section, is further amended by adding at the end the following new subsection:

''(g) COLLECTION AND REPORTING OF PARTICIPATION INFORMATION.—

''(1) COLLECTION OF INFORMATION FROM STATES.—Each State shall collect and submit to the Secretary (and make publicly available), in a format specified by the Secretary, information on average monthly enrollment and average monthly participation rates for adults and children under this section and of the number and percentage of children who become ineligible for medical assistance under this section whose medical assistance is continued under another eligibility category or who are enrolled under the State's child health plan under title XXI. Such information shall be submitted at the same time and frequency in which other enrollment information under this title is submitted to the Secretary.

''(2) ANNUAL REPORTS TO CONGRESS.—Using the information submitted under paragraph (1), the Secretary shall submit to Congress annual reports concerning enrollment and participation rates described in such paragraph.''.

(e) EFFECTIVE DATE.—The amendments made by subsections (b) through (d) shall take effect on July 1, 2009.

SEC. 5005. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM.

(a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking ''December 2009'' and inserting ''December 2010''.

(b) EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(g) of such Act (42 U.S.C. 1396u–3(g)) is amended—

(1) in paragraph (2)—

(A) by striking ''and'' at the end of subparagraph (K);

(B) in subparagraph (L), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

''(M) for the period that begins on January 1, 2010, and ends on September 30, 2010, the total allocation amount is $412,500,000; and

''(N) for the period that begins on October 1, 2010, and ends on December 31, 2010, the total allocation amount is $150,000,000.''; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking ''or (L)'' and inserting ''(L), or (N)''.

SEC. 5006. PROTECTIONS FOR INDIANS UNDER MEDICAID AND CHIP.

(a) PREMIUMS AND COST SHARING PROTECTION UNDER MEDICAID.—

(1) IN GENERAL.—Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(A) in subsection (a), in the matter preceding paragraph (1), by striking ''and (i)'' and inserting '', (i), and (j)''; and

(B) by adding at the end the following new subsection:

''(j) NO PREMIUMS OR COST SHARING FOR INDIANS FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN HEALTH PROGRAMS OR THROUGH REFERRAL UNDER CONTRACT HEALTH SERVICES.—

''(1) NO COST SHARING FOR ITEMS OR SERVICES FURNISHED TO INDIANS THROUGH INDIAN HEALTH PROGRAMS.—

''(A) IN GENERAL.—No enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge shall be imposed against an Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services for which payment may be made under this title.

''(B) NO REDUCTION IN AMOUNT OF PAYMENT TO INDIAN HEALTH PROVIDERS.—Payment due under this title to the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization, or a health care provider through referral under contract health services for the furnishing of an item or service to an Indian who is eligible for assistance under such title, may not be reduced by the amount of any enrollment fee, premium, or similar charge, or any deduction, copayment, cost sharing, or similar charge that would be due from the Indian but for the operation of subparagraph (A).

''(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as restricting the application of any other limitations on the imposition of premiums or cost sharing that may apply to an individual receiving medical assistance under this title who is an Indian.''.

(2) CONFORMING AMENDMENT.—Section 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3)) is amended—

(A) in subparagraph (A), by adding at the end the following new clause:

''(vii) An Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services.''; and

(B) in subparagraph (B), by adding at the end the following new clause:

''(x) Items and services furnished to an Indian directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services.''.

(b) TREATMENT OF CERTAIN PROPERTY FROM RESOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

(1) MEDICAID.—Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by sections 203(c) and 211(a)(1)(A)(ii) of the Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3), is amended by adding at the end the following new subsection:

''(ff) Notwithstanding any other requirement of this title or any other provision of Federal or State law, a State shall disregard the following property from resources for purposes of determining the eligibility of an individual who is an Indian for medical assistance under this title:

''(1) Property, including real property and improvements, that is held in trust, subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior, located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior.

''(2) For any federally recognized Tribe not described in paragraph (1), property located within the most recent boundaries of a prior Federal reservation.

''(3) Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.

''(4) Ownership interests in or usage rights to items not covered by paragraphs (1) through (3) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.''.

(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as amended by sections 203(a)(2), 203(d)(2), 214(b), 501(d)(2), and 503(a)(1) of the Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3), is amended—

(A) by redesignating subparagraphs (C) through (I), as subparagraphs (D) through (J), respectively; and

(B) by inserting after subparagraph (B), the following new subparagraph:

''(C) Section 1902(ff) (relating to disregard of certain property for purposes of making eligibility determinations).''.

(c) CONTINUATION OF CURRENT LAW PROTECTIONS OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RECOVERY.—Section 1917(b)(3) of the Social Security Act (42 U.S.C. 1396p(b)(3)) is amended—

(1) by inserting ''(A)'' after ''(3)''; and

(2) by adding at the end the following new subparagraph:

''(B) The standards specified by the Secretary under subparagraph (A) shall require that the procedures established by the State agency under subparagraph (A) exempt income, resources, and property that are exempt from the application of this subsection as of April 1, 2003, under manual instructions issued to carry out this subsection (as in effect on such date) because of the Federal responsibility for Indian Tribes and Alaska Native Villages. Nothing in this subparagraph shall be construed as preventing the Secretary from providing additional estate recovery exemptions under this title for Indians.''.

(d) RULES APPLICABLE UNDER MEDICAID AND CHIP TO MANAGED CARE ENTITIES WITH RESPECT TO INDIAN ENROLLEES AND INDIAN HEALTH CARE PROVIDERS AND INDIAN MANAGED CARE ENTITIES.—

(1) IN GENERAL.—Section 1932 of the Social Security Act (42 U.S.C. 1396u–2) is amended by adding at the end the following new subsection:

''(h) SPECIAL RULES WITH RESPECT TO INDIAN ENROLLEES, INDIAN HEALTH CARE PROVIDERS, AND INDIAN MANAGED CARE ENTITIES.—

''(1) ENROLLEE OPTION TO SELECT AN INDIAN HEALTH CARE PROVIDER AS PRIMARY CARE PROVIDER.—In the case of a non-Indian Medicaid managed care entity that—

''(A) has an Indian enrolled with the entity; and

''(B) has an Indian health care provider that is participating as a primary care provider within the network of the entity,

insofar as the Indian is otherwise eligible to receive services from such Indian health care provider and the Indian health care provider has the capacity to provide primary care services to such Indian, the contract with the entity under section 1903(m) or under section 1905(t)(3) shall require, as a condition of receiving payment under such contract, that the Indian shall be allowed to choose such Indian health care provider as the Indian's primary care provider under the entity.

''(2) ASSURANCE OF PAYMENT TO INDIAN HEALTH CARE PROVIDERS FOR PROVISION OF COVERED SERVICES.—Each contract with a managed care entity under section 1903(m) or under section 1905(t)(3) shall require any such entity, as a condition of receiving payment under such contract, to satisfy the following requirements:

''(A) DEMONSTRATION OF ACCESS TO INDIAN HEALTH CARE PROVIDERS AND APPLICATION OF ALTERNATIVE PAYMENT ARRANGEMENTS.—Subject to subparagraph (C), to—

''(i) demonstrate that the number of Indian health care providers that are participating providers with respect to such entity are sufficient to ensure timely access to covered Medicaid managed care services for those Indian enrollees who are eligible to receive services from such providers; and

''(ii) agree to pay Indian health care providers, whether such providers are participating or nonparticipating providers with respect to the entity, for covered Medicaid managed care services provided to those Indian enrollees who are eligible to receive services from such providers at a rate equal to the rate negotiated between such entity and the provider involved or, if such a rate has not been negotiated, at a rate that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a participating provider which is not an Indian health care provider.

The Secretary shall establish procedures for applying the requirements of clause (i) in States where there are no or few Indian health providers.

''(B) PROMPT PAYMENT.—To agree to make prompt payment (consistent with rule for prompt payment of providers under section 1932(f)) to Indian health care providers that are participating providers with respect to such entity or, in the case of an entity to which subparagraph (A)(ii) or (C) applies, that the entity is required to pay in accordance with that subparagraph.

''(C) APPLICATION OF SPECIAL PAYMENT REQUIREMENTS FOR FEDERALLY-QUALIFIED HEALTH CENTERS AND FOR SERVICES PROVIDED BY CERTAIN INDIAN HEALTH CARE PROVIDERS.—

''(i) FEDERALLY-QUALIFIED HEALTH CENTERS.—

''(I) MANAGED CARE ENTITY PAYMENT REQUIREMENT.—To agree to pay any Indian health care provider that is a federally-qualified health center under this title but not a participating provider with respect to the entity, for the provision of covered Medicaid managed care services by such provider to an Indian enrollee of the entity at a rate equal to the amount of payment that the entity would pay a federally-qualified health center that is a participating provider with respect to the entity but is not an Indian health care provider for such services.

