RSC Republican Study Committee

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H.R. 1 Conference Report—The American Recovery and Reinvestment Act

BY THE NUMBERS:

In millions

	House	Senate	Conference
FY 2009-2019 Discretionary Budget Authority	332,000	262,800	311,527
FY 2009-2019 Mandatory	307,500	282,800	266,358
FY 2009-2019 Revenue Reductions	182,300	292,400	211,803
Estimated Interest Cost	347,000	355,000	334,000
FY 2009-2019, Total Increase to Federal Deficit	**1,168,800**	**1,193,000**	**1,123,688**

Spending Discussion: No CBO score is available at press time, but based on preliminary reports, RSC staff estimates the legislation would increase the deficit by approximately $1.124 trillion, including the effect on interest payments. Over the 2009-2019 period, the legislation increases discretionary spending by $311.5 billion, increases mandatory spending by $266.4 billion, and reduces revenue by $211.8 billion (the media, as well as Congressional Democrats, will cite a higher "tax cut" figure—but only by including $112 billion of entitlement spending). This has the consequence of increasing the federal government's interest payments on the nation's debt by about $334 billion over ten years.

However, CBO, in a letter to Representative Paul Ryan, notes that the cost of the legislation is far higher: $2.527 trillion ($3.271 trillion including interest payments) if certain expiring programs are extended over the full ten-year budget window.

Background: In February 2008, Congress enacted a $168 billion economic stimulus package. In June 2008, Congress enacted a $260 billion supplemental for war funding, domestic spending, and new entitlement spending. Democrat leaders had numerous additional spending priorities that were not included in the final versions of either of the two bills. In late summer of last year—just five months ago—Democrats were discussing a stimulus plan of just $50 billion, 6 percent of the cost of the plan that will soon be before the House. This led on September 24, 2008 to House consideration of H.R. 7110, a $61 billion "stimulus bill."

Budget Compliance: The legislation violates the spirit of PAYGO by $478.2 billion over ten years (the amount of the tax revenue reductions and mandatory spending increases), though the legislation technically avoids any PAYGO constraints by using an emergency designation. To put this figure in perspective, prior to the current fiscal year, this is a larger amount (over ten years) than any federal deficit in U.S. history.

H.R. 1: Key Conservative Concerns

Take-Away Points

--***Won't Work.*** Many economists argue that there is no historical precedent for a stimulus spending-driven economic recovery. In an ad put together by CATO, more than *200 economists* reject the idea that more government spending will improve economic performance. Even many liberal economists predict that if this legislation passes, the unemployment rate will remain around 8% over the next couple of years (near a 25-year high).

--***Unprecedented Deficit Spending.*** Even *without* this legislation, the FY 2009 federal deficit is projected to be the largest peacetime deficit in U.S. history as a percentage of GDP (8.3%). To accommodate the additional deficit spending provided by the bill, the legislation includes the ***fourth*** increase to the nation's debt limit in the past 17 months.

--***Step Toward Washington-Run Health Care.*** The legislation dramatically expands spending for government-provided healthcare while establishing a board that can serve as a placeholder for Tom Daschle's goal of a Federal Health Board to regulate the U.S. health care system.

--***Phony "Tax Relief."*** Many of the so-called "tax relief" provisions in the legislation expire after two years, are intended to benefit *state and local governments*, or are actually *entitlement spending* increases.

--***Massive Expansion of Davis-Bacon.*** The legislation expands Davis-Bacon prevailing wage requirements to every project under the bill. According to the Heritage Foundation, eliminating Davis-Bacon from the bill would save taxpayers $17 billion.

--***Values Concerns.*** The legislation includes $1 billion in funding for a new Prevention and Wellness Fund which could be used for STD prevention and research. Further, the bill extends —through December 30, 2010—the Transitional Medical Assistance (TMA) program that provides Medicaid benefits for low-income families transitioning from welfare to work. Traditionally, the TMA is expanded along with abstinence education funding, but the conference report includes no abstinence funding.

--*Guts Welfare Reform.* The legislation provides financial incentives for states to *increase* their welfare caseloads.

For more details on these concerns, see below.

<u>Major Changes Compared to House-Passed Version</u>: Full summary of both divisions provided beginning on page 11 of the bulletin. The following are some of the key differences between the House-passed version and the conference report.

Division A—Appropriations

Table 1: Funding for Programs NOT Included in House Bill

In Thousands

Program	House	Senate	Conf
Violence Against Women Act grants	--	300,000	225,000
Justice—Grant Administration Salaries and Expenses	--	10,000	10,000
NASA—Exploration	--	450,000	400,000
Community Development Financial Institutions	--	250,000	100,000
Health Insurance Administration	--	--	80,000
SBA Surety Bond Guarantees Revolving Fund	--	15,000	15,000
SBA Salaries and Expenses	--	84,000	69,000
BLM Management and Land Expenses	--	135,000	125,000
BLM Wildland Fire Management	--	15,000	15,000
Fish and Wildlife Service Maintenance and Restoration	--	165,000	165,000
National Park Service operations for maintenance	--	158,000	146,000
Historic Preservation Fund	--	--	15,000
Bureau of Indian Affairs operations and training	--	40,000	40,000
Bureau of Indian Affairs guaranteed loan program	--	10,000	10,000
Indian Health Services for contract services and IT	--	135,000	85,000
USAID Information Technology Improvements	--	58,000	38,000
HUD Section 8 Project Based Rental Assistance	--	2,132,000	2,000,000
Public Health and Social Services Emergency Fund	--	--	50,000
FEMA State and Local grants for fire station construction	--	500,000	210,000
Department of State Domestic Facilities Initiative	--	25,000	90,000
High Speed Rail Corridor	--	2,000,000	8,000,000
Grants for National Transportation System	--	5,500,000	1,500,000
Grants for Low-Income Housing Tax Credits	--	2,000,000	2,250,000
Total	**0**	**15,030,000**	**15,558,000**

Table 2: "Airdropped" Funding Provisions

In Thousands

Program	House	Senate	Conf
Health Insurance Administration	--	--	80,000
Amtrak Rail Security Grants	--	--	450,000
Total	**0**	**0**	**530,000**

33 New Programs: The conference report includes 33 new programs at a total cost of $95.3 billion (source: Appropriations Committee Republicans). This compares to 30 in the Senate-passed bill and 32 in the House-passed bill.

