section 414.210(g)(9)(iv) of
23 title 42, Code of Federal Regulations (or any successor
24 regulation), as if the reference to “dates of service from
25 June 1, 2018 through December 31, 2020, based on the

1 fee schedule amount for the area is equal to 100 percent
2 of the adjusted payment amount established under this
3 section” were instead a reference to “dates of service from
4 March 6, 2020, through the remainder of the duration of
5 the emergency period described in section 1135(g)(1)(B)
6 of the Social Security Act (42 U.S.C. 1320b–5(g)(1)(B)),
7 based on the fee schedule amount for the area is equal
8 to 75 percent of the adjusted payment amount established
9 under this section and 25 percent of the unadjusted fee
10 schedule amount”.

11 **SEC. 4411. PROVIDING HOME AND COMMUNITY-BASED**
12 **SERVICES IN ACUTE CARE HOSPITALS.**

13 Section 1902(h) of the Social Security Act (42 U.S.C.
14 1396a(h)) is amended—

15 (1) by inserting “(1)” after “(h)”;

16 (2) by inserting “, home and community-based
17 services provided under subsection (c), (d), or (i) of
18 section 1915 or under a waiver under section 1115,
19 self-directed personal assistance services provided
20 pursuant to a written plan of care under section
21 1915(j), and home and community-based attendant
22 services and supports under section 1915(k)” before
23 the period; and

24 (3) by adding at the end the following:

1 “(2) Nothing in this title, title XVIII, or title XI shall
2 be construed as prohibiting receipt of any care or services
3 specified in paragraph (1) in an acute care hospital that
4 are—

5 “(A) identified in an individual’s person-cen-
6 tered plan of services and supports (or comparable
7 plan of care);

8 “(B) provided to meet needs of the individual
9 that are not met through the provision of hospital
10 services;

11 “(C) not a substitute for services that the hos-
12 pital is obligated to provide through its conditions of
13 participation or under Federal or State law; and

14 “(D) designed to ensure smooth transitions be-
15 tween acute care settings and home and community-
16 based settings, and to preserve the individual’s func-
17 tions.”.

18 **SEC. 4412. TREATMENT OF TECHNOLOGY-ENABLED COL-**
19 **LABORATIVE LEARNING AND CAPACITY**
20 **BUILDING MODELS AS MEDICAL ASSISTANCE.**

21 Section 1915 of the Social Security Act (42 U.S.C.
22 1396n) is amended by adding at the end the following:

23 “(m) **TECHNOLOGY-ENABLED COLLABORATIVE**
24 **LEARNING AND CAPACITY BUILDING MODELS.—**

1 “(1) IN GENERAL.—A State may provide, as
2 medical assistance, a technology-enabled collabo-
3 rative learning and capacity building model used by
4 a provider participating under the State plan (or a
5 waiver of such plan) without regard to the require-
6 ments of section 1902(a)(1) (relating to
7 statewideness), section 1902(a)(10)(B) (relating to
8 comparability), and section 1902(a)(23) (relating to
9 freedom of choice of providers).

10 “(2) REQUIREMENTS.—A State shall be eligible
11 for Federal financial assistance for providing such
12 medical assistance under the following conditions:

13 “(A) A participating provider uses the
14 technology-enabled collaborative learning and
15 capacity building model to train health profes-
16 sionals (which may include medical students) in
17 protocols for responding to a public health
18 emergency during an emergency period, includ-
19 ing any period relating to an outbreak of
20 coronavirus disease 2019 (COVID-19).

21 “(B) In accordance with section
22 1902(a)(25), there are no other third parties
23 liable to pay for the use of such model by a par-
24 ticipating provider, including as reimbursement

1 under a medical, social, educational, or other
2 program.

3 “(C) The State allocates the costs of any
4 part of the use such model which is reimburs-
5 able under another federally funded program in
6 accordance with OMB Circular A-87 (or any
7 related or successor guidance or regulations re-
8 garding allocation of costs among federally
9 funded programs) under an approved cost allo-
10 cation program.

11 “(3) NONAPPLICATION OF TIME LIMITS.—Sub-
12 section (h) shall not apply to the provision of med-
13 ical assistance for technology-enabled collaborative
14 learning and capacity building models under this
15 subsection.

16 “(4) DEFINITIONS.—In this subsection:

17 “(A) EMERGENCY PERIOD.—The term
18 ‘emergency period’ has the meaning given that
19 term in section 1135(g)(1).

20 “(B) TECHNOLOGY-ENABLED COLLABO-
21 RATIVE LEARNING AND CAPACITY BUILDING
22 MODEL.—The term ‘technology-enabled col-
23 laborative learning and capacity building model’
24 has the meaning given that term in section 2(7)
25 of the Expanding Capacity for Health Out-

1 comes Act (Public Law 114–270, 130 Stat.
2 1395).’’.

3 **SEC. 4413. ENCOURAGING THE DEVELOPMENT AND USE OF**
4 **DISARM ANTIMICROBIAL DRUGS.**

5 (a) ADDITIONAL PAYMENT FOR DISARM ANTI-
6 MICROBIAL DRUGS UNDER MEDICARE.—

7 (1) IN GENERAL.—Section 1886(d)(5) of the
8 Social Security Act (42 U.S.C. 1395ww(d)(5)) is
9 amended by adding at the end the following new
10 subparagraph:

11 “(M)(i)(I) In the case of discharges occurring on or
12 after October 1, 2021, and before October 1, 2026, subject
13 to subclause (II), the Secretary shall, after notice and op-
14 portunity for public comment (in the publications required
15 by subsection (e)(5) for a fiscal year or otherwise), provide
16 for an additional payment under a mechanism (separate
17 from the mechanism established under subparagraph (K)),
18 with respect to such discharges involving any DISARM
19 antimicrobial drug, in an amount equal to—

20 “(aa) the amount payable under section 1847A
21 for such drug during the calendar quarter in which
22 the discharge occurred; or

23 “(bb) if no amount for such drug is determined
24 under section 1847A, an amount to be determined
25 by the Secretary in a manner similar to the manner

1 in which payment amounts are determined under
2 section 1847A based on information submitted by
3 the manufacturer or sponsor of such drug (as re-
4 quired under clause (v)).

5 “(II) In determining the amount payable under sec-
6 tion 1847A for purposes of items (aa) and (bb) of sub-
7 clause (I), subparagraphs (A) and (B) of subsection (b)(1)
8 of such section shall be applied by substituting ‘100 per-
9 cent’ for ‘106 percent’ each place it appears and para-
10 graph (8)(B) of such section shall be applied by sub-
11 stituting ‘0 percent’ for ‘6 percent’.

12 “(ii) For purposes of this subparagraph, a DISARM
13 antimicrobial drug is—

14 “(I) a drug—

15 “(aa) that—

16 “(AA) is approved by the Food and
17 Drug Administration;

18 “(BB) is designated by the Food and
19 Drug Administration as a qualified infec-
20 tious disease product under subsection (d)
21 of section 505E of the Federal Food,
22 Drug, and Cosmetic Act; and

23 “(CC) has received an extension of its
24 exclusivity period pursuant to subsection
25 (a) of such section; and

1 “(bb) that has been designated by the Sec-
2 retary pursuant to the process established
3 under clause (iv)(I)(bb); or

4 “(II) an antibacterial or antifungal biological
5 product—

6 “(aa) that is licensed for use, or an anti-
7 bacterial or antifungal biological product for
8 which an indication is first licensed for use, by
9 the Food and Drug Administration on or after
10 June 5, 2014, under section 351(a) of the Pub-
11 lic Health Service Act for human use to treat
12 serious or life-threatening infections, as deter-
13 mined by the Food and Drug Administration,
14 including those caused by, or likely to be caused
15 by—

16 “(AA) an antibacterial or antifungal
17 resistant pathogen, including novel or
18 emerging infectious pathogens; or

19 “(BB) a qualifying pathogen (as de-
20 fined under section 505E(f) of the Federal
21 Food, Drug, and Cosmetic Act); and

22 “(bb) has been designated by the Secretary
23 pursuant to the process established under
24 clause (iv)(I)(bb).