''(II) CONTINUED APPLICATION OF STATE REQUIREMENT TO MAKE SUPPLEMENTAL PAYMENT.—Nothing in subclause (I) or subparagraph (A) or (B) shall be construed as waiving the application of section 1902(bb)(5) regarding the State plan requirement to make any supplemental payment due under such section to a federally-qualified health center for services furnished by such center to an enrollee of a managed care entity (regardless of whether the federally-qualified health center is or is not a participating provider with the entity).

''(ii) PAYMENT RATE FOR SERVICES PROVIDED BY CERTAIN INDIAN HEALTH CARE PROVIDERS.—If the amount paid by a managed care entity to an Indian health care provider that is not a federally-qualified health center for services provided by the provider to an Indian enrollee with the managed care entity is less than the rate that applies to the provision of such services by the provider under the State plan, the plan shall provide for payment to the Indian health care provider, whether the provider is a participating or nonparticipating provider with respect to the entity, of the difference between such applicable rate and the amount paid by the managed care entity to the provider for such services.

''(D) CONSTRUCTION.—Nothing in this paragraph shall be construed as waiving the application of section 1902(a)(30)(A) (relating to application of standards to assure that payments are consistent with efficiency, economy, and quality of care).

''(3) SPECIAL RULE FOR ENROLLMENT FOR INDIAN MANAGED CARE ENTITIES.—Regarding the application of a Medicaid managed care program to Indian Medicaid managed care entities, an Indian Medicaid managed care entity may restrict enrollment under such program to Indians in the same manner as Indian Health Programs may restrict the delivery of services to Indians.

''(4) DEFINITIONS.—For purposes of this subsection:

''(A) INDIAN HEALTH CARE PROVIDER.—The term 'Indian health care provider' means an Indian Health Program or an Urban Indian Organization.

''(B) INDIAN MEDICAID MANAGED CARE ENTITY.—The term 'Indian Medicaid managed care entity' means a managed care entity that is controlled (within the meaning of the last sentence of section 1903(m)(1)(C)) by the Indian Health Service, a Tribe, Tribal Organization, or Urban Indian Organization, or a consortium, which may be composed of 1 or more Tribes, Tribal Organizations, or Urban Indian Organizations, and which also may include the Service.

''(C) NON-INDIAN MEDICAID MANAGED CARE ENTITY.—The term 'non-Indian Medicaid managed care entity' means a managed care entity that is not an Indian Medicaid managed care entity.

''(D) COVERED MEDICAID MANAGED CARE SERVICES.—The term 'covered Medicaid managed care services' means, with respect to an individual enrolled with a managed care entity, items and services for which benefits are available with respect to the individual under the contract between the entity and the State involved.

''(E) MEDICAID MANAGED CARE PROGRAM.—The term 'Medicaid managed care program' means a program under sections 1903(m), 1905(t), and 1932 and includes a managed care program operating under a waiver under section 1915(b) or 1115 or otherwise.''.

(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(1)), as amended by subsection (b)(2), is amended—

(A) by redesignating subparagraph (J) as subparagraph (K); and

(B) by inserting after subparagraph (I) the following new subparagraph:

''(J) Subsections (a)(2)(C) and (h) of section 1932.''.

(e) CONSULTATION ON MEDICAID, CHIP, AND OTHER HEALTH CARE PROGRAMS FUNDED UNDER THE SOCIAL SECURITY ACT INVOLVING INDIAN HEALTH PROGRAMS AND URBAN INDIAN ORGANIZATIONS.—

(1) CONSULTATION WITH TRIBAL TECHNICAL ADVISORY GROUP (TTAG).—The Secretary of Health and Human Services shall maintain within the Centers for Medicaid & Medicare Services (CMS) a Tribal Technical Advisory Group (TTAG), which was first established in accordance with requirements of the charter dated September 30, 2003, and the Secretary of Health and Human Services shall include in such Group a representative of a national urban Indian health organization and a representative of the Indian Health Service. The inclusion of a representative of a national urban Indian health organization in such Group shall not affect the nonapplication of the Federal Advisory Committee Act (5 U.S.C. App.) to such Group.

(2) SOLICITATION OF ADVICE UNDER MEDICAID AND CHIP.—

(A) MEDICAID STATE PLAN AMENDMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 501(d)(1) of the Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3), (42 U.S.C. 1396a(a)) is amended—

(i) in paragraph (71), by striking ''and'' at the end;

(ii) in paragraph (72), by striking the period at the end and inserting ''; and''; and

(iii) by inserting after paragraph (72), the following new paragraph:

''(73) in the case of any State in which 1 or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for a process under which the State seeks advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Indian Organizations and that—

''(A) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and

''(B) may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organizations to the medical care advisory committee advising the State on its State plan under this title.''.

(B) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(1)), as amended by subsections (b)(2) and (d) (2), is amended—

(i) by redesignating subparagraphs (B), (C), (D), (E), (F), (G), (H), (I), (J), and (K) as subparagraphs (D), (F), (B), (E), (G), (I), (H), (J), (K), and (L), respectively;

(ii) by moving such subparagraphs so as to appear in alphabetical order; and

(iii) by inserting after subparagraph (B) (as so redesiganted and moved) the following new subparagraph:

''(C) Section 1902(a)(73) (relating to requiring certain States to seek advice from designees of Indian Health Programs and Urban Indian Organizations).''.

(3) RULE OF CONSTRUCTION.—Nothing in the amendments made by this subsection shall be construed as superseding existing advisory committees, working groups, guidance, or other advisory procedures established by the Secretary of Health and Human Services or by any State with respect to the provision of health care to Indians.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2009.

SEC. 5007. FUNDING FOR OVERSIGHT AND IMPLEMENTATION.

(a) OVERSIGHT.—For purposes of ensuring the proper expenditure of Federal funds under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), there is appropriated to the Office of the Inspector General of the Department of Health and Human Services, out of any money in the Treasury not otherwise appropriated and without further appropriation, $31,250,000 for fiscal year 2009, which shall remain available for expenditure until September 30, 2011, and shall be in addition to any other amounts appropriated or made available to such Office for such purposes.

(b) IMPLEMENTATION OF INCREASED FMAP.—For purposes of carrying out section 5001, there is appropriated to the Secretary of Health and Human Services, out of any money in the Treasury not otherwise appropriated and without further appropriation, $5,000,000 for fiscal year 2009, which shall remain available for expenditure until September 30, 2011, and shall be in addition to any other amounts appropriated or made available to such Secretary for such purposes.

SEC. 5008. GAO STUDY AND REPORT REGARDING STATE NEEDS DURING PERIODS OF NATIONAL ECONOMIC DOWNTURN.

(a) IN GENERAL.—The Comptroller General of the United States shall study the period of national economic downturn in effect on the date of enactment of this Act, as well as previous periods of national economic downturn since 1974, for the purpose of developing recommendations for addressing the needs of States during such periods. As part of such analysis, the Comptroller General shall study the past and projected effects of temporary increases in the Federal medical assistance percentage under the Medicaid program with respect to such periods.

(b) REPORT.—Not later than April 1, 2011, the Comptroller General of the United States shall submit a report to the appropriate committees of Congress on the results of the study conducted under paragraph (1). Such report shall include the following:

(1) Such recommendations as the Comptroller General determines appropriate for modifying the national economic downturn assistance formula for temporary adjustment of the Federal medical assistance percentage under Medicaid (also referred to as a ''countercyclical FMAP'') described in GAO report number GAO–07–97 to improve the effectiveness of the application of such percentage in addressing the needs of States during periods of national economic downturn, including recommendations for—

(A) improvements to the factors that would begin and end the application of such percentage;

(B) how the determination of the amount of such percentage could be adjusted to address State and regional economic variations during such periods; and

(C) how the determination of the amount of such percentage could be adjusted to be more responsive to actual Medicaid costs incurred by States during such periods.

(2) An analysis of the impact on States during such periods of—

(A) declines in private health benefits coverage;

(B) declines in State revenues; and

(C) caseload maintenance and growth under Medicaid, the Children's Health Insurance Program, or any other publicly-funded programs to provide health benefits coverage for State residents.

(3) Identification of, and recommendations for addressing, the effects on States of any other specific economic indicators that the Comptroller General determines appropriate.

TITLE VI—BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

SEC. 6000. TABLE OF CONTENTS.

The table of contents of this title is as follows:

SEC. 6001. BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM.

(a) The Assistant Secretary of Commerce for Communications and Information (Assistant Secretary), in consultation with the Federal Communications Commission (Commission), shall establish a national broadband service development and expansion program in conjunction with the technology opportunities program, which shall be referred to as the Broadband Technology Opportunities Program. The Assistant Secretary shall ensure that the program complements and enhances and does not conflict with other Federal broadband initiatives and programs.