"Airdropped Amtrak" Rail Security Grants Provision: The conference agreement provides $450 million for a *new program*, not previously included in either the Senate- or House-passed versions of the bill, for Amtrak Rail Security Grants. Amtrak runs a deficit of more than $1 billion a year. According to Dr. Utt of the Heritage Foundation, Amtrak only filled 48.9% of its seats in FY 2007.

High Speed Rail Corridor: The bill provides $8 billion in funding for a new program for high speed rail corridor. The House provided no funding for this program. According to the Washington Post, part of this funding is for a: "controversial proposal for a magnetic-levitation rail line between Disneyland, in California, and Las Vegas." This project is backed by Senator Harry Reid.

Contraception funding: Contraception funding has been removed from the conference report. It was in an early version of the House bill but was removed by the rule through a self-enacting amendment.

E-Verify Authorization: E-Verify program authorization has been removed from the Conference Report. E-Verify system is the only way employers can ensure they are hiring legal individuals – not illegal immigrants. The failure to reauthorize the program will make it more difficult for employers to determine work eligibility and will likely result in the increased hiring of illegal workers. The program was reauthorized by unanimous consent in the House Appropriations Committee, and included in the House-passed version of the legislation. No similar language was included in the Senate bill.

STD Funding: The House-passed bill included $335 million for sexually transmitted disease education and prevention programs at the Centers for Disease Control and Prevention (CDC). The conference report does not explicitly contain funding for STD education and prevention, but it does contain $1 billion in funding for a new Prevention and Wellness Fund to help prevent disease (The House bill proposed $3 billion). This funding could be used for STD prevention and research. The bill states that of the $1 billion for the program, "$650 million shall be to carry out evidence-based clinical and community-based prevention and wellness strategies… that address chronic disease rates." Additionally, "$50 million shall be provided to states for an additional amount to carry out activities to implement healthcare-associated infections reductions strategies."

State Fiscal Stabilization Fund: The legislation provides $53.6 billion for a State Fiscal Stabilization Fund (the House-passed funding level was $79 billion) to be allocated to the states: 61% based on school-age population and 39% based on the state's total population. States are required to use the money as follows:

- 81.8% ($40.8 billion) must be used to "support elementary, secondary and higher education."

- 18.2% ($8 billion) must be used for “public safety and other government services, which may include education services. These funds may be used for elementary, secondary, and higher education modernization, renovation, and repair activities that are consistent with State law.”

Division B—Taxes

“Making Work Pay” Tax Credit: The conference agreement reduces the value of this tax credit by 20%, so that the maximum value is $400 for individuals and $800 on a joint return (as compared to $500 and $1,000 in the House-passed bill).

AMT: Provides a one-year extension of the “AMT patch,” a $70,950 AMT exemption amount for married couples in 2009, and a $46,700 exemption amount for singles.

Restriction to 5-year Carryback of Net Operating Losses: The House-passed bill extended the two-year carryback period of net operating losses to five years. The conference report restricts this provision to businesses with gross receipts of $15 million or less. This means that U.S. businesses will receive only 6% as much tax relief as contained in the House-passed bill ($947 million versus $17.1 billion).

Deduction for Taxes Paid on Cars: The bill provides a deduction for state, local, and excise taxes paid for the purchase of new cars, trucks, or motorcycles (sold for $49,500 or less) during 2009. No similar provision was included in the House bill.

Division B—Other Provisions

Economic Recovery Payment to Recipients of Social Security, SSI, Railroad Retirement and Veterans: The legislation provides a one-time payment of $250 for retirees, disabled individuals and SSI recipients. This provision is effective for 2009 only. *This provision is estimated to cost $14.3 billion over ten years.*

Debt Limit Increase: The legislation increases the debt limit by $789 billion, from $11.315 trillion to $12.104 trillion. This will be the fourth increase in the debt limit since September, 2007. During this period, just 17 months, the debt limit has increased by $3.139 trillion or 35%. The House-passed version contained no similar provision.

Trade Adjustment Assistance (TAA) Expansion: The bill expands TAA coverage to workers affected by outsourcing from all countries – not just ones with which the U.S. has a free trade agreement. It creates an entirely new TAA program for trade-affected communities and allows for automatic TAA eligibility for workers suffering from unfair trade. The bill also increases training funds available to states by 160 percent to $575 million per fiscal year and adds a provision to increase the TAA Health Care Tax Credit to 80% up from the Senate’s previously proposed 65% credit. The Joint Committee on Taxation estimates this provision will cost $457 million. The provision also makes a number of other changes to encourage uptake of the credit. This was not included in the

House-passed version of the bill. *This provision is estimated to increase entitlement spending by $1.6 billion over ten years.*

Detailed Section on Conservative Concerns:

The following are some concerns that conservatives have with this legislation, based on the details summarized later in this document.

The Legislation Won't Work: Many economists argue that there is no example of deficit-financed stimulus spending resulting in an economic recovery. According to the Heritage Foundation, during the 1990s, Japan passed 10 "stimulus" bills in eight years, and along the way built the largest debt (180 percent of GDP) of the world's advanced economies.[1] But even so, Japan failed to come out of its downturn.