1 “(iii) The mechanism established pursuant to clause
2 (i) shall provide that the additional payment under clause
3 (i) shall—

4 “(I) with respect to a discharge, only be made
5 to a subsection (d) hospital that, as determined by
6 the Secretary—

7 “(aa) is participating in the National
8 Healthcare Safety Network Antimicrobial Use
9 and Resistance Module of the Centers for Dis-
10 ease Control and Prevention or a similar report-
11 ing program, as specified by the Secretary, re-
12 lating to antimicrobial drugs; and

13 “(bb) has an antimicrobial stewardship
14 program that aligns with the Core Elements of
15 Hospital Antibiotic Stewardship Programs of
16 the Centers for Disease Control and Prevention
17 or the Antimicrobial Stewardship Standard set
18 by the Joint Commission; and

19 “(II) apply to discharges occurring on or after
20 October 1 of the year in which the drug or biological
21 product is designated by the Secretary as a DIS-
22 ARM antimicrobial drug.

23 “(iv)(I) The mechanism established pursuant to
24 clause (i) shall provide for a process for—

1 “(aa) a manufacturer or sponsor of a drug or
2 biological product to request the Secretary to des-
3 ignate the drug or biological product as a DISARM
4 antimicrobial drug; and

5 “(bb) the designation by the Secretary of drugs
6 and biological products as DISARM antimicrobial
7 drugs.

8 “(II) A designation of a drug or biological product
9 as a DISARM antimicrobial drug may be revoked by the
10 Secretary if the Secretary determines that—

11 “(aa) the drug or biological product no longer
12 meets the requirements for a DISARM antimicrobial
13 drug under clause (ii);

14 “(bb) the request for such designation con-
15 tained an untrue statement of material fact; or

16 “(cc) clinical or other information that was not
17 available to the Secretary at the time such designa-
18 tion was made shows that—

19 “(AA) such drug or biological product is
20 unsafe for use or not shown to be safe for use
21 for individuals who are entitled to benefits
22 under part A; or

23 “(BB) an alternative to such drug or bio-
24 logical product is an advance that substantially

1 improves the diagnosis or treatment of such in-
2 dividuals.

3 “(III) Not later than October 1, 2021, and annually
4 thereafter through October 1, 2025, the Secretary shall
5 publish in the Federal Register a list of the DISARM anti-
6 microbial drugs designated under this subparagraph pur-
7 suant to the process established under clause (iv)(I)(bb).

8 “(v)(I) For purposes of determining additional pay-
9 ment amounts under clause (i), a manufacturer or sponsor
10 of a drug or biological product that submits a request de-
11 scribed in clause (iv)(I)(aa) shall submit to the Secretary
12 information described in section 1927(b)(3)(A)(iii).

13 “(II) The penalties for failure to provide timely infor-
14 mation under clause (i) of subparagraph (C) of section
15 1927(b)(3) and for providing false information under
16 clause (ii) of such subparagraph shall apply to manufac-
17 turers and sponsors of a drug or biological product under
18 this section with respect to information under subclause
19 (I) in the same manner as such penalties apply to manu-
20 facturers under such clauses with respect to information
21 under subparagraph (A) of such section.

22 “(vi) The mechanism established pursuant to clause
23 (i) shall provide that—

24 “(I) except as provided in subclause (II), no ad-
25 ditional payment shall be made under this subpara-

1 graph for discharges involving a DISARM anti-
2 microbial drug if any additional payments have been
3 made for discharges involving such drug as a new
4 medical service or technology under subparagraph
5 (K);

6 “(II) additional payments may be made under
7 this subparagraph for discharges involving a DIS-
8 ARM antimicrobial drug if any additional payments
9 have been made for discharges occurring prior to the
10 date of enactment of this subparagraph involving
11 such drug as a new medical service or technology
12 under subparagraph (K); and

13 “(III) no additional payment shall be made
14 under subparagraph (K) for discharges involving a
15 DISARM antimicrobial drug as a new medical serv-
16 ice or technology if any additional payments for dis-
17 charges involving such drug have been made under
18 this subparagraph.”.

19 (2) CONFORMING AMENDMENT.—Section
20 1886(d)(5)(K)(ii)(III) of the Social Security Act (42
21 U.S.C. 1395ww(d)(5)(K)(ii)(III)) is amended by
22 striking “provide” and inserting “subject to sub-
23 paragraph (M)(vi), provide”.

1 (b) STUDY AND REPORTS ON REMOVING BARRIERS
2 TO THE DEVELOPMENT OF DISARM ANTIMICROBIAL
3 DRUGS.—

4 (1) STUDY.—The Comptroller General of the
5 United States (in this subsection referred to as the
6 “Comptroller General”) shall, in consultation with
7 the Director of the National Institutes of Health,
8 the Commissioner of Food and Drugs, the Adminis-
9 trator of the Centers for Medicare & Medicaid Serv-
10 ices, and the Director of the Centers for Disease
11 Control and Prevention, conduct a study to—

12 (A) identify and examine the barriers that
13 prevent the development of DISARM anti-
14 microbial drugs (as defined in section
15 1886(d)(5)(M)(ii) of the Social Security Act, as
16 added by subsection (a)); and

17 (B) develop recommendations for actions
18 to be taken in order to overcome any barriers
19 identified under subparagraph (A).

20 (2) REPORT.—October 1, 2025, the Comp-
21 troller General shall submit to Congress a report
22 containing the preliminary results of the study con-
23 ducted under paragraph (1), together with rec-
24 ommendations for such legislation and administra-

1 tive action as the Comptroller General determines
2 appropriate.

3 **SEC. 4414. NOVEL MEDICAL PRODUCTS.**

4 (a) EXPEDITED CODING OF NOVEL MEDICAL PROD-
5 UCTS.—Section 1174(b)(2)(B) of the Social Security Act
6 (42 U.S.C. 1320d–3(b)(2)(B)) is amended by adding at
7 the end the following new clauses:

8 “(iii) EXPEDITED CODING OF NOVEL
9 MEDICAL PRODUCTS.—

10 “(I) IN GENERAL.—Notwith-
11 standing paragraph (1), in the case of
12 a novel medical product (as defined in
13 clause (iv)), the Secretary shall make
14 modifications to the HCPCS code set
15 at least once every quarter.

16 “(II) REQUEST.—Upon the writ-
17 ten confidential request of a manufac-
18 turer of a novel medical product, the
19 Secretary shall make a determination
20 whether to assign a HCPCS code to
21 such product. Such request may occur
22 on or after the date on which the
23 product receives a designation as a
24 breakthrough therapy under section
25 506(a) of the Federal Food, Drug,

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1 and Cosmetic Act (21 U.S.C. 356(a)),
2 a breakthrough device under section
3 515B of such Act (21 U.S.C. 360e–
4 3), or a regenerative advanced therapy
5 under section 506(g) of such Act (21
6 U.S.C. 356(g)).

7 “(III) DEADLINE FOR DETER-
8 MINATION; NOTIFICATION.—The Sec-
9 retary shall—

10 “(aa) not later than 180 cal-
11 endar days after receiving the re-
12 quest of a manufacturer under
13 subclause (II), make a deter-
14 mination under such subclause
15 with respect to the request; and

16 “(bb) not later than 30 cal-
17 endar days after making such de-
18 termination, notify the manufac-
19 turer of the determination.

20 “(IV) MONITORING UTILIZATION
21 AND OUTCOMES.—A HCPCS code as-
22 signed under this clause shall allow
23 for the reliable monitoring of utiliza-
24 tion and outcomes of the novel med-

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1 ical product as described in clause
2 (vi).

3 “(V) EFFECTIVE DATE OF CODE
4 ASSIGNMENT.—If the Secretary makes
5 a determination to assign a HCPCS
6 code to a product under subclause
7 (II), such code—

8 “(aa) may be assigned with-
9 in the first quarter after the
10 manufacturer files, with respect
11 to such product, a new drug ap-
12 plication under section 505(b) of
13 the Federal Food, Drug, and
14 Cosmetic Act (21 U.S.C. 355(b)),
15 a biological product license appli-
16 cation under section 351(a) of
17 the Public Health Service Act
18 (42 U.S.C. 262(a)), a premarket
19 application under section 515(c)
20 of the Federal Food, Drug, and
21 Cosmetic Act (21 U.S.C.
22 360e(c)), a report under section
23 510(k) of such Act (21 U.S.C.
24 360k), or a request for classifica-
25 tion under section 513(f)(2) of

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1 such Act (21 U.S.C. 360c(f)(2));
2 and

3 “(bb) may not take effect
4 before the date the product is ap-
5 proved, cleared, or licensed by
6 the Food and Drug Administra-
7 tion.