(b) The purposes of the program are to—

(1) provide access to broadband service to consumers residing in unserved areas of the United States;

(2) provide improved access to broadband service to consumers residing in underserved areas of the United States;

(3) provide broadband education, awareness, training, access, equipment, and support to—

(A) schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;

(B) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations; and

(C) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture;

(4) improve access to, and use of, broadband service by public safety agencies; and

(5) stimulate the demand for broadband, economic growth, and job creation.

(c) The Assistant Secretary may consult a State, the District of Columbia, or territory or possession of the United States with respect to—

(1) the identification of areas described in subsection (b)(1) or (2) located in that State; and

(2) the allocation of grant funds within that State for projects in or affecting the State.

(d) The Assistant Secretary shall—

(1) establish and implement the grant program as expeditiously as practicable;

(2) ensure that all awards are made before the end of fiscal year 2010;

(3) seek such assurances as may be necessary or appropriate from grantees under the program that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award; and

(4) report on the status of the program to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, every 90 days.

(e) To be eligible for a grant under the program, an applicant shall—

(1)(A) be a State or political subdivision thereof, the District of Columbia, a territory or possession of the United States, an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)) or native Hawaiian organization;

(B) a nonprofit—

(i) foundation,

(ii) corporation,

(iii) institution, or

(iv) association; or

(C) any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest. In establishing such rule, the Assistant Secretary shall to the extent practicable promote the purposes of this section in a technologically neutral manner;

(2) submit an application, at such time, in such form, and containing such information as the Assistant Secretary may require;

(3) provide a detailed explanation of how any amount received under the program will be used to carry out the purposes of this section in an efficient and expeditious manner, including a showing that the project would not have been implemented during the grant period without Federal grant assistance;

(4) demonstrate, to the satisfaction of the Assistant Secretary, that it is capable of carrying out the project or function to which the application relates in a competent manner in compliance with all applicable Federal, State, and local laws;

(5) demonstrate, to the satisfaction of the Assistant Secretary, that it will appropriate (if the applicant is a State or local government agency) or otherwise unconditionally obligate, from non-Federal sources, funds required to meet the requirements of subsection (f);

(6) disclose to the Assistant Secretary the source and amount of other Federal or State funding sources from which the applicant receives, or has applied for, funding for activities or projects to which the application relates; and

(7) provide such assurances and procedures as the Assistant Secretary may require to ensure that grant funds are used and accounted for in an appropriate manner.

(f) The Federal share of any project may not exceed 80 percent, except that the Assistant Secretary may increase the Federal share of a project above 80 percent if—

(1) the applicant petitions the Assistant Secretary for a waiver; and

(2) the Assistant Secretary determines that the petition demonstrates financial need.

(g) The Assistant Secretary may make competitive grants under the program to—

(1) acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, and infrastructure for broadband services;

(2) construct and deploy broadband service related infrastructure;

(3) ensure access to broadband service by community anchor institutions;

(4) facilitate access to broadband service by low-income, unemployed, aged, and otherwise vulnerable populations in order to provide educational and employment opportunities to members of such populations;

(5) construct and deploy broadband facilities that improve public safety broadband communications services; and

(6) undertake such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

(h) The Assistant Secretary, in awarding grants under this section, shall, to the extent practical—

(1) award not less than 1 grant in each State;

(2) consider whether an application to deploy infrastructure in an area—

(A) will, if approved, increase the affordability of, and subscribership to, service to the greatest population of users in the area;

(B) will, if approved, provide the greatest broadband speed possible to the greatest population of users in the area;

(C) will, if approved, enhance service for health care delivery, education, or children to the greatest population of users in the area; and

(D) will, if approved, not result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area; and

(3) consider whether the applicant is a socially and economically disadvantaged small business concern as defined under section 8(a) of the Small Business Act (15 U.S.C. 637).

(i) The Assistant Secretary—

(1) shall require any entity receiving a grant pursuant to this section to report quarterly, in a format specified by the Assistant Secretary, on such entity's use of the assistance and progress fulfilling the objectives for which such funds were granted, and the Assistant Secretary shall make these reports available to the public;

(2) may establish additional reporting and information requirements for any recipient of any assistance made available pursuant to this section;

(3) shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds made available pursuant to this section;

(4) may, in addition to other authority under applicable law, deobligate awards to grantees that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Assistant Secretary, and award these funds competitively to new or existing applicants consistent with this section; and

(5) shall create and maintain a fully searchable database, accessible on the Internet at no cost to the public, that contains at least a list of each entity that has applied for a grant under this section, a description of each application, the status of each such application, the name of each entity receiving funds made available pursuant to this section, the purpose for which such entity is receiving such funds, each quarterly report submitted by the entity pursuant to this section, and such other information sufficient to allow the public to understand and monitor grants awarded under the program.

(j) Concurrent with the issuance of the Request for Proposal for grant applications pursuant to this section, the Assistant Secretary shall, in coordination with the Commission, publish the non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section, including, at a minimum, adherence to the principles contained in the Commission's broadband policy statement (FCC 05–15, adopted August 5, 2005).

(k)(1) Not later than 1 year after the date of enactment of this section, the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report containing a national broadband plan.

(2) The national broadband plan required by this section shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. The plan shall also include—

(A) an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States;

(B) a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public;

(C) an evaluation of the status of deployment of broadband service, including progress of projects supported by the grants made pursuant to this section; and

(D) a plan for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.

(3) In developing the plan, the Commission shall have access to data provided to other Government agencies under the Broadband Data Improvement Act (47 U.S.C. 1301 note).

(l) The Assistant Secretary shall develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State. Not later than 2 years after the date of the enactment of this Act, the Assistant Secretary shall make the broadband inventory map developed and maintained pursuant to this section accessible by the public on a World Wide Web site of the National Telecommunications and Information Administration in a form that is interactive and searchable.

(m) The Assistant Secretary shall have the authority to prescribe such rules as are necessary to carry out the purposes of this section.

TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

SEC. 7000. TABLE OF CONTENTS.

The table of contents of this title is as follows:

SEC. 7001. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

Section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221) is amended to read as follows:

"SEC. 111. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) SENIOR EXECUTIVE OFFICER.—The term 'senior executive officer' means an individual who is 1 of the top 5 most highly paid executives of a public company, whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934, and any regulations issued thereunder, and non-public company counterparts.

''(2) GOLDEN PARACHUTE PAYMENT.—The term 'golden parachute payment' means any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued.

''(3) TARP RECIPIENT.—The term 'TARP recipient' means any entity that has received or will receive financial assistance under the financial assistance provided under the TARP.

''(4) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

''(5) PERIOD IN WHICH OBLIGATION IS OUTSTANDING; RULE OF CONSTRUCTION.—For purposes of this section, the period in which any obligation arising from financial assistance provided under the TARP remains outstanding does not include any period during which the Federal Government only holds warrants to purchase common stock of the TARP recipient.

''(b) EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.—

''(1) ESTABLISHMENT OF STANDARDS.—During the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, each TARP recipient shall be subject to—

''(A) the standards established by the Secretary under this section; and

''(B) the provisions of section 162(m)(5) of the Internal Revenue Code of 1986, as applicable.

''(2) STANDARDS REQUIRED.—The Secretary shall require each TARP recipient to meet appropriate standards for executive compensation and corporate governance.

''(3) SPECIFIC REQUIREMENTS.—The standards established under paragraph (2) shall include the following:

''(A) Limits on compensation that exclude incentives for senior executive officers of the TARP recipient to take unnecessary and excessive risks that threaten the value of such recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

''(B) A provision for the recovery by such TARP recipient of any bonus, retention award, or incentive compensation paid to a senior executive officer and any of the next 20 most highly-compensated employees of the TARP recipient based on statements of earnings, revenues, gains, or other criteria that are later found to be materially inaccurate.

''(C) A prohibition on such TARP recipient making any golden parachute payment to a senior executive officer or any of the next 5 most highly-compensated employees of the TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

''(D)(i) A prohibition on such TARP recipient paying or accruing any bonus, retention award, or incentive compensation during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, except that any prohibition developed under this paragraph shall not apply to the payment of long-term restricted stock by such TARP recipient, provided that such long-term restricted stock—

''(I) does not fully vest during the period in which any obligation arising from financial assistance provided to that TARP recipient remains outstanding;

''(II) has a value in an amount that is not greater than 1/3 of the total amount of annual compensation of the employee receiving the stock; and

''(III) is subject to such other terms and conditions as the Secretary may determine is in the public interest.

''(ii) The prohibition required under clause (i) shall apply as follows:

''(I) For any financial institution that received financial assistance provided under the TARP equal to less than $25,000,000, the prohibition shall apply only to the most highly compensated employee of the financial institution.