Many supporters of "stimulus" legislation will instead cite the Great Depression in the U.S. as the model for "stimulus" spending leading to economic recovery. But this analogy does not work for several reasons:

- The largest federal deficit during the Great Depression was 5.9% of GDP, and in many years it was much lower (in 1937 it was just 0.5% of GDP). Not counting spending from this stimulus package, the FY 2009 deficit is already projected to be 8.3% of GDP.
- Leading up to the Great Depression, private savings was high. Leading up to the most recent crisis, private savings is low.
- Leading up to the Great Depression, the federal government ran a surplus for eleven straight years (every year from 1920 to 1930). Leading up to this most recent economic crisis, the federal government has run a deficit in 43 out of the last 48 years.
- During the Great Depression, infrastructure projects didn't face the review process that exists today. Consequently, it is simply not possible (absent dramatic changes to, among other things, environmental regulations) for infrastructure spending to work as it did in the 1930s. That is why actual infrastructure spending is such a small percentage of the "stimulus" spending.

But there are two other problems with citing the Great Depression as a model of "stimulus" spending leading to recovery. First, the Great Depression began in 1929 and did not end until 1940. And the stock market did not return to the level of September 3, 1929 until 1954. If today's economy were to go through a similar "recovery," we would not fully escape the current recession until 2018, and the Dow would not reach its high of 2007 until sometime in 2032. Economists have differing opinions on the effectiveness of many of the government actions undertaken during the New Deal, but Megan McArdle notes:

[1] Heritage Foundation, "Learning from Japan's Big Debt Spending Failure." Available online at The Foundry (accessed February 10, 2009).

> "Government spending went up, which naturally pushed the measurement up [GDP]. But that didn't mean the economy was healthy, and no reputable economist, left or right, claims that the Great Depression ended before 1940."

Second, many economists note that during the Great Depression the U.S. did not actually have much of an expansionary fiscal policy. To be sure, federal spending did increase, but so did federal taxes. As Tyler Cowen puts it:

> "The New Deal's legacy of public works programs has given many people the impression that it was a time of expansionary fiscal policy, but that isn't quite right. Government spending went up considerably, but taxes rose, too. Under President Herbert Hoover and continuing with Roosevelt, the federal government increased income taxes, excise taxes, inheritance taxes, corporate income taxes, holding company taxes and "excess profits" taxes. When all of these tax increases are taken into account, New Deal fiscal policy didn't do much to promote recovery."

And here is what Christina Romer—President Obama's Chair of the Council of Economic Advisers—said in a 1992 paper *What Ended the Great Depression?*:

> "This paper examines the role of aggregate demand stimulus in ending the Great Depression. ***A simple calculation indicates that nearly all of the observed recovery of the U.S. economy prior to 1942 was due to monetary expansion.*** Huge gold inflows in the mid- and late-1930s swelled the U.S. money stock and appear to have stimulated the economy by lowering real interest rates and encouraging investment spending and purchases of durable goods. The finding that monetary developments were crucial to the recovery implies that self-correction played little role in the growth of real output between 1933 and 1942."

An Unprecedented Expansion of the Nation's Debt Burden: Even without enactment of any stimulus bill, the FY 2009 deficit is projected to be $1.186 trillion or 8.3% of GDP. This would be the largest nominal deficit in U.S. history, as well as the largest deficit as a percentage of GDP in U.S. history outside of World War II.

Since January 2007, the national debt has increased from $8.67 trillion to $10.73 trillion, an increase of $2.06 trillion or 23.8% in just two years. To put this in perspective, the increase to the national debt over just the past two years is larger than the total amount of debt accumulated by the federal government from 1789 to 1985.

The national debt may increase by another $2 trillion this year. According to the Financial Times, in February the U.S. will put forward a record debt sale.

Taxpayer Funded Bail for Criminals: The bill provides $2 billion for the Edward Byrne Memorial Justice Assistance Grant which is a major funding source for "pretrial release and pretrial release agencies." Pretrial release uses taxpayer dollars to compete with the private sector surety bail industry to release criminals from jail. With passage of the stimulus, taxpayers will begin funding pretrial services and pretrial agencies that compete with the tax-paying private surety bail industry. Expanding the budgets of taxpayer-funded pretrial release programs is not fiscally responsible when the private surety bail industry can be utilized to greater degrees at no taxpayer expense. Additionally, government should not compete with private enterprise when the private sector is more effective and less costly to the taxpayer.

Davis-Bacon: The legislation extends Davis-Bacon requirements to all projects in the bill. Davis-Bacon prevailing wage requirements tend to increase the cost of federal projects. According to the Heritage Foundation, eliminating Davis-Bacon would save taxpayers $17 billion.

Taxes: Of the $790 billion increase to the deficit that this legislation would cause, only 27% (or $212 billion) is attributable to revenue reductions—the other 73% is all spending increases. But conservatives may have a number of concerns with how this $212 billion tax package is structured:

- *Increased Entitlement Spending:* Much of what the authors of the legislation call "tax cuts" are actually entitlement spending increases. $112 billion of the $326 billion score for the tax changes consists of higher mandatory spending (refundable tax credits score as higher spending for amounts in excess of an individual's tax burden).
- *Tax Relief Expires:* Most of the tax relief, including for example the "Making Work Pay" tax credit, expires at the end of 2010. This increases uncertainty about the future of the tax code, which many economists believe is economically harmful.
- *Increased Marginal Tax Rates for Some Middle Class Workers:* Many of the new tax credits in H.R. 1, most notably the "Making Work Pay" tax credit, have phase-outs of $75,000 for individuals. This is functionally a marginal tax rate increase for taxpayers that fall within the phase-out.