8 “(VI) TRADE SECRETS AND CON-
9 FIDENTIAL INFORMATION.—No infor-
10 mation submitted under subclause (II)
11 shall be construed as authorizing the
12 Secretary to disclose any information
13 that is a trade secret or confidential
14 information subject to section
15 552(b)(4) of title 5, United States
16 Code.

17 “(iv) NOVEL MEDICAL PRODUCT DE-
18 FINED.—For purposes of this subpara-
19 graph, the term ‘novel medical product’
20 means a drug, biological product, or med-
21 ical device—

22 “(I) that has not been assigned a
23 HCPCS code; and

24 “(II) that has been designated as
25 a breakthrough therapy under section

1 506(a) of the Federal Food, Drug,
2 and Cosmetic Act (21 U.S.C. 356(a)),
3 a breakthrough device under section
4 515B of such Act (21 U.S.C. 360e–
5 3), or a regenerative advanced therapy
6 under section 506(g) of such Act (21
7 U.S.C. 356(g)).

8 “(v) HCPCS DEFINED.—For pur-
9 poses of this subparagraph, the term
10 ‘HCPCS’ means the Healthcare Common
11 Procedure Coding System.

12 “(vi) INPATIENT PRODUCTS.—The
13 Secretary shall establish a code modifier
14 within the hospital inpatient prospective
15 payment system under section 1886(d) to
16 track the utilization and outcomes of novel
17 medical products that are assigned a
18 HCPCS code pursuant to the expedited
19 coding process under clause (iii) and are
20 furnished by hospitals in inpatient set-
21 tings.”.

22 (b) COVERAGE DETERMINATIONS FOR NOVEL MED-
23 ICAL PRODUCTS.—Section 1862(l) of the Social Security
24 Act (42 U.S.C. 1395y(l)) is amended by adding at the end
25 the following new paragraph:

1 “(7) COVERAGE PATHWAY FOR NOVEL MEDICAL
2 PRODUCTS.—

3 “(A) IN GENERAL.—The Secretary shall
4 facilitate an efficient coverage pathway to expedite a national coverage decision for coverage
5 with evidence development process under this
6 title for novel medical products described in
7 subparagraph (D). The Secretary shall review
8 such novel medical products for the coverage
9 process on an expedited basis, beginning as
10 soon as the Secretary assigns a HCPCS code to
11 the product under clause (iii)(V)(aa) of section
12 1174(b)(2)(B).
13

14 “(B) DETERMINATION OF COVERAGE WITH
15 EVIDENCE DEVELOPMENT.—Such coverage
16 pathway shall include, with respect to such
17 novel medical products, if the Secretary determines coverage with evidence development is
18 appropriate, issuance of a national coverage determination of coverage with evidence development
19 for a period up to, but not to exceed, 4
20 years from the date of such determination.
21
22

23 “(C) MODERNIZING PAYMENT OPTIONS
24 FOR NOVEL MEDICAL PRODUCTS.—Not later
25 than 4 years after issuing such national cov-

1 erage determination, the Secretary shall submit
2 to Congress and to the manufacturer of the
3 novel medical product a report providing op-
4 tions for alternative payment models under this
5 title for the novel medical product or class of
6 such products, which may include the utilization
7 of existing models in the commercial health in-
8 surance market. Such report shall include any
9 recommendations for legislation and adminis-
10 trative action as the Secretary determines ap-
11 propriate to facilitate such payment arrange-
12 ments.

13 “(D) NOVEL MEDICAL PRODUCTS DE-
14 SCRIBED.—For purposes of this paragraph, a
15 novel medical product described in this subpara-
16 graph is a novel medical product, as defined in
17 clause (iv) of section 1174(b)(2)(B), that is as-
18 signed a HCPCS code pursuant to the expe-
19 dited coding process under clause (iii) of such
20 section.

21 “(E) CLARIFICATION.—Nothing in this
22 paragraph shall prevent the Secretary from
23 issuing a noncoverage or a national coverage
24 determination for a novel medical product.”.

1 (c) ENHANCING COORDINATION WITH THE FOOD
2 AND DRUG ADMINISTRATION.—

3 (1) PUBLIC MEETING.—

4 (A) IN GENERAL.—Not later than 12
5 months after the date of the enactment of this
6 Act, the Secretary shall convene a public meet-
7 ing for the purposes of discussing and providing
8 input on improvements to coordination between
9 the Food and Drug Administration and the
10 Centers for Medicare & Medicaid Services in
11 preparing for the availability of novel medical
12 products (as defined in section
13 1174(b)(2)(B)(iv) of the Social Security Act, as
14 added by subsection (a)) on the market in the
15 United States.

16 (B) ATTENDEES.—The public meeting
17 shall include—

18 (i) representatives of relevant Federal
19 agencies, including representatives from
20 each of the medical product centers within
21 the Food and Drug Administration and
22 representatives from the coding, coverage,
23 and payment offices within the Centers for
24 Medicare & Medicaid Services;

1 (ii) stakeholders with expertise in the
2 research and development of novel medical
3 products, including manufacturers of such
4 products;

5 (iii) representatives of commercial
6 health insurance payers;

7 (iv) stakeholders with expertise in the
8 administration and use of novel medical
9 products, including physicians; and

10 (v) stakeholders representing patients
11 and with expertise in the utilization of pa-
12 tient experience data in medical product
13 development.

14 (C) TOPICS.—The public meeting shall in-
15 clude a discussion of—

16 (i) the status of the drug and medical
17 device development pipeline related to the
18 availability of novel medical products;

19 (ii) the anticipated expertise necessary
20 to review the safety and effectiveness of
21 such products at the Food and Drug Ad-
22 ministration and current gaps in such ex-
23 pertise, if any;

24 (iii) the expertise necessary to make
25 coding, coverage, and payment decisions

1 with respect to such products within the
2 Centers for Medicare & Medicaid Services,
3 and current gaps in such expertise, if any;

4 (iv) trends in the differences in the
5 data necessary to determine the safety and
6 effectiveness of a novel medical product
7 and the data necessary to determine
8 whether a novel medical product meets the
9 reasonable and necessary requirements for
10 coverage and payment under title XVIII of
11 the Social Security Act pursuant to section
12 1862(a)(1)(A) of such Act (42 U.S.C.
13 1395y(a)(1)(A));

14 (v) the availability of information for
15 sponsors of such novel medical products to
16 meet each of those requirements; and

17 (vi) the coordination of information
18 related to significant clinical improvement
19 over existing therapies for patients between
20 the Food and Drug Administration and the
21 Centers for Medicare & Medicaid Services
22 with respect to novel medical products.

23 (D) TRADE SECRETS AND CONFIDENTIAL
24 INFORMATION.—No information discussed as a
25 part of the public meeting under this paragraph

1 shall be construed as authorizing the Secretary
2 to disclose any information that is a trade se-
3 cret or confidential information subject to sec-
4 tion 552(b)(4) of title 5, United States Code.

5 (2) IMPROVING TRANSPARENCY OF CRITERIA
6 FOR MEDICARE COVERAGE.—

7 (A) UPDATING GUIDANCE.—Not later than
8 18 months after the public meeting under para-
9 graph (1), the Secretary of Health and Human
10 Services shall update the final guidance entitled
11 “National Coverage Determinations with Data
12 Collection as a Condition of Coverage: Coverage
13 with Evidence Development” to improve the
14 availability and coordination of information as
15 described in clauses (iv) through (vi) of para-
16 graph (1)(C), and clarify novel medical product
17 clinical data requirements to meet reasonable
18 and necessary requirements for coverage and
19 payment under title XVIII of the Social Secu-
20 rity Act.

21 (B) FINALIZING UPDATED GUIDANCE.—
22 Not later than 12 months after issuing draft
23 guidance under subparagraph (A), the Sec-
24 retary shall finalize the updated guidance.

1 (d) REPORT ON CODING, COVERAGE, AND PAYMENT
2 PROCESSES UNDER MEDICARE FOR NEW MEDICAL
3 PRODUCTS.—

4 (1) IN GENERAL.—Not later than 12 months
5 after the date of enactment of this Act, the Sec-
6 retary of Health and Human Services shall publish
7 a report on the internet website of the Department
8 of Health and Human Services regarding processes
9 under the Medicare program under title XVIII of
10 the Social Security Act (42 U.S.C. 1395 et seq.)
11 with respect to the coding, coverage, and payment of
12 medical products described in paragraph (2). Such
13 report shall include the following:

14 (A) A description of challenges in the cod-
15 ing, coverage, and payment processes under the
16 Medicare program for medical products de-
17 scribed in such paragraph.