''(II) For any financial institution that received financial assistance provided under the TARP equal to at least $25,000,000, but less than $250,000,000, the prohibition shall apply to at least the 5 most highly-compensated employees of the financial institution, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

''(III) For any financial institution that received financial assistance provided under the TARP equal to at least $250,000,000, but less than $500,000,000, the prohibition shall apply to the senior executive officers and at least the 10 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

''(IV) For any financial institution that received financial assistance provided under the TARP equal to $500,000,000 or more, the prohibition shall apply to the senior executive officers and at least the 20 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

''(iii) The prohibition required under clause (i) shall not be construed to prohibit any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009, as such valid employment contracts are determined by the Secretary or the designee of the Secretary.

''(E) A prohibition on any compensation plan that would encourage manipulation of the reported earnings of such TARP recipient to enhance the compensation of any of its employees.

''(F) A requirement for the establishment of a Board Compensation Committee that meets the requirements of subsection (c).

''(4) CERTIFICATION OF COMPLIANCE.—The chief executive officer and chief financial officer (or the equivalents thereof) of each TARP recipient shall provide a written certification of compliance by the TARP recipient with the requirements of this section—

''(A) in the case of a TARP recipient, the securities of which are publicly traded, to the Securities and Exchange Commission, together with annual filings required under the securities laws; and

''(B) in the case of a TARP recipient that is not a publicly traded company, to the Secretary.

''(c) BOARD COMPENSATION COMMITTEE.—

''(1) ESTABLISHMENT OF BOARD REQUIRED.—Each TARP recipient shall establish a Board Compensation Committee, comprised entirely of independent directors, for the purpose of reviewing employee compensation plans.

''(2) MEETINGS.—The Board Compensation Committee of each TARP recipient shall meet at least semiannually to discuss and evaluate employee compensation plans in light of an assessment of any risk posed to the TARP recipient from such plans.

''(3) COMPLIANCE BY NON-SEC REGISTRANTS.—In the case of any TARP recipient, the common or preferred stock of which is not registered pursuant to the Securities Exchange Act of 1934, and that has received $25,000,000 or less of TARP assistance, the duties of the Board Compensation Committee under this subsection shall be carried out by the board of directors of such TARP recipient.

''(d) LIMITATION ON LUXURY EXPENDITURES.—The board of directors of any TARP recipient shall have in place a company-wide policy regarding excessive or luxury expenditures, as identified by the Secretary, which may include excessive expenditures on—

''(1) entertainment or events;

''(2) office and facility renovations;

''(3) aviation or other transportation services; or

''(4) other activities or events that are not reasonable expenditures for staff development, reasonable performance incentives, or other similar measures conducted in the normal course of the business operations of the TARP recipient.

''(e) SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

''(1) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—Any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding shall permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

''(2) NONBINDING VOTE.—A shareholder vote described in paragraph (1) shall not be binding on the board of directors of a TARP recipient, and may not be construed as overruling a decision by such board, nor to create or imply any

additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

''(3) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of enactment of the American Recovery and Reinvestment Act of 2009, the Commission shall issue any final rules and regulations required by this subsection.

''(f) REVIEW OF PRIOR PAYMENTS TO EXECUTIVES.—

''(1) IN GENERAL.—The Secretary shall review bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most highly-compensated employees of each entity receiving TARP assistance before the date of enactment of the American Recovery and Reinvestment Act of 2009, to determine whether any such payments were inconsistent with the purposes of this section or the TARP or were otherwise contrary to the public interest.

''(2) NEGOTIATIONS FOR REIMBURSEMENT.—If the Secretary makes a determination described in paragraph (1), the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses.

''(g) NO IMPEDIMENT TO WITHDRAWAL BY TARP RECIPIENTS.—Subject to consultation with the appropriate Federal banking agency (as that term is defined in section 3 of the Federal Deposit Insurance Act), if any, the Secretary shall permit a TARP recipient to repay any assistance previously provided under the TARP to such financial institution, without regard to whether the financial institution has replaced such funds from any other source or to any waiting period, and when such assistance is repaid, the Secretary shall liquidate warrants associated with such assistance at the current market price.

''(h) REGULATIONS.—The Secretary shall promulgate regulations to implement this section.''.

SEC. 7002. APPLICABILITY WITH RESPECT TO LOAN MODIFICATIONS.

Section 109(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5219(a)) is amended—

(1) by striking ''To the extent'' and inserting the following:

''(1) IN GENERAL.—To the extent''; and

(2) by adding at the end the following:

''(2) WAIVER OF CERTAIN PROVISIONS IN CONNECTION WITH LOAN MODIFICATIONS.—The Secretary shall not be required to apply executive compensation restrictions under section 111, or to receive warrants or debt instruments under section 113, solely in connection with any loan modification under this section.''.

And the Senate agreed to the same.

DAVID OBEY,
CHARLES RANGEL,
HENRY WAXMAN,
Managers on the Part of the House.

DANIEL K. INOUYE,
MAX BAUCUS,
HARRY REID,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1), a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment to the text deleted the entire House bill after the enacting clause and inserted the Senate bill. This conference agreement includes a revised bill.

The conference agreement designates amounts in the Act as emergency requirements pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009. All applicable provisions in the Act are designated as an emergency for purposes of pay-as-you-go principles.

DIVISION A—APPROPRIATIONS PROVISIONS

TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES

DEPARTMENT OF AGRICULTURE

AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

The conference agreement provides $24,000,000 for the Agriculture Buildings and Facilities and Rental Payments account instead of $44,000,000 as proposed by the House. The Senate bill contained no such account.

The conference agreement provides funding to address priority maintenance, repair, and modernization investments in USDA's headquarter buildings and facilities.

OFFICE OF INSPECTOR GENERAL

The conference agreement provides $22,500,000 for the Office of Inspector General as proposed by both the House and Senate.

The conference agreement provides funding to enhance oversight and improve accountability of the use of economic recovery funds appropriated to the Department of Agriculture in this Act, including $7,500,000 for the U.S. Forest Service.

AGRICULTURAL RESEARCH SERVICE

BUILDINGS AND FACILITIES

The conference agreement provides $176,000,000 for the Agricultural Research Service, Buildings and Facilities account instead of $209,000,000 as proposed by the House. The Senate bill contained no such account.

The conference agreement provides funding to address critical deferred maintenance of the agency's aging laboratory and research infrastructure.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

The conference agreement provides $50,000,000 for the Farm Service Agency, Salaries and Expenses account instead of $245,000,000 as proposed by the House. The Senate bill contained no such account.

The conference agreement provides funding to maintain and modernize the information technology system.

NATURAL RESOURCES CONSERVATION SERVICE

WATERSHED AND FLOOD PREVENTION OPERATIONS

The conference agreement provides $290,000,000 for the Watershed and Flood Prevention Operations program instead of $350,000,000 as proposed by the House and $275,000,000 as proposed by the Senate.

Of the total amount, $145,000,000 is for purchasing and restoring floodplain easements under the authorities of the Emergency Watershed Protection Program. Funding is provided for conducting a floodplain restoration enrollment process that encompasses multiple regions of the country and that will provide the greatest public and environmental benefits.

The conference agreement provides funding to invest in both structural and nonstructural watershed infrastructure improvements. When considering project applications, the agency is directed to prioritize funding for projects that most cost-effectively provide the greatest public safety, flood protection, economic, and environmental benefits.

With the funds provided, the agency is directed to complete existing infrastructure projects that have already initiated planning, design, or construction work, as well as prioritize funding for projects that are prepared to initiate work as soon as possible. The agency is further directed to fully fund the cost of completing discrete functional components of both structural and nonstructural projects initiated with the dollars provided in this conference agreement.

WATERSHED REHABILITATION PROGRAM

The conference agreement provides $50,000,000 for the Watershed Rehabilitation Program as proposed by the House instead of $65,000,000 as proposed by the Senate.

The conference agreement provides funding to rehabilitate aging flood control infrastructure. The agency is directed to prioritize funding for projects that are at greatest risk of failure and present threats to public safety. The agency is further directed to prioritize funding for projects that can obligate and expend funds both cost effectively and rapidly. Finally, the agency is directed to fully fund the cost of completing rehabilitation projects initiated with the dollars provided in this conference agreement.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

The conference agreement provides $200,000,000 in budget authority as proposed by the Senate instead of $500,000,000 as proposed by the House. The amount of funding provided by the conference agreement will support $11,472,000,000 in direct and guaranteed single family housing loans under the Rural Housing Insurance Fund, of which $1,000,000,000 is for direct single family housing loans and $10,472,000,000 is for guaranteed single family housing loans.