Steps Toward Washington-Run Health Care: This legislation includes $24.7 billion aimed at laying the groundwork towards universal healthcare. For example, the legislation includes:

- $500 million to "*prepare our country for universal healthcare*" by training primary care providers including dentists, nurses and doctors and paying medical school expenses for those who agree to participate in the National Health Service Corps.
- $1.1 billion for the establishment of a Federal Coordinating Council for Comparative Effectiveness Research, of which $400 million will be given to the Secretary of HHS to do with as he sees fit. While the provision does not *yet* have teeth, some conservatives may be concerned that it is a place-holder for the liberals' universal health care plan, and have concerns with the following. This new health board could grant President Obama's nominee for Secretary of HHS, Tom Daschle, his wish of a *permanent government rationing board made up of bureaucrats who will prescribe care without input from patients and providers,*

which he lays out in his book "Critical: What We Can Do About the Health Care Crisis":

> The Federal Health Board wouldn't be a regulatory agency, but its recommendations would *have teeth* because all federal health programs would have to abide by them…Congress could opt to go further with the Board's recommendations. It could, for example, link the tax exclusion for health insurance to insurance that complies with the Board's recommendation.

Some conservatives may be concerned that the Democrats' CER board is modeled after the UK's government agency, the National Institute for Health and Clinical Excellence (NICE). If a treatment is found to cost more than about $30,000-$45,000 per "quality-adjusted life-year," it is rarely covered. For example, NICE limited several Alzheimer's drugs to patients for whom the disease had advanced from early to middle-stage. Even though doctors argued that starting treatment at the onset would be most effective, NICE decided that patients would have to wait until they became sick.

Conservatives may be concerned that the legislation provides nearly $27 billion to extend public programs and provide new government subsidies to an estimated 6.5 million unemployed individuals through COBRA, leaving an ever shrinking portion of the population with truly private health care coverage. Some conservatives may be concerned this provision will add to the already high cost of coverage due to adverse selection creating the opposite of a stimulus effect. It could cause employees to spend more out of their wages on health care instead of in the economy and force employers to spend more time and money to administer COBRA to former employees and pay rising premiums.

The legislation further increases Medicaid spending by over $91 billion, including an $87 billion FMAP increase that allows states to continue fiscal irresponsibility and further expand coverage to higher income levels, despite the inability to cover those currently on the program. Some conservatives may be concerned that these provisions mark the first skirmish in a longer-term campaign by liberals to demolish independent private-sector health care in America.

Some conservatives may also believe that the Health IT provisions place overly restrictive and burdensome regulations. Employers and providers have expressed concerns with privacy provisions that will limit their ability to exchange information, thus limiting access to quality-care, disease management, and prevention services as well as the new burden on interstate corporations who must now adhere to 50 different state attorney generals' interpretations of the law.

E-Verify: The E-Verify program authorization has been removed from the Conference Report. The E-Verify system is the only way employers can ensure they are hiring legal individuals – not illegal immigrants. The failure to reauthorize the program will make it more difficult for employers to determine work eligibility and will likely result in the increased hiring of illegal workers. The program was reauthorized by a unanimous consent in the House Appropriations Committee, and no language was included in the Senate bill.

Values Concerns: The legislation includes $1 billion in funding for a new Prevention and Wellness Fund, which could be used for STD prevention and research. Further, the bill extends —through December 30, 2010—the Transitional Medical Assistance (TMA) program that provides Medicaid benefits for low-income families transitioning from welfare to work. Traditionally, the TMA is expanded along with abstinence education funding, but the conference report includes no abstinence funding. This is the same language passed by the House.

Guts Welfare Reform Law: The legislation undermines the 1996 welfare reform law that led to reductions in welfare dependency and child poverty. Specifically, the legislation rewards states when they increase their caseloads. According to this Heritage Foundation paper, this could increase welfare spending by $787 billion over ten years.

***Summary*:**

DIVISION A—Appropriations:

Table 3: New Programs Created by Legislation

In Millions

Program	House	Senate	Conf
Broadband Data and Deployment Grants	350	350	350
Wireless and Broadband Deployment Grants	2,825	6,650	4,350
Energy Efficiency and Conservation Block Grants	3,500	4,200	3,200
Transportation Electrification (EISA 2007 Sec. 131)	200	200	400
Alternative Fueled Vehicles Pilot Grant Program	400	350	300
Advanced Battery Manufacturing Grants	1,000	2,000	2,000
Smart Grid	4,500	4,500	4,500
DOE Energy Innovative Technology Loan Guarantee	8,000	9,000	6,000
Subsidies for SBA Direct and Guaranteed Loans	426	621	636
Federal Government Vehicle Fleet Procurement	600	300	300
Recovery and Accountability Board	14	7	84
Green Jobs, Health Care, and Emerging Industry Training Grants	750	250	750
Youth Summer Jobs Program Grants	1,200	1,200	1,200
State Fiscal Stabilization Fund	39,000	31,500	40,600
New program for local schools funding	15,000	7,500	5,000
Health Information Technology	2,000	3,000	2,000
Comparative Effectiveness Research	1,100	1,100	1,100
Energy Retrofit Grants for Elderly, Disability, and Sect. 8 Housing	2,500	118	250
Grants to Replace State Reductions in Local Government Services	25,000	--	8,000
After School Feeding Program	726	--	100
NSF Advanced Research Facilities Modernization	200	--	200
Energy Advanced Research Project Agency	400	--	400

Impact Aid School Construction	100	--	100
Preventitive Wellness Trust	3,000	--	1,000
FEMA state and local grants for fire state construction	--	500	210
Department of State Domestic Facilities Incentive	--	25	90
High Speed Rail Corridor	--	2,000	8,000
Supplemental Discretionary Grants for National Transportation System	--	5,500	1,500
Grants for Low-Income Housing	--	2,000	2,250
Amtrak Rail Security Grants	--	--	450
Total	136,566	85,977	95,320

Source: Appropriations Committee Republicans

Note: In addition the above table, the conference report creates three other new programs that share funding from another program in the bill. Those three programs are: Neighborhood stabilization grants for non-profits, K-12 school construction, and construction for higher education facilities.

Title I Grants: The legislation provides $13 billion for Title I grants to local educational agencies (LEAs) to provide supplemental education to low-achieving students in high-poverty areas attending pre-K through 12th grade. This is the same as the House-passed funding level.