18 (B) Recommendations to—

19 (i) incorporate patient experience data
20 (such as the impact of a disease or condi-
21 tion on the lives of patients and patient
22 treatment preferences) into the coverage
23 and payment processes within the Centers
24 for Medicare & Medicaid Services;

1 (ii) decrease the length of time to
2 make national and local coverage deter-
3 minations under the Medicare program (as
4 those terms are defined in subparagraph
5 (A) and (B), respectively, of section
6 1862(l)(6) of the Social Security Act (42
7 U.S.C. 1395y(l)(6)));

8 (iii) streamline the coverage process
9 under the Medicare program and incor-
10 porate input from relevant stakeholders
11 into such coverage determinations; and

12 (iv) identify potential mechanisms to
13 incorporate novel payment designs similar
14 to those in development in commercial in-
15 surance plans and State plans under title
16 XIX of the Social Security Act (42 U.S.C.
17 1396r et seq.) into the Medicare program.

18 (2) MEDICAL PRODUCTS DESCRIBED.—For pur-
19 poses of paragraph (1), a medical product described
20 in this paragraph is a medical product, including a
21 drug, biological (including gene and cell therapy and
22 gene editing), or medical device, that has been des-
23 ignated as a breakthrough therapy under section
24 506(a) of the Federal Food, Drug, and Cosmetic Act
25 (21 U.S.C. 356(a)), a breakthrough device under

1 section 515B of such Act (21 U.S.C. 360e–3), or a
2 regenerative advanced therapy under section 506(g)
3 of such Act (21 U.S.C. 356(g)).

4 **TITLE II—EDUCATION**
5 **PROVISIONS**

6 **SEC. 4501. SHORT TITLE.**

7 This title may be cited as the “COVID-19 Pandemic
8 Education Relief Act of 2020”.

9 **SEC. 4502. DEFINITIONS.**

10 (a) **DEFINITIONS.**—In this title:

11 (1) **QUALIFYING EMERGENCY.**—The term
12 “qualifying emergency” means—

13 (A) a public health emergency declared by
14 the Secretary of Health and Human Services
15 pursuant to section 319 of the Public Health
16 Service Act (42 U.S.C. 247d);

17 (B) an event for which the President de-
18 clared a major disaster or an emergency under
19 section 401 or 501, respectively, of the Robert
20 T. Stafford Disaster Relief and Emergency As-
21 sistance Act (42 U.S.C. 5170 and 5191); or

22 (C) a national emergency declared by the
23 President under section 201 of the National
24 Emergencies Act (50 U.S.C. 1601 et seq.).

1 (2) INSTITUTION OF HIGHER EDUCATION.—The
2 term “institution of higher education” has the
3 meaning of the term under section 102 of the High-
4 er Education Act of 1965 (20 U.S.C. 1002).

5 (3) SECRETARY.—The term “Secretary” means
6 the Secretary of Education.

7 **SEC. 4503. CAMPUS-BASED AID WAIVERS.**

8 (a) WAIVER OF NON-FEDERAL SHARE REQUIRE-
9 MENT.—Notwithstanding sections 413C(a)(2) and
10 443(b)(5) of the Higher Education Act of 1965 (20
11 U.S.C. 1070b–2(a)(2) and 1087–53(b)(5)), with respect
12 to funds made available for award years 2019-2020 and
13 2020-2021, the Secretary shall waive the requirement that
14 a participating institution of higher education provide a
15 non-Federal share to match Federal funds provided to the
16 institution for the programs authorized pursuant to sub-
17 part 3 of part A and part C of title IV of the Higher
18 Education Act of 1965 (20 U.S.C. 1070b et seq. and
19 1087–51 et seq.).

20 (b) AUTHORITY TO REALLOCATE.—Notwithstanding
21 sections 413D, 442, and 488 of the Higher Education Act
22 of 1965 (20 U.S.C. 1070b–3, 1087–52, and 1095), during
23 a period of a qualifying emergency, an institution may
24 transfer up to 100 percent of the institution’s unexpended
25 allotment under section 442 of such Act to the institu-

1 tion's allotment under section 413D of such Act, but may
2 not transfer any funds from the institution's unexpended
3 allotment under section 413D of such Act to the institu-
4 tion's allotment under section 442 of such Act.

5 **SEC. 4504. USE OF SUPPLEMENTAL EDUCATIONAL OPPOR-**
6 **TUNITY GRANTS FOR EMERGENCY AID.**

7 (a) IN GENERAL.—Notwithstanding section 413B of
8 the Higher Education Act of 1965 (20 U.S.C. 1070b–1),
9 an institution of higher education may reserve any amount
10 of an institution's allocation under subpart 3 of part A
11 of title IV of the Higher Education Act of 1965 (20 U.S.C.
12 1070b et seq.) for a fiscal year to award, in such fiscal
13 year, emergency financial aid grants to assist under-
14 graduate or graduate students for unexpected expenses
15 and unmet financial need as the result of a qualifying
16 emergency.

17 (b) DETERMINATIONS.—In determining eligibility for
18 and awarding emergency financial aid grants under this
19 section, an institution of higher education may—

20 (1) waive the amount of need calculation under
21 section 471 of the Higher Education Act of 1965
22 (20 U.S.C. 1087kk);

23 (2) allow for a student affected by a qualifying
24 emergency to receive funds in an amount that is not

1 more than the maximum Federal Pell Grant for the
2 applicable award year; and

3 (3) utilize a contract with a scholarship-grant-
4 ing organization designated for the sole purpose of
5 accepting applications from or disbursing funds to
6 students enrolled in the institution of higher edu-
7 cation, if such scholarship-granting organization dis-
8 burses the full allocated amount provided to the in-
9 stitution of higher education to the recipients.

10 (c) SPECIAL RULE.—Any emergency financial aid
11 grants to students under this section shall not be treated
12 as other financial assistance for the purposes of section
13 471 of the Higher Education Act of 1965 (20 U.S.C.
14 1087kk).

15 **SEC. 4505. FEDERAL WORK-STUDY DURING A QUALIFYING**
16 **EMERGENCY.**

17 (a) IN GENERAL.—In the event of a qualifying emer-
18 gency, an institution of higher education participating in
19 the program under part C of title IV of the Higher Edu-
20 cation Act of 1965 (20 U.S.C. 1087–51 et seq.) may make
21 payments under such part to affected work-study stu-
22 dents, for the period of time (not to exceed one academic
23 year) in which affected students were unable to fulfill the
24 students' work-study obligation for all or part of such aca-
25 demic year due to such qualifying emergency, as follows:

Comment [dk46]: Also a good provision.

1 (1) Payments may be made under such part to
2 affected work-study students in an amount equal to
3 or less than the amount of wages such students
4 would have been paid under such part had the stu-
5 dents been able to complete the work obligation nec-
6 essary to receive work study funds, as a one time
7 grant or as multiple payments.

8 (2) Payments shall not be made to any student
9 who was not eligible for work study or was not com-
10 pleting the work obligation necessary to receive work
11 study funds under such part prior to the occurrence
12 of the qualifying emergency.

13 (3) Any payments made to affected work-study
14 students under this subsection shall meet the match-
15 ing requirements of section 443 of the Higher Edu-
16 cation Act of 1965 (20 U.S.C. 1087–53), unless
17 such matching requirements are waived by the Sec-
18 retary of Education.

19 (b) DEFINITION OF AFFECTED WORK-STUDY STU-
20 DENT.—In this section, the term “affected work-study
21 student” means a student enrolled at an eligible institu-
22 tion participating in the program under part C of title IV
23 of the Higher Education Act of 1965 (20 U.S.C. 1087–
24 51 et seq.) who—

1 (1) received a work-study award under section
2 443 of the Higher Education Act of 1965 (20
3 U.S.C. 1087–53) for the academic year during which
4 a qualifying emergency occurred;

5 (2) earned Federal work-study wages from such
6 eligible institution for such academic year; and

7 (3) was prevented from fulfilling the student’s
8 work-study obligation for all or part of such aca-
9 demic year due to such qualifying emergency.