RURAL COMMUNITY FACILITIES PROGRAM ACCOUNT

The conference agreement includes $130,000,000 in budget authority for loans and grants for rural community facilities instead of $200,000,000 as proposed by the House and $127,000,000 as proposed by the Senate.

The conference agreement provides funding to support $1,234,000,000 in loans and grants for essential rural community facilities including hospitals, health clinics, health and safety vehicles and equipment, public buildings, and child and elder care facilities. Of this amount, $1,171,000,000 is for direct community facility loans and $63,000,000 is for community facility grants.

RURAL BUSINESS—COOPERATIVE SERVICE

RURAL BUSINESS PROGRAM ACCOUNT

The conference agreement includes $150,000,000 in budget authority for rural business loans and grants as proposed by the Senate instead of $100,000,000 as proposed by the House. The amount of funding provided by the conference agreement will support $3,010,000,000 in rural business loans and grants. Of this amount, $2,990,000,000 is for guaranteed business and industry loans and $20,000,000 is for rural business enterprise grants.

RURAL UTILITIES SERVICE

RURAL WATER AND WASTE DISPOSAL PROGRAM ACCOUNT

The conference agreement includes $1,380,000,000 in budget authority for loans and grants for water and waste disposal facilities instead of $1,500,000,000 as proposed by the House and $1,375,000,000 as proposed by the Senate. The amount of funding provided by the conference agreement will support $3,788,000,000 in loans and grants for water and waste disposal facilities in rural areas. Of this amount, $2,820,000,000 is for direct loans and $968,000,000 is for grants.

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM

The conference agreement includes $2,500,000,000 for the distance learning, telemedicine, and broadband program instead of $2,825,000,000 as proposed by the House and $100,000,000 as proposed by the Senate.

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

The conference agreement includes $100,000 for a grant program for National School Lunch Program equipment assistance as proposed by the Senate. The House bill contained no such account.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

The conference agreement includes $500,000,000 for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as proposed by the Senate instead of $100,000,000 as proposed by the House.

Of the total amount provided by the conference agreement, $400,000,000 is for the program's contingency reserve to ensure that the WIC program will have adequate funds to cover potential increased participation or food costs as a result of economic uncertainty. The conference agreement also provides $100,000,000 from the total amount to help state agencies implement new management information systems or improve existing management information systems for the program.

COMMODITY ASSISTANCE PROGRAM

The conference agreement includes $150,000,000 for the Emergency Food Assistance Program for food purchases as proposed by both the House and Senate. Of the total amount provided by the conference agreement, up to $50,000,000 may be used for administrative funding.

GENERAL PROVISIONS—THIS TITLE

SEC. 101. The conference agreement includes language to increase the value of benefits provided through the Supplemental Nutrition Assistance Program by 13.6 percent. The conference agreement also includes $295,000,000 for the cost of state administrative expenses and $5,000,000 in administrative funding for the Food Distribution Program on Indian Reservations.

SEC. 102. The conference agreement includes language to provide for transitional agricultural disaster assistance.

SEC. 103. The conference agreement includes language to carry out the Food, Conservation, and Energy Act of 2008.

SEC. 104. The conference agreement includes language to carry out the rural development loan and grant programs funded in this title.

SEC. 105. The conference agreement includes language to specify the use of funds in persistent poverty counties.

TITLE II—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

DEPARTMENT OF COMMERCE

The Department is directed to submit to the House and Senate Committees on Appropriations spending plans, signed by the Secretary, detailing its intended allocation of funds provided in this Act within 60 days of enactment of this Act.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

The conference agreement includes $150,000,000 for Economic Development Assistance Programs to leverage private investment, stimulate employment and increase incomes in economically distressed communities. Of the amounts provided, $50,000,000 shall be for economic adjustment assistance to help communities recover from sudden and severe economic dislocation and massive job losses due to corporate restructuring and $50,000,000 may be transferred to federally authorized, regional economic development commissions.

BUREAU OF THE CENSUS

PERIODIC CENSUSES AND PROGRAMS

To ensure a successful 2010 Decennial, the conference agreement includes $1,000,000,000 to hire additional personnel, provide required training, increase targeted media purchases, and improve management of other operational and programmatic risks. Of the amounts provided, up to $250,000,000 shall be for partnership and outreach efforts to minority communities and hard-to-reach populations.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

The conference agreement includes $4,700,000,000 for NTIA's Broadband Technology Opportunities Program (TOP), to be available until September 30, 2010. Funding is provided to award competitive grants to accelerate broadband deployment in unserved and underserved areas and to strategic institutions that are likely to create jobs or provide significant public benefits. Of the amounts provided, $350,000,000 shall establish the State Broadband Data and Development Grant program, as authorized by Public Law 110–385 and for the development and maintenance of a national broadband inventory map as authorized by division B of this Act. In addition, $200,000,000 shall be for competitive grants for expanding public computer center capacity; $250,000,000 shall be for competitive grants for innovative programs to encourage sustainable broadband adoption; and $10,000,000 is to be transferred to the Department of Commerce Inspector General for audits and oversight of funds provided under this heading, to be available until expended.

DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM

The conference agreement includes $650,000,000 for additional implementation and administration of the digital-to-analog converter box coupon program, including additional coupons to meet new projected demands and consumer support, outreach and administration. Of the amounts provided, up to $90,000,000 may be used for education and outreach to vulnerable populations, including one-on-one assistance for converter box installation.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

The conference agreement includes $220,000,000 for research, competitive grants, additional research fellowships and advanced research and measurement equipment and supplies. In addition, $20,000,000 is provided by transfer from the Health Information Technology (HIT) initiative within this Act. For HIT activities, NIST is directed to create and test standards related to health security and interoperability in conjunction with partners at the Department of Health and Human Services.

CONSTRUCTION OF RESEARCH FACILITIES

The conference agreement includes $360,000,000 to address NIST's backlog of maintenance and renovation and for construction of new facilities and laboratories. Of the amounts provided, $180,000,000 shall be for the competitive construction grant program for research science buildings, including fiscal year 2008 and 2009 competitions.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

The conference agreement includes $230,000,000 for NOAA operations, research, and facilities to address a backlog of research, restoration, navigation, conservation and management activities.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

The conference agreement includes $600,000,000 for construction and repair of NOAA facilities, ships and equipment, to improve weather forecasting and to support satellite development. Of the amounts provided, $170,000,000 shall address critical gaps in climate modeling and establish climate data records for continuing research into the cause, effects and ways to mitigate climate change.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $6,000,000 for the Office of Inspector General, to remain available until September 30, 2013.

DEPARTMENT OF JUSTICE

The Department is directed to submit to the House and Senate Committees on Appropriations a spending plan, signed by the Attorney General, detailing its intended allocation of funds provided in this Act within 60 days of enactment of this Act.

GENERAL ADMINISTRATION

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $2,000,000 for the Office of Inspector General, to be available until September 30, 2013.

STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

OFFICE ON VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS

The conference agreement provides $225,000,000 for Violence Against Women Prevention and Prosecution Programs, to be available until September 30, 2010, of which $175,000,000 is for the STOP Violence Against Women Formula Assistance Program, and $50,000,000 is for transitional housing assistance grants. No administrative overhead costs shall be deducted from the programs funded under this accout.

OFFICE OF JUSTICE PROGRAMS

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

The conference agreement includes a total of $2,765,000,000 for the following state and local law enforcement assistance programs, to be available until September 30, 2010. No administrative overhead costs shall be deducted from the programs funded under this account.

Edward Byrne Memorial Justice Assistance Grants	$2,000,000,000
Byrne competitive grants	225,000,000
Rural Law Enforcement	125,000,000
Southwest Border/Project Gunrunner	40,000,000
Victims Compensation	100,000,000
Tribal Law Enforcement Assistance	225,000,000
Internet Crimes Against Children Task Force	50,000,000
Total	2,765,000,000

Byrne-Justice Assistance Grants.—The conference agreement provides $2,000,000,000 for Edward Byrne Memorial Justice Assistance

Grants. This funding is allocated by formula to State and local law enforcement agencies to help prevent, fight, and prosecute crime.

Byrne Competitive Grants.—The conference agreement provides $225,000,000 for competitive, peer-reviewed grants to units of State, local, and tribal government, and to national, regional, and local non-profit organizations to prevent crime, improve the administration of justice, provide services to victims of. crime, support critical nurturing and mentoring of at-risk children and youth, and for other similar activities.

Rural Law Enforcement.—The conference agreement provides $125,000,000 for grants to combat the persistent problems of drug-related crime in rural America. Funds will be available on a competitive basis for drug enforcement and other law enforcement activities in rural states and rural areas, including for the hiring of police officers and for community drug prevention and treatment programs.