IDEA, Part B State Grants: The legislation provides $12.2 billion in IDEA (Individuals with Disabilities Education Act) Part B funding (grants to states). States and LEAs must provide free public education to children who are eligible for IDEA funding. This is the same as the House-passed funding level.

Pell Grants: The legislation provides $15.6 billion for Pell Grants, a program for low-income undergraduate students to help offset the costs of college. For FY2008-2009, the maximum Pell Grant award is $4,731. H.R. 1 would increase the maximum Pell Grant award to $5,350 for FY2009-2010. This is the same as the House-passed funding level.

State Fiscal Stabilization Fund: The legislation provides $53.6 billion for a State Fiscal Stabilization Fund (the House-passed funding level was $79 billion) to be allocated to the states 61% based on school-age population and 39% based on the state's total population. States are required to use the money as follows:

- First, the state is required to use the money to maintain funding for elementary, secondary, and support of public higher education at FY 2008 levels;
- Second, the state is required to provide money left over, up to at least 61% of the total funding given to the state under the program, to school districts; and
- Third, state's have wide discretion on how to spend the final 39% of funding.

National Broadband Plan: The legislation requires the FCC, one year after the effective date, to establish bench marks for affordable nationwide broadband service. It establishes a $7 billion program to encourage broadband deployment and determine the geographic extent to which broadband service capability is deployed and available from either private or public providers. The provisions contain "network neutrality" and "interconnection" provisions, mandates which will actually discouraging telecommunication firms from participating.

Taxpayer Funded Bail for Criminals: The bill provides $2 billion for the Edward Byrne Memorial Justice Assistance Grant which is a major funding source for "pretrial release and pretrial release agencies." Pretrial release uses taxpayer dollars to compete with the private sector surety bail industry to release criminals from jail. With passage of the stimulus, taxpayers will begin funding pretrial services and pretrial agencies that compete with the tax-paying private surety bail industry.

Buy America Language: The conference report contains Buy America language (included in both the House and Senate bills). The language was supplemented by the Dorgan amendment, which provides that the Buy America provisions are to "be applied in a manner consistent with the United States obligations under international agreements."

Under the current Buy America laws, US iron or steel are required on a federal public works project unless: 1) it causes an "unreasonable cost;" 2) it is inconsistent with the public interest; 3) the iron and steel is not produced in sufficient and reasonably available quantities and of satisfactory quality; 4) it will be used outside the U.S; or 5) the procurement project is less than $2,500. While it keeps most exceptions, the Visclosky amendment, passed in the House in committee and included in the House-passed version of the bill, could change the threshold for the cost exception in certain circumstances, making the Buy America provision more stringent.

Energy Efficiency and Renewable Energy: The legislation provides a total of $16.8 billion for the Energy Efficiency and Renewable Energy. This is down from the House-passed version of H.R. 1, which contained $18.5 billion. This funding is in part divided between the following programs:

- <u>Weatherization Assistance Program (WAP)</u>: The legislation provides $5 billion (down from $6.2 billion) for this program, which directs funds to states to weatherize low-income homes. Eligibility for this program is expanded by increasing the maximum income from 150 percent to 200 percent of the poverty level and the allowable level of investment per home from $3,055 to $5,000.
- <u>Energy Efficient Appliance Rebate Program and Energy Star</u>: The conference report continues to appropriate $300 million (same as House passed) on rebates for residential consumers for the purchase of residential Energy Star products to replace used appliances with more efficient models. Approximately 15 states have appliance rebate programs currently operating to incentivize the purchase of energy efficient appliances. This program would add federal funds to increase the effectiveness of these programs and to encourage the remaining states to adopt similar programs.
- <u>Advanced Battery Manufacturing Cost</u>: The legislation provides a total of $2 billion (up from $1 billion compared to House-passed bill) for awards to support

the manufacturing of advanced vehicle batteries. Some conservatives would argue that this is an earmark to a number of battery producers to help jump start the struggling lithium industry.

- Innovative Technology Loan Guarantee: The new program provides $6 billion (not included in House version) for new loan guarantees aimed at standard renewable projects, such as wind or solar projects and for electricity transmission projects. By contrast, the Senate included $50 billion of loan guarantees for this purpose.

National Park Service: The conference report provides $750 million for the National Park Service infrastructure, as compared to $1.7 billion included in the House-passed version. This reduction compared to the House version comes after reports that a chief lobbyist for the National Parks Conservation Association (NPCA), which lobbies for this funding, is the son of Appropriations Committee Chairman David Obey.

Health Resources and Services: The legislation provides $2.19 billion for Health Resources and Services, as follows:

- $10 billion for National Institute of Health;
- $2 billion for Community Health Centers services, renovation, and repairs;
- $500 million for training of nurses and primary care physicians; and
- $2 billion for the Office of the National Coordinator for Health IT for management and oversight activities.

Of note is the House Appropriations Committee Democrats' rationale for the $500 million for training nurses and primary care physicians: "A key component of attaining **universal health care reform** will be ensuring the supply of primary health care providers – family medicine, internal medicine, pediatricians, dentists, and nurses."

Federal Coordinating Council for Comparative Effectiveness Research (CER): In the legislation, the Council is composed of 15 members all of whom are federal officials/employees with responsibility for making treatment recommendations on all public health-related programs. The Members are appointed by the President and are required to submit a report to the President and Congress detailing recommendations (see conservative concerns on this provision).

DIVISION B—Tax Provisions

Title I—Tax Provisions

"Making Work Pay" Tax Credit: The legislation creates a temporary "Making Work Pay" tax credit. This credit would be worth the lesser of 6.2% of an individual's earned income or $400 for an individual, or $800 on a joint return. The value of the credit is phased out beginning with individuals with incomes of $75,000 and joint filers with incomes of $150,000 (functionally a marginal tax rate increase on individuals earning more than $75,000). This tax credit is effective for 2009 and 2010 only (i.e. it expires at the end of 2010).