10 **SEC. 4506. ADJUSTMENT OF SUBSIDIZED LOAN USAGE LIM-**
11 **ITS.**

12 Notwithstanding section 455(q)(3) of the Higher
13 Education Act of 1965 (20 U.S.C. 1087e(q)(3)), the Sec-
14 retary shall exclude from a student’s period of enrollment
15 for purposes of loans made under part D of title IV of
16 the Higher Education Act of 1965 (20 U.S.C. 1087a et
17 seq.) any semester (or the equivalent) during which the
18 student was unable to remain enrolled in school as a result
19 of a qualifying emergency, if the Secretary is able to ad-
20 minister such policy in a manner that limits complexity
21 and the burden on the student.

22 **SEC. 4507. EXCLUSION FROM FEDERAL PELL GRANT DURA-**
23 **TION LIMIT.**

24 The Secretary shall exclude from a student’s Federal
25 Pell Grant duration limit under section 401(c)(5) of the

1 Higher Education Act of 1965 (2 U.S.C. 1070a(c)(5)) any
2 semester (or the equivalent) that the student does not
3 complete due to a qualifying emergency if the Secretary
4 is able to administer such policy in a manner that limits
5 complexity and the burden on the student.

6 **SEC. 4508. INSTITUTIONAL REFUNDS AND FEDERAL STU-**
7 **DENT LOAN FLEXIBILITY.**

8 (a) **INSTITUTIONAL WAIVER.**—The Secretary may
9 waive the institutional requirement in section 484B of the
10 Higher Education Act of 1965 (20 U.S.C. 1091b) with
11 respect to the amount of grant or loan assistance (other
12 than assistance received under part C of title IV of such
13 Act) to be returned to the title IV programs if a recipient
14 of assistance under title IV of the Higher Education Act
15 of 1965 (20 U.S.C. 1070 et seq.) withdraws from the in-
16 stitution during the payment period or period of enroll-
17 ment as a result of a qualifying emergency.

18 (b) **STUDENT WAIVER.**—The Secretary may waive
19 the amounts that students are required to return in sec-
20 tion 484B of the Higher Education Act of 1965 (20
21 U.S.C. 1091b) with respect to Federal Pell Grants or
22 other grant assistance if the withdrawals on which the re-
23 turns are based on withdrawals by students who withdrew
24 from the institution as a result of a qualifying emergency.

1 (c) CANCELING LOAN OBLIGATION.—Notwith-
2 standing any other provision of the Higher Education Act
3 of 1965 (20 U.S.C. 1001 et seq.), the Secretary shall can-
4 cel the borrower's obligation to repay the portion of a loan
5 made under part D of title IV of such Act for a recipient
6 of assistance who withdraws from the institution during
7 the payment period as a result of a qualifying emergency.

8 (d) APPROVED LEAVE OF ABSENCE.—Notwith-
9 standing any other provision of law, for purposes of receiv-
10 ing assistance under title IV of the Higher Education Act
11 of 1965 (20 U.S.C. 1070 et seq.), an institution of higher
12 education may, as a result of a qualifying emergency, pro-
13 vide a student with an approved leave of absence that does
14 not require the student to return at the same point in the
15 academic program that the student began the leave of ab-
16 sence if the student returns within the same semester (or
17 the equivalent).

18 **SEC. 4509. SATISFACTORY PROGRESS.**

19 Notwithstanding section 484 of the Higher Education
20 Act of 1965 (20 U.S.C. 1091), in determining whether a
21 student is maintaining satisfactory progress for purposes
22 of title IV of the Higher Education Act of 1965 (20 U.S.C.
23 1070 et seq.), an institution of higher education may, as
24 a result of a qualifying emergency, exclude from the quan-
25 titative component of the calculation any attempted cred-

1 its that were not completed by such student without re-
2 quiring an appeal by such student.

3 **SEC. 4510. CONTINUING EDUCATION AT AFFECTED FOR-**
4 **EIGN INSTITUTIONS.**

5 (a) IN GENERAL.—Notwithstanding section 481(b)
6 of the Higher Education Act of 1965 (20 U.S.C. 1088(b)),
7 with respect to a foreign institution, in the case of a public
8 health emergency, major disaster or emergency, or na-
9 tional emergency declared by the applicable government
10 authorities in the country in which the foreign institution
11 is located, the Secretary may permit any part of an other-
12 wise eligible program to be offered via distance education
13 for the duration of such emergency or disaster and the
14 following payment period for purposes of title IV of the
15 Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

16 (b) ELIGIBILITY.—An otherwise eligible program
17 that is offered in whole or in part through distance edu-
18 cation by a foreign institution between March 1, 2020, and
19 the date of enactment of this Act shall be deemed eligible
20 for the purposes of part D of title IV of the Higher Edu-
21 cation Act of 1965 (20 U.S.C. 1087a et seq.) for the dura-
22 tion of the qualifying emergency and the following pay-
23 ment period for purposes of title IV of the Higher Edu-
24 cation Act of 1965 (20 U.S.C. 1070 et seq.). Not later
25 than June 30, 2020, an institution of higher that uses

1 the authority provided in the previous sentence shall re-
2 port such use to the Secretary.

3 (c) REPORT.—Not later than 180 days after the date
4 of enactment of this Act, and every 180 days thereafter
5 for the duration of the qualifying emergency and the fol-
6 lowing payment period, the Secretary shall submit to the
7 authorizing committees (as defined in section 103 of the
8 Higher Education Act of 1965 (20 U.S.C. 1003)) a report
9 that identifies each foreign institution that carried out a
10 distance education program authorized under this section.

11 (d) WRITTEN ARRANGEMENTS.—

12 (1) IN GENERAL.—Notwithstanding section 102
13 of the Higher Education Act of 1965 (20 U.S.C.
14 1002), for the duration of a qualifying emergency
15 and the following payment period, the Secretary may
16 allow a foreign institution to enter into a written ar-
17 rangement with an institution of higher education
18 located in the United States that participates in the
19 Federal Direct Loan Program under part D of title
20 IV of the Higher Education Act of 1965 (20 U.S.C.
21 1087a et seq.) for the purpose of allowing a student
22 of the foreign institution who is a borrower of a loan
23 made under such part to take courses from the insti-
24 tution of higher education located in the United
25 States.

1 (2) FORM OF ARRANGEMENTS.—

2 (A) PUBLIC OR OTHER NONPROFIT INSTI-
3 TUTIONS.—A foreign institution that is a public
4 or other nonprofit institution may enter into a
5 written arrangement under subsection (a) only
6 with an institution of higher education de-
7 scribed in section 101 of such Act (20 U.S.C.
8 1001).

9 (B) OTHER INSTITUTIONS.—A foreign in-
10 stitution that is a graduate medical school,
11 nursing school, or a veterinary school and that
12 is not a public or other nonprofit institution
13 may enter into a written arrangement under
14 subsection (a) with an institution of higher edu-
15 cation described in section 101 or section 102
16 of such Act (20 U.S.C. 1001 and 1002).

17 (3) REPORT USE.—Not later than June 30,
18 2020, an institution of higher that uses the author-
19 ity described in paragraph (2) shall report such use
20 to the Secretary.

21 (4) REPORT FROM THE SECRETARY.—Not later
22 than 180 days after the date of enactment of this
23 Act, and every 180 days thereafter for the duration
24 of the qualifying emergency and the following pay-
25 ment period, the Secretary shall submit to the au-

1 thorizing committees (as defined in section 103 of
2 the Higher Education Act of 1965 (20 U.S.C.
3 1003)) a report that identifies each foreign institu-
4 tion that entered into a written arrangement author-
5 ized under subsection (a).

6 **SEC. 4511. NATIONAL EMERGENCY EDUCATIONAL WAIVERS.**

7 (a) IN GENERAL.—Notwithstanding any other provi-
8 sion of law, the Secretary of Education may waive any
9 statutory or regulatory provision described under subpara-
10 graphs (A) through (C) of subsection (b)(1) if the Sec-
11 retary determines that such a waiver is necessary and ap-
12 propriate due to the emergency involving Federal primary
13 responsibility determined to exist by the President under
14 the section 501(b) of the Robert T. Stafford Disaster Re-
15 lief and Emergency Assistance Act (42 U.S.C. 5191(b))
16 with respect to the Coronavirus Disease 2019 (COVID-
17 19).

18 (b) APPLICABLE PROVISIONS OF LAW.—

19 (1) IN GENERAL.—The Secretary of Education
20 may waive any statutory or regulatory requirement
21 (such as those requirements related to assessments,
22 accountability, allocation of funds, and reporting),
23 for which a waiver request is submitted under sub-
24 section (c), if the Secretary determines that such a

1 waiver is necessary and appropriate as described in
2 subsection (a), under the following provisions of law:

3 (A) The Elementary and Secondary Edu-
4 cation Act of 1965 (20 U.S.C. 6301 et seq.).