Southwest Border/Project Gunrunner.—The conference agreement provides $40,000,000 for competitive grants for programs that provide assistance and equipment to local law enforcement along the Southern border or in High-Intensity Drug Trafficking Areas to combat criminal narcotic activity, of which $10,000,000 shall be available, by transfer, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives for Project Gunrunner.

Victims Compensation.—The conference agreement provides $100,000,000 for formula grants to be administered through the Justice Department's Office for Victims of Crime to support State compensation and assistance programs for victims and survivors of domestic violence, sexual assault, child abuse, drunk driving, homicide, and other Federal and state crimes.

Tribal Law Enforcement Assistance.—The conference agreement provides $225,000,000 for grants to assist American Indian and Alaska Native tribes, to be distributed under the guidelines set forth by the Correctional Facilities on Tribal Lands program. The Department is directed to coordinate with the Bureau of Indian Affairs, and to consider the following in the grant approval process: (1) the detention bed space needs of an applicant tribe; and (2) the violent crime statistics of the tribe.

Internet Crimes Against Children (ICAC) Task Force Program.—The conference agreement provides $50,000,000 to help State and local law enforcement agencies enhance investigative responses to offenders who use the Internet, online communication systems, or other computer technology to sexually exploit children.

COMMUNITY ORIENTED POLICING SERVICES

COPS Hiring Grants.—The conference agreement provides $1,000,000,000 for grants to State, local, and tribal governments for the hiring of additional law enforcement officers, to be available until September 30, 2010. No administrative overhead costs shall be deducted from the programs funded under this account.

SALARIES AND EXPENSES

The conference agreement provides $10,000,000 for management and administrative costs of Department of Justice grants funded in this Act.

SCIENCE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA is directed to submit to the House and Senate Committees on Appropriations a spending plan, signed by the Administrator, detailing its intended allocation of funds provided in this Act within 60 days of enactment of this Act.

SCIENCE

The conference agreement includes $400,000,000 for Science, to remain available until September 30, 2010. Funding is included herein to accelerate the development of the tier 1 set of Earth science climate research missions recommended by the National Academies Decadal Survey and to increase the agency's supercomputing capabilities.

AERONAUTICS

The conference agreement includes $150,000,000 for aeronautics, to remain available until September 30, 2010. These funds are available for system-level research, development and demonstration activities related to aviation safety, environmental impact mitigation and the Next Generation Air Transportation System (NextGen).

EXPLORATION

The conference agreement includes $400,000,000 for exploration, to remain available until September 30, 2010.

CROSS AGENCY SUPPORT

The conference agreement includes $50,000,000 for cross agency support, to remain available until September 30, 2010. In allocating these funds, NASA shall give its highest priority to restore NASA-owned facilities damaged from hurricanes and other natural disasters occurring during calendar year 2008.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $2,000,000 for the Office of Inspector General, to remain available until September 30, 2013.

NATIONAL SCIENCE FOUNDATION

NSF is directed to submit to the House and Senate Committees on Appropriations a spending plan, signed by the Director, detailing its intended allocation of funds provided in this Act within 60 days of enactment of this Act.

RESEARCH AND RELATED ACTIVITIES

For research and related activities, the conference agreement provides a total of $2,500,000,000, to remain available until September 30, 2010. Within this amount, $300,000,000 shall be available solely for the major research instrumentation program and $200,000,000 shall be available for activities authorized by title II of Public Law 100–570 for academic facilities modernization. In allocating the resources provided under this heading, the conferees direct that NSF support all research divisions and support advancements in supercomputing technology.

EDUCATION AND HUMAN RESOURCES

The conference agreement includes $100,000,000 for education and human resources, to remain available until September 30, 2010. These funds shall be allocated as follows:

Robert Noyce Scholarship Program	$60,000,000
Math and Science Partnerships	25,000,000
Professional Science Master's Programs	15,000,000

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

The conference agreement includes $400,000,000 for major research equipment and facilities construction, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $2,000,000 for the Office of Inspector General, to remain available until September 30, 2013.

GENERAL PROVISION—THIS TITLE

Sec. 201. For COPS Hiring Grants, waives the $75,000 per officer cap codified at 42 U.S.C. 6dd–3(c) and the 25 percent local match requirement codified at 42 U.S.C. 3796dd(g).

TITLE III—DEFENSE

DEPARTMENT OF DEFENSE

FACILITY INFRASTRUCTURE INVESTMENTS, DEFENSE

Facilities Sustainment, Restoration and Modernization covers expenses associated with maintaining the physical plant at Department of Defense posts, camps and stations. The conference agreement provides $4,240,000,000 for Facilities Sustainment, Restoration and Modernization and directs that this funding shall only be available for facilities in the United States and its territories. Further, of the funds provided, $400,000,000 is for the Defense Health Program as described elsewhere in this statement. Of the funds provided in Operation and Maintenance, Army, $153,500,000 shall be used for barracks renovations. The remainder of the funds provided shall be used to invest in energy efficiency projects and to repair and modernize Department of Defense facilities. The Secretary of Defense shall provide a written report to the congressional defense committees no later than 60 days after enactment of this Act with a project listing of how these funds will be obligated.

NEAR TERM ENERGY EFFICIENCY TECHNOLOGY DEMONSTRATIONS AND RESEARCH

The conference agreement provides $75,000,000 for Research, Development, Test and Evaluation, Army; $75,000,000 for Research, Development, Test and Evaluation, Navy; $75,000,000 for Research, Development, Test and Evaluation, Air Force; and $75,000,000 for Research, Development, Test and Evaluation, Defense-Wide only for the funding of research, development, test and evaluation projects, including pilot projects, demonstrations and energy efficient manufacturing enhancements. Funds are for improvements in energy generation and efficiency, transmission, regulation, storage, and for use on military installations and within operational forces, to include research and development of energy from fuel cells, wind, solar, and other renewable energy sources to include biofuels and bioenergy. The Secretary of Defense is directed to provide a report to the congressional defense committees detailing the planned use of these funds within 60 days after enactment of this Act. Additionally, the Secretary of Defense is directed to provide a report on the progress made by this effort to the congressional defense committees not later than one year after enactment of this Act and an additional report not later than two years after enactment of this Act.

DEFENSE HEALTH PROGRAM

The conference agreement provides $400,000,000 for Facilities Sustainment, Restoration, and Modernization. Of these funds, $220,000,000 shall be for the Army, $50,000,000 shall be for the Navy, and $130,000,000 shall be for the Air Force. Funds shall be used to invest in energy efficiency projects and to improve, repair and modernize military medical facilities in the United States and its territories. The Service Surgeons General shall provide written reports to the congressional defense committees no later than 60 days after enactment of this Act with a project listing of how and when these funds will be obligated.

OFFICE OF THE INSPECTOR GENERAL

The conference agreement provides $15,000,000 for the Office of the Inspector General to conduct vigorous oversight of Department of Defense programs.

TITLE IV—ENERGY AND WATER DEVELOPMENT

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

INTRODUCTION

The conferees agree to provide an additional $4,600,000,000 for the Corps of Engineers as proposed by the Senate instead of $4,500,000,000 as proposed by the House. The conferees direct the Corps to consider the following criteria when allocating funds:

(a) Programs, projects, or activities that can be obligated/executed quickly;

(b) Programs, projects, or activities that will result in high, immediate employment;

(c) Programs, projects, or activities that have little schedule risk;

(d) Programs, projects, or activities that will be executed by contract or direct hire of temporary labor; and

(e) Programs, projects, or activities that will complete either a project phase, a project, or will provide a useful service that does not require additional funding.

Further, the Corps is directed to utilize the criteria above to execute authorized projects in order to maximize national benefits without regard to the business line amounts proposed in the Senate report, except where statutory language specifies an amount.

INVESTIGATIONS

The conferees agree to provide an additional $25,000,000 as proposed by the Senate. The House proposed no funding for this account. The conference agreement includes or modifies several provisions proposed by the Senate related to availability of funds and reprogramming.

CONSTRUCTION

The conferees agree to provide an additional $2,000,000,000 as proposed by both the House and the Senate.

The conference agreement includes a provision proposed by the Senate regarding availability of funds for authorized environmental infrastructure projects. The House bill included no similar provision.

The conference agreement includes several provisions proposed by the House and the Senate regarding limitations on reimbursement, annual program and total project cost limits, the Inland Waterways Trust Fund, and availability of funds.

The conference agreement deletes a provision proposed by the House directing the prioritization of funds. The Senate carried report language addressing prioritization.

The conference agreement includes a provision proposed by the Senate granting the Secretary of the Army unlimited reprogramming authority for funds provided under this heading. The House bill included no similar provision.

The conference agreement includes a provision proposed by the House requiring specific reports on obligation and expenditure of funds provided in this Act. The Senate bill included no similar provision.