Earned Income Tax Credit: The legislation temporarily increases the value of the Earned Income Tax Credit in two respects:

- Under current law, the value of the earned income tax credit for families with two or more children is equal to 40% of a qualifying family's first $12,570 of earned income. H.R. 1 would increase this to 45% of the first $12,570 of earned income for families with three or more children.
- Under current law, the earned income tax credit begins to phase out at $19,540 for married couples filing jointly. This legislation would increase the phase out for married couples to $21,420, an increase of $1,880.

Both changes to the Earned Income Tax Credit would be effective for 2009 and 2010 only.

Child Tax Credit Refundability: Under current law, the child tax credit is refundable up to 15% of the taxpayer's earned income in excess of $8,500. This legislation would make the child tax credit refundable at 15% of the taxpayer's earned income in excess of $3,000 (compared to $0.00 in the House bill).

AMT: Provides a $70,950 AMT exemption amount for married couples in 2009 (it was $69,950 in 2008) and a $46,700 exemption amount for singles (it was $46,200 in 2008). This would prevent for just one year a huge, unintended tax increase, without which more than 26 million taxpayers would be subject to a large tax increase beginning in tax-year 2009. ***The AMT section would save taxpayers $69.759 billion over ten years.***

Extension of Bonus Depreciation: Businesses were able to immediately write-off fifty percent of the cost of depreciable property acquired in 2008. The bill would extend the provision to 2009.

The RSC's Economic Recovery and Middle-Class Tax Relief Act (H.R. 470) would provide immediate, full expensing for all businesses.

5-year Carryback of Net Operating Losses: A business incurs a net operating loss when its tax liability is negative in a given year. Under current law, there is a two-year carryback period for businesses to receive refunds on previously paid taxes. In other words, a business may receive a refund equal to their negative tax liability up to the amount of taxes paid over the previous two years. This legislation would extend this period from two years to five years, but only apply for 2008 and 2009 net operating losses, and only for those with gross receipts of $15 million or less (the House-passed version included no such limitation).

The RSC's Economic Recovery and Middle-Class Tax Relief Act (H.R. 470) would provide *permanent* (instead of just for 2008 and 2009) *7-year* (instead of 5-year) carryback of net operating losses.

American Opportunity Tax Credit: Creates an American Opportunity Tax Credit of up to $2,500 for the cost of tuition and related expenses. The credit would work as follows:

- 100% tax credit up to the first $2,000 of tuition and related expenses;
- 25% tax credit up of the next $2,000 of tuition and related expenses;
- 40% of the tax credit would be refundable; and
- The tax credit would have a phase-out of $80,000 for individuals and $160,000 for joint filers (functionally a marginal tax rate increase on taxpayers earning more than these amounts).

The provision is effective for 2009 and 2010 only.

Extension of Enhanced Small Business Expensing: In 2008, small businesses were able to write-off up to $250,000 in capital expenditures at a phase-out threshold of $800,000. H.R. 1 would extend this provision to 2009.

The RSC's Economic Recovery and Middle-Class Tax Relief Act (H.R. 470) would provide immediate, full expensing for all businesses.

Incentives to Hire Unemployed Veterans and Disconnected Youth: The legislation would add unemployed veterans (defined as a Member of the Armed Services discharged in 2008, 2009, or 2010 who received unemployment compensation for more than four weeks before being hired) and "disconnected youth" (defined as an individual between 16 and 25 who has not been regularly employed or attended school in the past 6 months) to the nine existing targeted groups that qualify under the work opportunity tax credit. Of note, the bill requires an unemployed veteran to receive unemployment compensation for at least four weeks in order for that individual's potential employer to receive the work opportunity tax credit. The provision is effective for 2009 and 2010 only.

Recovery Zone Bonds: The legislation creates tax credit bonds for investment in economic recovery zones, with a national limit of $10 billion for recovery zone economic development bonds and $15 billion for recovery zone economic development bonds. This provision is effective for 2009 and 2010 only.

Tribal Economic Development Bonds: The legislation allows tribal governments to issue $2 billion in tax-exempt bonds without the "essential government function" requirement imposed in current law.

Treatment of Tax-Exempt Bonds Held by Financial Institutions: The legislation would allow financial institutions to take a tax deduction for interest expenses on tax-exempt bonds, where the total investment in such bonds amounts to less than 2% of the total assets held by the financial institution. This provision is intended to make investment in municipal bonds more attractive. The provision is effective for 2009 and 2010 only.

Small Issuer Exception to Tax-Exempt Interest Expense Allocation Rules: This provision would allow financial institutions to take a tax deduction for interest expenses on tax-exempt bonds if the issuer is a "qualified small issuer," defined as an issuer that anticipates that the amount of its tax exempt bonds will not exceed $30 million. Under current law, the interest expense disallowance rule applies up to $10 million. The provision is effective for 2009 and 2010 only.

Application of AMT to State and Local Governments: Under current law, interest on most tax-exempt private activity bonds is subject to the AMT. This provision would shield all interest on private activity bonds from the AMT. The provision is effective for 2009 and 2010 only.

Qualified School Construction Bonds: The bill creates a new category of tax credit bonds for the construction, rehabilitation, or repair of public school facilities and places a national limit of $11 billion in 2009 and $11 billion in 2010 that may be used by state and local governments. A national limit of $400 million (equally divided between 2009 and 2010) applies to Indian tribal governments.

Qualified Zone Academy Bonds: The bill would allow an additional $1.4 billion of Qualified Zone Academy Bonds to be issued by state and local governments. A qualified zone academy is a public school located in an empowerment zone or enterprise community that cooperates with business on the academic curriculum with the goal of increasing graduation and employment rates. This provision is effective for 2009 and 2010 only.

Child Tax Credit Refundability: Under current law, the child tax credit is refundable up to 15% of the taxpayer's earned income in excess of $8,500. This legislation would make the child tax credit refundable at 15% of the taxpayer's earned income in excess of $0.00.