5 (B) The Carl D. Perkins Career and Tech-
6 nical Education Act of 2006 (20 U.S.C. 2301
7 et seq.).

8 (C) The Higher Education Act of 1965
9 (20 U.S.C. 1001 et seq.).

10 (2) LIMITATION.—The Secretary of Education
11 shall not waive under this section any statutory or
12 regulatory requirements relating to applicable civil
13 rights laws.

14 (c) REQUESTS FOR WAIVERS.—

15 (1) IN GENERAL.—In addition to any provision
16 waived by the Secretary under subsection (a), a
17 State, State educational agency, local educational
18 agency, Indian tribe, or institution of higher edu-
19 cation that desires a waiver from any statutory or
20 regulatory provision described under subparagraphs
21 (A) through (C) of subsection (b)(1) that the Sec-
22 retary has not already waived in accordance with
23 subsection (a), may submit a waiver request to the
24 Secretary in accordance with this subsection.

1 (2) REQUESTS SUBMITTED.—A request for a
2 waiver under this subsection shall—

3 (A) identify the Federal programs affected
4 by the requested waiver;

5 (B) describe which Federal statutory or
6 regulatory requirements are to be waived; and

7 (C) describe how the emergency involving
8 Federal primary responsibility determined to
9 exist by the President under the section 501(b)
10 of the Robert T. Stafford Disaster Relief and
11 Emergency Assistance Act (42 U.S.C. 5191(b))
12 with respect to the Coronavirus Disease 2019
13 (COVID-19) prevents or otherwise restricts the
14 ability of the State, State educational agency,
15 local educational agency, Indian tribe, or insti-
16 tution of higher education to comply with such
17 statutory or regulatory requirements.

18 (3) SECRETARY APPROVAL.—

19 (A) IN GENERAL.—Except as provided
20 under subparagraph (B), the Secretary of Edu-
21 cation shall approve or disapprove a waiver re-
22 quest submitted under paragraph (1) not more
23 than 15 days after the date on which such re-
24 quest is submitted.

1 (B) EXCEPTIONS.—The Secretary of Edu-
2 cation may disapprove a waiver request sub-
3 mitted under paragraph (1), only if the Sec-
4 retary determines that—

5 (i) the waiver request does not meet
6 the requirements of this section;

7 (ii) the waiver is not permitted pursu-
8 ant to subsection (b)(2); or

9 (iii) the description required under
10 paragraph (2)(C) provides insufficient in-
11 formation to demonstrate that the waiving
12 of such requirements is necessary or ap-
13 propriate consistent with subsection (a).

14 (4) DURATION.—

15 (A) IN GENERAL.—Except as provided in
16 paragraph (B), a waiver approved by the Sec-
17 retary of Education under this subsection may
18 be for a period not to exceed 1 academic year.

19 (B) EXTENSION.—The Secretary of Edu-
20 cation may extend the period described under
21 subparagraph (A) if the State, State edu-
22 cational agency, local educational agency, In-
23 dian tribe, or institution of higher education
24 demonstrates to the Secretary that extending

1 the waiving of such requirements is necessary
2 and appropriate consistent with subsection (a).

3 (d) REPORTING AND PUBLICATION.—

4 (1) NOTIFYING CONGRESS.—Not later than 7
5 days after granting a waiver under this section, the
6 Secretary of Education shall notify the Committee
7 on Health, Education, Labor, and Pensions of the
8 Senate, the Committee on Appropriations of the
9 Senate, the Committee on Education and Labor of
10 the House of Representatives, and the Committee on
11 Appropriations of the House of Representatives of
12 such waiver.

13 (2) PUBLICATION.—Not later than 30 days
14 after granting a waiver under this section, the Sec-
15 retary of Education shall publish a notice of the Sec-
16 retary's decision in the Federal Register and on the
17 website of the Department of Education.

18 (3) IDEA REPORT.—Not later than 30 days
19 after the date of enactment of this Act, the Sec-
20 retary of Education shall prepare and submit a re-
21 port to the Committee on Health, Education, Labor,
22 and Pensions and the Committee on Appropriations
23 of the Senate, and the Committee on Education and
24 Labor and the Committee on Appropriations of the
25 House of Representatives, with recommendations on

1 any additional waivers the Secretary believes are
2 necessary to be enacted into law under the Individ-
3 uals with Disabilities Education Act (20 U.S.C.
4 1401 et seq.) and the Rehabilitation Act of 1973 (29
5 U.S.C. 701 et seq.) to provide limited flexibility to
6 States and local educational agencies to meet the
7 unique needs of students with disabilities during the
8 emergency involving Federal primary responsibility
9 determined to exist by the President under the sec-
10 tion 501(b) of the Robert T. Stafford Disaster Relief
11 and Emergency Assistance Act (42 U.S.C. 5191(b))
12 with respect to the Coronavirus Disease 2019
13 (COVID-19).

14 **SEC. 4512. HBCU CAPITAL FINANCING.**

15 (a) **DEFERMENT PERIOD.**—

16 (1) **IN GENERAL.**—Notwithstanding any provi-
17 sion of title III of the Higher Education Act of 1965
18 (20 U.S.C. 1051 et seq.), or any regulation promul-
19 gated under such title, the Secretary may grant a
20 deferment, for a period of a qualifying emergency to
21 an institution that has received a loan under part D
22 of title III of such Act (20 U.S.C. 1066 et seq.).

23 (2) **TERMS.**—During the deferment period
24 granted under this subsection—

1 (A) the institution shall not be required to
2 pay any periodic installment of principal re-
3 quired under the loan agreement for such loan;
4 and

5 (B) the Secretary shall make principal pay-
6 ments otherwise due under the loan agreement.

7 (3) CLOSING.—At the closing of a loan deferred
8 under this subsection, terms shall be set under
9 which the institution shall be required to repay the
10 Secretary for the payments of principal made by the
11 Secretary during the deferment, on a schedule that
12 begins upon repayment to the lender in full on the
13 loan agreement.

14 (b) TERMINATION DATE.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the authority provided under this section
17 to grant a loan deferment under subsection (a), shall
18 terminate on the date that is the end of the quali-
19 fying emergency.

20 (2) DURATION.—Any provision of a loan agree-
21 ment or insurance agreement modified or waived by
22 the authority under this section shall remain so
23 modified or waived for the duration of the period
24 covered by the loan agreement or insurance agree-
25 ment.

1 (c) REPORT.—Not later than 180 days after the date
2 of enactment of this Act, and every 180 days thereafter
3 during the period beginning on the first day of the quali-
4 fying emergency and ending on September 30 of the fiscal
5 year following the end of the qualifying emergency, the
6 Secretary shall submit to the authorizing committees (as
7 defined in section 103 of the Higher Education Act of
8 1965 (20 U.S.C. 1003)) a report that identifies each insti-
9 tution that received assistance or a waiver under this sec-
10 tion.

11 **SEC. 4513. TEMPORARY RELIEF FOR FEDERAL STUDENT**
12 **LOAN BORROWERS.**

13 (a) IN GENERAL.—The Secretary shall suspend all
14 payments due for loans made under part D of title IV
15 of the Higher Education Act of 1965 (20 U.S.C. 1087a
16 et seq.) for 3 months.

17 (b) NO ACCRUAL OF INTEREST.—Notwithstanding
18 any other provision of the Higher Education Act of 1965
19 (20 U.S.C. 1001 et seq.), interest shall not accrue on a
20 loan described under subsection (a) for which payment
21 was suspended for the period of the suspension.

22 (c) CONSIDERATION OF PAYMENTS.—The Secretary
23 shall deem each month for which a loan payment was sus-
24 pended under this section as if the borrower of the loan
25 had made a payment for the purpose of any loan forgive-

1 ness program authorized under part D of title IV of the
2 Higher Education Act of 1965 (20 U.S.C. 1087a et seq.)
3 for which the borrower would have otherwise qualified.

4 (d) EXTENSION.—The Secretary may extend the pe-
5 riod of suspension described under subsection (a) for an
6 additional 3 months.