MISSISSIPPI RIVER AND TRIBUTARIES

The conferees agree to provide an additional $375,000,000 instead of $250,000,000 as proposed by the House and $500,000,000 as proposed by the Senate.

The conference agreement deletes a provision proposed by the House directing the prioritization of funds. The Senate carried report language addressing prioritization.

The conference agreement includes several provisions proposed by the House and the Senate regarding total project cost limits and availability of funds.

The conference agreement includes a provision proposed by the Senate granting the Secretary of the Army unlimited reprogramming authority for funds provided under this heading. The House bill included no similar provision.

The conference agreement includes a provision proposed by the House requiring specific reports on obligation and expenditure of funds provided in this Act. The Senate bill included no similar provision.

OPERATION AND MAINTENANCE

The conferees agree to provide an additional $2,075,000,000 instead of $2,225,000,000 as proposed by the House and $1,900,000,000 as proposed by the Senate.

The conference agreement deletes a provision proposed by the House directing the prioritization of funds. The Senate carried report language addressing prioritization.

The conference agreement includes several provisions proposed by the House and the Senate regarding total project cost limits and availability of funds.

The conference agreement deletes a provision proposed by the Senate relating to activities authorized in section 9004 of Public Law 110–114. The House bill included no similar provision.

The conference agreement includes a provision proposed by the Senate relating to annual project limitations set forth in section 9006 of Public Law 110–114. The House bill included no similar provision.

The conference agreement includes a provision proposed by the Senate granting the Secretary of the Army unlimited reprogramming authority for funds provided under this heading. The House bill included no similar provision.

The conference agreement includes a provision proposed by the House requiring specific reports on obligation and expenditure of funds provided in this Act. The Senate bill included no similar provision.

REGULATORY PROGRAM

The conferees agree to provide an additional $25,000,000 as proposed by both the House and the Senate.

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

The conferees agree to provide an additional $100,000,000 as proposed by the Senate. The House proposed no funding for this account.

The conference agreement includes or modifies several provisions proposed by the Senate related to availability of funds and reprogramming.

The conference agreement includes a new provision requiring specific reports on obligation and expenditure of funds provided in this Act.

FLOOD CONTROL AND COASTAL EMERGENCIES

The conferees provide no additional funds, as proposed by the House, instead of $50,000,000 as proposed by the Senate.

DEPARTMENT OF INTERIOR

BUREAU OF RECLAMATION

WATER AND RELATED RESOURCES

The conferees agree to provide an additional $1,000,000,000 for Water and Related Resources instead of $500,000,000 as proposed by the House and $1,400,000,000 as proposed by the Senate. The conferees direct the Bureau to consider the following criteria when allocating funds:

(a) Programs, projects, or activities that can be obligated/executed quickly;

(b) Programs, projects, or activities that will result in high, immediate employment;

(c) Programs, projects, or activities that have little schedule risk;

(d) Programs, projects, or activities that will be executed by contract or direct hire of temporary labor; and

(e) Programs, projects, or activities that will complete either a project phase, a project, or will provide a useful service that does not require additional funding.

Further, the Bureau is directed to utilize the criteria above to execute authorized projects in order to maximize national benefits without regard to the amounts proposed in the Senate report by purpose, except where statutory language specifies an amount.

The conference agreement includes a provision proposed by the House related to expenditures for authorized title XVI projects. The Senate bill included a similar provision.

The conference agreement deletes several provisions proposed by the Senate related to the Bureau of Reclamation's special fee account; contributed funds; funds advanced under 43 U.S.C. 397a; and limitations on funding programs, projects or activities that receive funding in Acts making appropriations for Energy and Water Development. The House bill included no similar provisions.

The conference agreement includes provisions proposed by the Senate relating to availability of funds for projects that can be completed with funds provided in this Act and the availability of funds for authorized activities under the Central Utah Project Completion Act, California-Bay Delta Restoration Act, and the bureau-wide inspection of canals program in urbanized areas. The House bill included no similar provisions.

The conference agreement includes a provision proposed by the Senate relating to authorized rural water projects. The House bill included a similar provision.

The conference agreement modifies provisions proposed by both the House and the Senate relating to repayment of reimbursable activities.

The conference agreement includes a provision proposed by the Senate relating to availability of funds for costs associated with supervision, inspection, overhead, engineering and design on projects. The House bill included no similar provision.

The conference agreement includes a provision proposed by the Senate granting the Secretary of Interior unlimited reprogramming authority for funds provided under this heading. The House bill included no similar provision.

The conference agreement includes a new provision requiring specific reports on obligation and expenditure of funds provided in this Act.

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY EFFICIENCY AND RENEWABLE ENERGY

The conferees agree to provide an additional $16,800,000,000 for the Energy Efficiency and Renewable Energy program, instead of $18,500,000,000 as proposed by the House and $14,398,000,000 as proposed by the Senate. The conference agreement includes $2,500,000,000 for applied research, development, demonstration and deployment activities to include $800,000,000 for projects related to biomass and $400,000,000 for geothermal activities and projects. Within available funds, the conferees direct $50,000,000 for the Department to support research to increase the efficiency of information and communications technology and improve standards.

Funds under this heading include $3,200,000,000 for the Energy Efficiency and Conservation Block Grant (EECBG) program, instead of $3,500,000,000 as proposed by the House and $4,200,000,000 as proposed by the Senate. Of the funds provided for the EECBG program, $400,000,000 shall be awarded on a competitive basis to grant applicants.

Funds under this heading include $5,000,000,000 for the Weatherization Assistance Program, instead of $6,200,000,000 as proposed in the House bill. The Senate proposed $2,900,000,000 in report language.

Funds under this heading include $3,100,000,000 for the State Energy Program, instead of $3,400,000,000 as proposed in the House bill. The Senate proposed $500,000,000 in report language.

Funds under this heading include $2,000,000,000 for Advanced Battery Manufacturing grants to support the manufacturing of advanced vehicle batteries and components, as proposed by the Senate, instead of $1,000,000,000 as proposed by the House. The conference agreement does not include the Advanced Battery Loan Guarantee program as proposed by the House. The Senate bill carried no similar provision.

Funds under this heading include $300,000,000 for the Alternative Fueled Vehicles Pilot Grant Program, instead of $400,000,000 as proposed in the House bill. The Senate proposed $350,000,000 in report language.

Funds under this heading include $400,000,000 for Transportation Electrification, instead of $200,000,000 as proposed in the House bill. The Senate proposed $200,000,000 in report language.

Funds under this heading include $300,000,000 for the Energy Efficient Appliance Rebate program and the Energy Star Program as proposed by the House. The Senate bill carried no similar provision.

The conference agreement includes language proposed by both the House and Senate that accelerates the hiring of personnel for the Energy Efficiency and Renewable Energy program.

The conference agreement does not include $500,000,000 for incentives for Energy Recovery of Industrial Waste Heat, as proposed by the House. The Senate bill carried no similar provision.

The conference agreement does not include $1,000,000,000 for grants to Institutional Entities for Energy Sustainability and Efficiency as proposed in the House bill. The Senate proposed $1,600,000,000 in report language.

The conference agreement does not include $500,000,000 for the cost of guaranteed loans to Institutional Entities for Energy Sustainability and Efficiency as proposed in the House bill. The Senate bill carried no similar provision.

ELECTRICITY DELIVERY AND ENERGY RELIABILITY

The conferees agree to provide an additional $4,500,000,000 for the Electricity Delivery and Energy Reliability program, as proposed by the House and the Senate. The conferees provide $100,000,000 within these funds for worker training, as proposed by the House and the Senate.

The conferees include language enabling the Secretary to use funds for transmission improvements authorized in any subsequent Act, as proposed by the House. The Senate bill contained no similar provision.

The conferees include language proposed by the Senate that accelerates the hiring of personnel for the Electricity Delivery and Energy Reliability program. The House bill contained no similar provision.

The conference agreement modifies bill language proposed by the Senate providing funds to conduct a resource assessment of future demand and transmission requirements. The House bill contained no similar provision.

The conference agreement modifies bill language proposed by the Senate for technical assistance to the North American Electric Reliability Corporation, the regional reliability entities, the States, and other transmission owners and operators for the formation of interconnection-based transmission plans for the Eastern and Western Interconnections and ERCOT. The House bill contained no similar provision.

The conference agreement includes bill language proposed by the Senate providing $10,000,000 to implement section 1305 of Public Law 110–140. The House bill contained no similar provision.

FOSSIL ENERGY RESEARCH AND DEVELOPMENT

The conferees agree to provide an additional $3,400,000,000 for the Fossil Energy Research and Development program, instead of $2,400,000,000 as proposed by the House and $4,600,000,000 as proposed by the Senate.