Special Credit for Certain Government Retirees: The legislation creates a refundable $250 tax credit ($500 on a joint return) for individuals who receive a government pension or annuity, but do not receive Social Security. This provision is effective for 2009 only.

Economic Recovery Payment to Recipients of Social Security, SSI, Railroad Retirement and Veterans: The legislation provides a one-time payment of $250 for retirees, disabled individuals, and SSI recipients. This provision is effective for 2009 only.

Taxable Bond Option for State and Local Governments: The legislation allows state and local governments the option of issuing tax credit bonds, and allows states to elect to receive a direct payment from the federal government equal to the tax benefit that the state would otherwise receive from issuing these bonds. This provision is effective for 2009 and 2010 only.

Renewable Energy Production Tax Credit: The bill extends the renewable energy tax credit for wind facilities through 2012 (a three-year extension). The bill extends the tax credit for closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, waste-to-energy, and marine renewable facilities through 2013 (a three-year extension).

Election of Investment Tax Credit in Lieu of Production Tax Credit: Under current law, facilities that produce electricity from solar facilities can take a 30% investment tax credit in the year that the facility is placed in service. A production tax credit, payable over a ten year period, is available for other energy sources (such as wind hydropower, geothermal, etc.). This provision allows the same 30% investment tax credit available to solar energy to be available as an option (in lieu of the production tax credit) for these other energy sources as well. This provision is effective for 2009 and 2010 only.

Repeal of Certain Limitations on Credit for Renewable Energy Property: The legislation allows a business or individual to qualify for the full amount of the investment tax credit even if the property is financed with industrial bonds or other tax-advantaged financing (which under current law reduces the value of the investment tax credit).

Uncapped Energy Tax Credits: The legislation eliminates the caps under current law on the value of energy tax credits that small businesses may claim. Specifically, the $4,000 cap on qualified small wind energy property, the $2,000 cap on qualified solar water heating property, the $2,000 cap on geothermal heat pumps, etc., would be repealed.

Clean Renewable Energy Bonds: The legislation increases the national limitation on clean renewable energy bonds by $1.6 billion.

Qualified Energy Conservation Bonds: The bill increases the national limitation on Qualified Energy Conservation Bonds by $2.4 billion.

Tax Credits for Energy-Efficient Improvements to Homes: The legislation increases the value of the 10% tax credit for qualified energy efficient improvements to 30% and places a total limit on the tax credit of $1,500. The bill also extends this tax credit through 2010 (it is currently scheduled to expire at the end of 2009).

Tax Credits for Alternative Fuel Pumps: The legislation increases the tax credit for gas stations (or other businesses) with alternative fuel pumps (such as E85 or natural gas) from 30% to 50% and increases the cap from $30,000 to $50,000. Hydrogen refueling pumps would keep the 30% tax credit but have the cap increased to $200,000. The bill also increases the 30% alternative refueling property tax credit for individuals from 30% to 50% and increases the cap from $1,000 to $2,000. This provision is effective for 2009 and 2010 only.

Extension First-Time Home Buyer Credit: This provision waives the current-law requirement, in the case of homes purchased between January 1, 2009 and July 1, 2009, that a taxpayer receiving this tax credit pay back the amount of the credit to the Treasury over 15 years (in equal installments). Further, this provision increases the value of the maximum credit from $7,500 to $8,000.

Suspension of Taxation of Unemployment Benefits: The bill suspends federal taxes on unemployment benefits for 2009.

Other Notable Tax Provisions Not Previously Included in House-Passed Bill:

- Computers as Qualified Education Expenses: The bill allows computers to count as a "qualified education expense" for purposes of 529 education plans. ***Score:*** $6 million over ten years.
- Deduction on Taxes Paid on Cars: The bill provides a deduction for state, local, and excise taxes paid for the purchase of new cars, trucks, or motorcycles (sold for $49,500 or less) during 2009. The income phaseout begins at $125,000 for individuals and $250,000 for joint filers. ***Score:*** $1.7 billion over ten years.
- Transit Benefits: Makes employer-provided transit benefits (for either parking or transit benefits) tax-free up to $230. ***Score:*** $192 million over ten years.
- Small Business Capital Gains: The legislation allows a 75% exclusion for individuals on the gain from the sale of certain small business stock held more than five years. ***Score:*** $829 million over ten years.
- Holding Period of Built-in-Gains for S Corporations: The legislation reduces from 10 years to 7 years the amount of time an S corporation must hold its assets to avoid a tax on the built-in-gains that existed at the time of the conversion. ***Score:*** $415 million over ten years.
- Industrial Development Bonds: The legislation expands the eligibility of manufacturing facilities for tax-exempt bond financing. ***Score:*** $203 million over ten years
- Advanced Energy Investment Credit: The legislation creates a 30% investment tax credit for facilities that manufacture "advanced energy property." ***Score:*** $1.647 billion over ten years.
- Expansion of New Markets Tax Credit: The legislation increases the availability of credits from $3.5 billion to $5 billion for 2008 and 2009. ***Score:*** $815 million over ten years.
- High-Speed Rail Bonds: The legislation makes it easier for states to issue tax-exempt private activity bonds for high speed rail by loosening the definition of "high-speed rail." ***Score:*** $288 million over ten years.

DIVISION B—Other Provisions

Unemployment Benefits: The conference report extends unemployment benefits for up to 33 additional weeks (through December 31, 2009), increases the weekly benefit for beneficiaries by $25, and provides $7.5 billion worth of incentive payments for states to extend unemployment insurance beyond current recipients. In addition, the legislation temporarily waives the interest payments on the accrual of interest on advances to state unemployment funds. *These expansions of unemployment compensation benefits are estimated to increase entitlement spending by $40 billion over ten years.*

Extended Unemployment Benefits for Railroad Workers: The conference report extends unemployment benefits for railroad workers (who are not part of the federal/state unemployment system) by up to 13 weeks. This provides a total benefit of 26 weeks work of extended benefits *plus* 26 weeks of normal benefits (a year total). *This provision is estimated to increase entitlement spending by $138 million over ten years.*

Emergency Fund for TANF: The legislation establishes an "Emergency Contingency Fund for State Temporary Assistance for Needy Families Programs" to provide states with money to make up for a portion of a state's higher spending on TANF benefits in 2009 and 2010 as compared to 2007 and 2008.