7 **SEC. 4514. PROVISIONS RELATED TO THE CORPORATION**
8 **FOR NATIONAL AND COMMUNITY SERVICE.**

9 (a) ACCRUAL OF SERVICE HOURS.—

10 (1) ACCRUAL THROUGH OTHER SERVICE
11 HOURS.—

12 (A) IN GENERAL.—Notwithstanding any
13 other provision of the Domestic Volunteer Serv-
14 ice Act of 1973 (42 U.S.C. 4950 et seq.) or the
15 National and Community Service Act of 1990
16 (42 U.S.C. 12501 et seq.), the Corporation for
17 National and Community Service shall allow an
18 individual described in subparagraph (B) to ac-
19 cruce other service hours that will count toward
20 the number of hours needed for the individual's
21 education award.

22 (B) AFFECTED INDIVIDUALS.—Subpara-
23 graph (A) shall apply to any individual serving
24 in a position eligible for an educational award
25 under subtitle D of title I of the National and

1 Community Service Act of 1990 (42 U.S.C.
2 12601 et seq.)—

3 (i) who is performing limited service
4 due to COVID-19; or

5 (ii) whose position has been suspended
6 or placed on hold due to COVID-19.

7 (2) PROVISIONS IN CASE OF EARLY EXIT.—In
8 any case where an individual serving in a position el-
9 igible for an educational award under subtitle D of
10 title I of the National and Community Service Act
11 of 1990 (42 U.S.C. 12601 et seq.) was required to
12 exit the position early at the direction of the Cor-
13 poration for National and Community Service, the
14 Chief Executive Officer of the Corporation for Na-
15 tional and Community Service may—

16 (A) deem such individual as having met
17 the requirements of the position; and

18 (B) award the individual the full value of
19 the educational award under such subtitle for
20 which the individual would otherwise have been
21 eligible.

22 (b) AVAILABILITY OF FUNDS.—Notwithstanding any
23 other provision of law, all funds made available to the Cor-
24 poration for National and Community Service under any
25 Act, including the amounts appropriated to the Corpora-

tion under the headings “OPERATING EXPENSES”, “SALARIES AND EXPENSES”, and “OFFICE OF THE INSPECTOR GENERAL” under the heading “CORPORATION FOR NATIONAL AND COMMUNITY SERVICE” under title IV of Division A of the Further Consolidated Appropriations Act, 2020 (Public Law 116–94), shall remain available for the fiscal year ending September 30, 2021.

(c) NO REQUIRED RETURN OF GRANT FUNDS.—Notwithstanding section 129(l)(3)(A)(i) of the National and Community Service Act of 1990 (42 U.S.C. 12581(l)(3)(A)(i)), the Chief Executive Officer of the Corporation for National and Community Service may permit fixed-amount grant recipients under such section 129(l) to maintain a pro rata amount of grant funds, at the discretion of the Corporation for National and Community Service, for participants who exited or are serving in a limited capacity due to COVID-19, to enable the grant recipients to maintain operations and to accept participants.

(d) EXTENSION OF TERMS AND AGE LIMITS.—Notwithstanding any other provision of law, the Corporation for National and Community Service may extend the term of service (for a period not to exceed the 1-year period immediately following the end of the national emergency) or waive any upper age limit (except in no case shall the maximum age exceed 26 years of age) for national service

1 programs carried out by the National Civilian Community
2 Corps under subtitle E of title I of the National and Com-
3 munity Service Act of 1990 (42 U.S.C. 12611 et seq.),
4 and the participants in such programs, for the purposes
5 of—

6 (1) addressing disruptions due to COVID-19;
7 and

8 (2) minimizing the difficulty in returning to full
9 operation due to COVID-19 on such programs and
10 participants.

11 **SEC. 4515. WORKFORCE RESPONSE ACTIVITIES.**

12 (a) **ADMINISTRATIVE COSTS.**—Of the total amount
13 allocated to a local area under section 128(b) of the Work-
14 force Innovation and Opportunity Act (29 U.S.C.
15 3163(b)) and section 133(b) of such Act (29 U.S.C.
16 3173(b)) and available for administrative costs for pro-
17 gram year 2019, not more than 20 percent of the total
18 amount may be used by the local board involved for the
19 administrative costs of carrying out local workforce invest-
20 ment activities under chapter 2 or chapter 3 of subtitle
21 B of title I of such Act (29 U.S.C. 3151 et seq.), if the
22 portion of the total amount that exceeds 10 percent of the
23 total amount as described under section 128(b)(4)(A) of
24 such Act is used to respond to the COVID-19 national
25 emergency.

1 (b) RAPID RESPONSE ACTIVITIES.—

2 (1) STATEWIDE RAPID RESPONSE.—Of the
3 funds available for program year 2019 for statewide
4 activities under section 128(a) of the Workforce In-
5 novation and Opportunity Act (29 U.S.C. 3163(a)),
6 such funds may be used for statewide rapid response
7 activities as described in section 134(a)(2)(A) (29
8 U.S.C. 3174(a)(2)(A)) for responding to the
9 COVID-19 national emergency.

10 (2) LOCAL BOARDS.—Of the funds available to
11 a Governor under section 133(a)(2) of such Act (29
12 U.S.C. 3173(a)(2)) such funds may be released
13 within 30 days to local boards most impacted by the
14 coronavirus at the determination of the Governor for
15 rapid response activities related to responding to the
16 COVID-19 national emergency.

17 (c) DEFINITIONS.—In this section:

18 (1) CORONAVIRUS.—The term “coronavirus”
19 means coronavirus as defined in section 506 of the
20 Coronavirus Preparedness and Response Supple-
21 mental Appropriations Act, 2020 (Public Law 116–
22 123).

23 (2) COVID-19 NATIONAL EMERGENCY.—The
24 term “COVID-19 national emergency” means the
25 national emergency declared by the President under

1 the National Emergencies Act (50 U.S.C. 1601 et
2 seq.) on March 13, 2020, with respect to the
3 coronavirus.

4 (3) WIOA TERMS.—Except as otherwise pro-
5 vided, the terms in this section have the meanings
6 given the terms in section 3 of the Workforce Inno-
7 vation and Opportunity Act (29 U.S.C. 3102).

8 **SEC. 4516. TECHNICAL AMENDMENTS.**

9 (a) IN GENERAL.—

10 (1) Section 6103(a)(3) of the Internal Revenue
11 Code of 1986, as amended by the FUTURE Act
12 (Public Law 116-91), is further amended by striking
13 “(13), (16)” and inserting “(13)(A), (13)(B),
14 (13)(C), (13)(D)(i), (16)”.

15 (2) Section 6103(p)(3)(A) of such Code, as so
16 amended, is further amended by striking “(12),”
17 and inserting “(12), (13)(A), (13)(B), (13)(C),
18 (13)(D)(i)”.

19 (3) Section 6103(p)(4) of such Code, as so
20 amended, is further amended by striking “(13) or
21 (16)” each place it appears and inserting “(13), or
22 (16)”.

23 (4) Section 6103(p)(4) of such Code, as so
24 amended and as amended by paragraph (3), is fur-
25 ther amended by striking “(13)” each place it ap-

1 pears and inserting “(13)(A), (13)(B), (13)(C),
2 (13)(D)(i)”.

3 (5) Section 6103(l)(13)(C)(ii) of such Code, as
4 added by the FUTURE Act (Public Law 116-91), is
5 amended by striking “section 236A(e)(4)” and in-
6 serting “section 263A(e)(4)”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall apply as if included in the enactment
9 of the FUTURE Act (Public Law 116-91).

10 **TITLE III—LABOR PROVISIONS**

11 **SEC. 4601. LIMITATION ON PAID LEAVE.**

12 Section 110(b)(2)(B) of the Family and Medical
13 Leave Act of 1993 (as added by the Emergency Family
14 and Medical Leave Expansion Act) is amended by striking
15 clause (ii) and inserting the following:

16 “(ii) LIMITATION.—An employer shall
17 not be required to pay more than \$200 per
18 day and \$10,000 in the aggregate for each
19 employee for paid leave under this sec-
20 tion.”.

21 **SEC. 4602. EMERGENCY PAID SICK LEAVE ACT LIMITATION.**

22 Section 5102 of the Emergency Paid Sick Leave Act
23 (division E of the Families First Coronavirus Response
24 Act) is amended by adding at the end the following:

25 “(f) LIMITATIONS.—

Comment [dk47]: What is the current limit? Is this a big reduction?

1 “(1) IN GENERAL.—An employer shall not be
2 required to pay more than either—

3 “(A) \$511 per day and \$5,110 in the ag-
4 gregate for each employee, when the employee
5 is taking leave for a reason described in para-
6 graph (1), (2), or (3) of section 5102(a); or

7 “(B) \$200 per day and \$2,000 in the ag-
8 gregate for each employee, when the employee
9 is taking leave for a reason described in para-
10 graph (4), (5), or (6) of section 5102(a).

11 “(2) EXPIRATION OF REQUIREMENT.— An em-
12 ployer’s requirement to provide paid leave with re-
13 spect to a specific employee shall expire at the ear-
14 lier of—

15 “(A) the time when the employer has paid
16 that employee for paid leave under this section
17 for an equivalent of 80 hours of work; or

18 “(B) upon the employee’s return to work
19 after taking paid leave under this section.”.

20 **SEC. 4603. REGULATORY AUTHORITIES UNDER THE EMER-**
21 **GENCY PAID SICK LEAVE ACT.**

22 Section 5111(2) of the Emergency Paid Sick Leave
23 Act (division E of the Families First Coronavirus Re-
24 sponse Act) is amended by striking “section 5102(a)(5)”

Comment [dk48]: This caps payments for a coronavirus case to two weeks of labor. But the more severe cases almost always last longer than this.

1 and inserting “paragraphs (4) and (5) of section
2 5102(a)(5)”.

3 **SEC. 4604. UNEMPLOYMENT INSURANCE.**

4 Section 903(h)(2)(B) of the Social Security Act (42
5 U.S.C. 1103(h)(2)(B)), as added by section 4102 of the
6 Emergency Unemployment Insurance Stabilization and
7 Access Act of 2020, is amended to read as follows:

8 “(B) The State ensures that applications
9 for unemployment compensation, and assistance
10 with the application process, are accessible in
11 person, by phone, or online.”.

12 **SEC. 4605. OMB WAIVER OF PAID FAMILY AND PAID SICK
13 LEAVE.**

14 (a) FAMILY AND MEDICAL LEAVE ACT OF 1993.—
15 Section 110(a) of title I of the Family and Medical Leave
16 Act of 1993 (29 U.S.C. 2611 et seq.) (as added by division
17 C of the Families First Coronavirus Response Act) is
18 amended by adding at the end the following new para-
19 graph:

20 “(4) The Director of the Office of Management
21 and Budget shall have the authority to exclude for
22 good cause from the requirements under subsection
23 (b) certain employers of the United States Govern-
24 ment with respect to certain categories of Executive
25 Branch employees.”.

1 (b) EMERGENCY PAID SICK LEAVE ACT.—The
2 Emergency Paid Sick Leave Act (division E of the Fami-
3 lies First Coronavirus Response Act) is amended by add-
4 ing at the end the following new section:

5 “SEC. 5112. AUTHORITY TO EXCLUDE CERTAIN EMPLOYEES.

6 “The Director of the Office of Management and
7 Budget shall have the authority to exclude for good cause
8 from the definition of employee under section 5110(1) cer-
9 tain employees described in subparagraphs (E) and (F)
10 of such section, including by exempting certain United
11 States Government employers covered by section
12 5110(2)(A)(i)(V) from the requirements of this title with
13 respect to certain categories of Executive Branch employ-
14 ees.”.

15 SEC. 4606. PAID LEAVE FOR REHIRED EMPLOYEES.

16 Section 110(a)(1)(A) of the Family and Medical
17 Leave Act of 1993, as added by section 3102 of the Emer-
18 gency Family and Medical Leave Expansion Act, is
19 amended to read as follows:

20 “(A) ELIGIBLE EMPLOYEE.—

21 “(i) IN GENERAL.—In lieu of the defi-
22 nition in sections 101(2)(A) and
23 101(2)(B)(ii), the term ‘eligible employee’
24 means an employee who has been employed
25 for at least 30 calendar days by the em-

1 ployer with respect to whom leave is re-
2 quested under section 102(a)(1)(F).

3 “(ii) RULE REGARDING REHIRED EM-
4 PLOYEES.—For purposes of clause (i), the
5 term ‘employed for at least 30 calendar
6 days’, used with respect to an employee
7 and an employer described in clause (i), in-
8 cludes an employee who was laid off by
9 that employer not earlier than March 1,
10 2020, had worked for the employer for not
11 less than 30 of the last 60 calendar days
12 prior to the employee’s layoff, and was re-
13 hired by the employer.’”.

14 **SEC. 4607. ADVANCE REFUNDING OF CREDITS.**

15 (a) PAYROLL CREDIT FOR REQUIRED PAID SICK
16 **LEAVE.**—Section 7001 of division G of the Families First
17 Coronavirus Response Act is amended by inserting after
18 subsection (g) the following new subsection:

19 “(h) TREATMENT OF DEPOSITS.—The Secretary of
20 the Treasury (or the Secretary’s delegate) shall waive any
21 penalty under section 6656 of the Internal Revenue Code
22 of 1986 for any failure to make a deposit of the tax im-
23 posed by section 3111(a) or 3221(a) of such Code if the
24 Secretary determines that such failure was due to the an-
25 ticipation of the credit allowed under this section.’”.

Comment [dk49]: Greatly reduces the time between paying out sick leave and getting it reimbursed.

1 (b) CREDIT FOR SICK LEAVE FOR CERTAIN SELF-
2 EMPLOYED INDIVIDUALS.—Section 7002 of division G of
3 the Families First Coronavirus Response Act is amended
4 by inserting after subsection (g) the following new sub-
5 section:

6 “(h) ADVANCING CREDIT.—The Secretary of the
7 Treasury (or the Secretary’s delegate) shall issue such
8 forms and instructions as are necessary—

9 “(1) to allow the advance payment of the credit
10 under subsection (a), subject to the limitations pro-
11 vided in this section, based on such information as
12 the Secretary shall require, and

13 “(2) to provide for the reconciliation of such
14 advance payment with the amount advanced at the
15 time of filing the return of tax for the taxable
16 year.”.

17 (c) PAYROLL CREDIT FOR REQUIRED PAID FAMILY
18 LEAVE.—Section 7003 of division G of the Families First
19 Coronavirus Response Act is amended by inserting after
20 subsection (g) the following new subsection:

21 “(h) TREATMENT OF DEPOSITS.—The Secretary of
22 the Treasury (or the Secretary’s delegate) shall waive any
23 penalty under section 6656 of the Internal Revenue Code
24 of 1986 for any failure to make a deposit of the tax im-
25 posed by section 3111(a) or 3221(a) of such Code if the

1 Secretary determines that such failure was due to the an-
2 ticipation of the credit allowed under this section.”.

3 (d) CREDIT FOR FAMILY LEAVE FOR CERTAIN SELF-
4 EMPLOYED INDIVIDUALS.—Section 7004 of division G of
5 the Families First Coronavirus Response Act is amended
6 by inserting after subsection (e) the following new sub-
7 section:

8 “(f) ADVANCING CREDIT.—The Secretary of the
9 Treasury (or the Secretary’s delegate) shall issue such
10 forms and instructions as are necessary—

11 “(1) to allow the advance payment of the credit
12 under subsection (a), subject to the limitations pro-
13 vided in this section, based on such information as
14 the Secretary shall require, and

15 “(2) to provide for the reconciliation of such
16 advance payment with the amount advanced at the
17 time of filing the return of tax for the taxable
18 year.”.

1 **DIVISION E—TEMPORARY PER-**
2 **MIT USE TO GUARANTEE**
3 **MONEY MARKET MUTUAL**
4 **FUNDS**

5 **SEC. 5001. NON-APPLICABILITY OF RESTRICTIONS ON ESF**
6 **DURING NATIONAL EMERGENCY.**

7 Section 131 of the Emergency Economic Stabilization
8 Act of 2008 (12 U.S.C. 5236) shall not apply during the
9 national emergency concerning the novel coronavirus dis-
10 ease (COVID–19) outbreak declared by the President
11 under the National Emergencies Act (50 U.S.C. 1601 et
12 seq.).

13 **DIVISION F—BUDGETARY**
14 **PROVISIONS**

15 **SEC. 6001. EMERGENCY DESIGNATION.**

16 (a) **IN GENERAL.**—The amounts provided under this
17 Act are designated as an emergency requirement pursuant
18 to section 4(g) of the Statutory Pay-As-You-Go Act of
19 2010 (2 U.S.C. 933(g)).

20 (b) **DESIGNATION IN SENATE.**—In the Senate, this
21 Act is designated as an emergency requirement pursuant
22 to section 4112(a) of H. Con. Res. 71 (115th Congress),
23 the concurrent resolution on the budget for fiscal year
24 2018.