COBRA Premiums: The legislation provides a 65% subsidy to cover the first 9 months of COBRA coverage for any individual who lost their job between September 1, 2008 and December 31, 2009. This provision would cost $24.7 billion according to JCT. This subsidy also applies to health care continuation coverage, if required by states for small employers. The subsidy begins to phase out for those with annual incomes in excess of $125,000 for individuals or $250,000 for couples and would not apply to an individual making more than $145,000 or a couple making more than $290,000. The conference report retains a Senate provision that allows individuals to opt-in to a less expensive group health plan, if one was provided by the employer. However it does not allow an individual to opt-into a Health Savings Account or Flexible Savings Account.

National Coordinator of Health IT: The legislation would provide $35 billion to promote and implement the adoption of health records through codifying the Office of the National Coordinator of Health IT, who will be responsible for creating a national system and standards by 2010. The National Coordinator will make health records available for a fee if needs are not already *substantially and adequately* met by the marketplace.

Medicare/Medicaid Incentives: Under the conference report, providers and hospitals will be paid for showing meaningful use of Health IT, beginning in 2011, and will penalize non-adopters beginning in 2015. *However, not all are hospitals are eligible for payments*.

Privacy: The legislation <u>expands HIPPA</u> to "business associates" of "covered entities" (providers) requiring patient consent any time information is exchanged, and allows state attorney generals to bring a civil action as a means of enforcing HIPPA Privacy Rules.

Medicare Provisions: The legislation delays regulations regarding certain Medicare provisions at an estimated cost of about $340 million, including:

- Medicare Payments for Teaching Hospitals: Delays for one year a Medicare payment reduction to teaching hospitals related to capital payments for indirect medical education (IME).

- Medicare Payments to Hospice: Delays for one year a Medicare payment cut to hospice providers related to a wage index payment add-on.
- Long Term Care Hospital Earmark: The bill makes technical corrections to the Medicare, Medicaid, and SCHIP Extension Act of 2007 related to Medicare payments for long-term care hospitals which would benefit an estimated 3 three hospitals nationwide.

Medicaid Aid to States (FMAP): The legislation would provide about $87 billion to states, increasing from October 1, 2008 through the end of FY 2010 the share of Medicaid costs the Federal government reimburses all states by 6.2 percentage points, with additional relief tied to rates of unemployment. H.R. 1 would also increase Medicaid allotments for territories by providing a 30% increase or a 6.2 percentage-point increase, plus a 15% increase in their caps. The bill does not include a Senate provision that would have prohibited states from receiving the FMAP increases for additional expenditures due to an increase in a state's income eligibility standards. The bill also would prohibit states from receiving the FMAP increase if they are not in compliance with existing prompt pay requirements and the extension of these requirements to nursing homes and hospitals.

Prompt Payment Requirements for Nursing Facilities and Hospitals: The bill temporarily applies Medicaid prompt pay requirements to nursing facilities and hospitals. This provision is estimated to cost $680 million.

Temporary Increase in Disproportionate Share Hospital (DSH) Payments. The bill increases states' 2009 annual DSH allotments by 2.5%, and by an additional by 2.5 % in 2010. After FY2010, states' annual DSH allotments would return to 100% of the annual DSH allotments as determined under current law. The estimated cost of this provision is $456 million.

Moratorium on Regulations: The legislation extends the moratorium on Medicaid regulations for 6 months, through June 30, 2009. This includes the three of the six CMS regulations blocked by HR 5613: provider taxes, targeted case management services and school administration and transportation services. The remaining three payments to public providers (intergovernmental transfers), graduate medical education (GME), and rehabilitative services, are accounted for by a Sense of Congress that the Secretary of HHS should not promulgate regulations. The legislation also blocks an additional or seventh regulation, not included in H.R. 5613, that narrows the definition of patient hospital services.

Extension of Transitional Medical Assistance (TMA). The bill extends TMA, a program that allows those who want to go back to work to stay on Medicaid, through December 31, 2010. This provision is estimated to cost $1.3 billion.

Extension of the Qualified Individual Program. The bill extends the Qualified Individual program, which assists certain low-income duel-eligible individuals with Medicare Part B premiums, through December 31, 2010. The estimated cost of this provision is $550 million.

Provisions from the Indian Health Care Improvement Act. The bill prohibits implementing cost-sharing requirements for Americans Indians and Alaska Natives in Medicaid, removes Indian Tribal property from being counted as assets for determining eligibility, and creates new requirements for maintaining access to Indian health facilities. These provisions are estimated to cost $135 million.

Trade Adjustment Assistance (TAA) Expansion: The bill expands TAA coverage to workers affected by outsourcing from all countries – not just ones with which the U.S. has a free trade agreement. It creates an entirely new TAA program for trade-affected communities and allows for automatic TAA eligibility for workers suffering from unfair trade. The bill also increases training funds available to states by 160 percent to $575 million per fiscal year and adds a provision to increase the TAA Health Care Tax Credit to 80% up from the Senate's previously proposed 65% credit. The Joint Committee on Taxation estimates this provision will cost $457 million. The provision also makes a number of other changes to encourage uptake of the credit. This was not included in the House-passed version of the bill. *This provision is estimated to increase entitlement spending by $1.6 billion over ten years.*

Debt Limit Increase: The legislation increases the debt limit by $789 billion, from $11.315 trillion to $12.104 trillion. This will be the fourth increase in the debt limit since September 2007. During this period, just 17 months, the debt limit has increased by $3.139 trillion or 35%.

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