Funds under this heading include $1,000,000,000 for fossil energy research and development programs; $800,000,000 for additional amounts for the Clean Coal Power Initiative Round III Funding Opportunity Announcement; $1,520,000,000 for a competitive solicitation for a range of industrial carbon capture and energy efficiency improvement projects, including a small allocation for innovative concepts for beneficial CO_2 reuse; $50,000,000 for a competitive solicitation for site characterization activities in geologic formations; $20,000,000 for geologic sequestration training and research grants; and $10,000,000 for program direction funding.

The conference agreement does not include $2,400,000,000 for Section 702 of the Energy Independence and Security Act of 2007, as proposed by the House. The Senate bill contained no similar provision.

The conference agreement deletes several provisions proposed by the Senate delineating funding within this account. The House bill contained no similar provisions.

NON-DEFENSE ENVIRONMENTAL CLEANUP

The conferees agree to provide an additional $483,000,000 for the Non-Defense Environmental Cleanup program, as proposed by the Senate. The House bill carried no similar provision.

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

The conferees agree to provide an additional $390,000,000 for the Uranium Enrichment Decontamination and Decommissioning Fund, as proposed by the Senate. The House bill carried no similar provision. Within available funds, $70,000,000 is provided for the title X uranium and thorium program.

SCIENCE

The conferees agree to provide an additional $1,600,000,000 for the Science program. After taking into account the additional $400,000,000 provided for Advanced Research Projects Agency-Energy (ARPA–E) in a separate account, the funding level for Science is the same as proposed by the House, instead of $330,000,000 as proposed by the Senate.

The conference agreement does not include $100,000,000 for advanced scientific computing as proposed in the House bill. The Senate bill carried no similar provision.

ADVANCED RESEARCH PROJECTS AGENCY-ENERGY

The conferees agree to provide $400,000,000 for the Advanced Research Projects Agency-Energy authorized under section 5012 of the America COMPETES Act (42 U.S.C. 16538). This funding was provided by the House under ''Science''. The Senate bill carried no similar provision.

TITLE 17—INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

The conference agreement includes $6,000,000,000 for the cost of guaranteed loans authorized by section 1705 of the Energy Policy Act of 2005, instead of $8,000,000,000 as proposed by the House and $9,500,000,000 as proposed by the Senate.

This new loan program would provide loan guarantees for renewable technologies and transmission technologies. The $6,000,000,000 in appropriated funds is expected to support more than $60,000,000,000 in loans for these projects.

Funds under this heading include $10,000,000 for administrative expenses to support the Advanced Technology Vehicles Manufacturing Loan program. The House bill and the Senate bill included no similar provision.

The conference agreement does not include a provision proposed by the Senate providing $50,000,000,000 in additional loan authority for commitments to guarantee loans under section 1702(b)(2) of the Energy Policy Act of 2005. The House bill contained no similar provision.

OFFICE OF THE INSPECTOR GENERAL

The conferees agree to provide an additional $15,000,000 for the Office of Inspector General, as proposed by the House. The Senate bill included a similar provision.

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY ADMINISTRATION

WEAPONS ACTIVITIES

The conference agreement does not provide $1,000,000,000 for the National Nuclear Security Administration, Weapons Activities, as proposed by the Senate. The House bill contained no similar provision.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL CLEANUP

The conferees agree to provide an additional $5,127,000,000 for the Defense Environmental Cleanup program, instead of $500,000,000 as proposed by the House and $5,527,000,000 as proposed by the Senate.

CONSTRUCTION, REHABILITATION, OPERATION, AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION

The conference agreement includes bill language proposed by the Senate providing $10,000,000 in non-reimbursable funds for construction, rehabilitation, operations, and maintenance for the Western Area Power Administration (WAPA). The House bill contained no similar provision.

The conference agreement includes bill language proposed by the Senate providing additional staffing levels for the WAPA. The House bill contained no similar provision.

Legislative language is also included in the General Provisions of this title providing the WAPA with $3,250,000,000 in borrowing authority, as proposed by both the House and the Senate.

GENERAL PROVISIONS—THIS TITLE

The conference agreement includes a provision proposed by both the House and Senate increasing the borrowing authority ceiling for the Bonneville Power Administration by $3,250,000,000.

The conference agreement includes a provision proposed by the Senate providing the Western Area Power Administration $3,250,000,000 in borrowing authority. The House bill contained a similar provision.

The conference agreement modifies a provision proposed by the House granting transfer authority to the Secretary of Energy under specific circumstances. The Senate bill contained no similar provision.

The conference agreement includes a provision proposed by the House making technical corrections to section 543(a) of the Energy Independence and Security Act of 2007. The Senate bill contained no similar provision.

The conference agreement modifies a provision proposed by the House amending title XIII of the Energy Independence and Security Act of 2007 to provide financial support to smart grid demonstration projects including those in urban, suburban, rural and tribal areas including areas where electric system assets are controlled by nonprofit entities and areas where the electric system assets are controlled by investor owned utilities. The Senate bill contained a similar provision.

The conference agreement modifies a provision proposed by the House amending title XVII of the Energy Independence and Security Act of 2007 creating a temporary loan guarantee program for the rapid deployment of renewable energy and electric power transmission projects. The Senate bill contained a similar provision.

The conference agreement modifies a provision proposed by the House expanding the eligibility of low income households for the Weatherization Assistance Program and increasing the funding assistance level per dwelling unit. The provision also provides guidance on effective use of funds. The Senate bill contained a similar provision.

The conference agreement includes a provision proposed by the Senate making technical corrections to redesignate two paragraphs of the Public Utility Regulatory Policies Act of 1978. The House bill contained no similar provision.

The conference agreement includes a provision proposed by the House providing the Secretary of Energy further direction in completing the 2009 National Electric Transmission Congestion Study. The Senate bill contained no similar provision.

The conference agreement includes a provision proposed by the House requiring as a condition of receipt of State Energy Program grants, a Governor to notify the Secretary of Energy that the Governor has obtained certain assurances, regarding certain regulatory policies, building code requirements and the prioritization of existing state programs. The Senate bill contained a similar provision.

The conference agreement deletes a provision proposed by the House waiving per project limitations for grants provided under section 399A(f)(2), (3), and (4) of the Energy Policy and Conservation Act and establishes that grants shall be available for not more than an amount equal to 80 percent of the costs of the project for which the grant is provided. The Senate bill contained no similar provision.

TITLE V—FINANCIAL SERVICES AND GENERAL GOVERNMENT

DEPARTMENT OF THE TREASURY

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

SALARIES AND EXPENSES

The conference agreement provides $7,000,000 for oversight and audits of the administration of the making work pay tax credit and economic recovery payments under the American Recovery and Reinvestment Act, as proposed by the Senate. The House did not include funds for this account.

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT

The conference agreement provides $100,000,000 for qualified applicants under the fiscal year 2009 funding round of the Community Development Financial Institutions Fund program, instead of no funds as proposed by the House and $250,000,000 as proposed by the Senate.

INTERNAL REVENUE SERVICE

HEALTH INSURANCE TAX CREDIT ADMINISTRATION

The conference agreement provides $80,000,000 to cover expected additional costs associated with implementation of the TAA Health Coverage Improvement Act of 2009.

DISTRICT OF COLUMBIA

FEDERAL PAYMENTS

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

The conference agreement does not provide funding for the District of Columbia Water and Sewer Authority, instead of $125,000,000 as proposed by the Senate.

GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

(INCLUDING TRANSFER OF FUNDS)

The conference agreement provides $5,550,000,000, for the Federal Buildings Fund, instead of $7,700,000,000 as proposed by the House and $5,548,000,000 as proposed by the Senate. Of the amounts provided, the conference agreement includes $750,000,000 for Federal buildings and United States courthouses, $450,000,000 of which shall be for a new headquarters for the Department of Homeland Security; $300,000,000 for border stations and land ports of entry; and not less than $4,500,000,000 to convert GSA facilities to High-Performance Green buildings as defined in P.L. 110–140. The conference agreement provides $4,000,000 for the Office of Federal High-Performance Green Buildings, authorized in the Energy Independence and Security Act of 2007. The agreement also provides $3,000,000 for a training and apprenticeship program for construction, repair and alteration of Federal buildings. With any funds in the Act that are used for new United States courthouse construction, the conferees advise GSA to consider projects for which the design provides courtroom space for senior judges for up to 10 years from eligibility for senior status, not to exceed one courtroom for every two senior judges.

ENERGY-EFFICIENT FEDERAL MOTOR VEHICLE FLEET PROCUREMENT

The conference agreement includes $300,000,000 for the acquisition of motor vehicles for the Federal fleet as proposed by the Senate, instead of $600,000,000 as proposed by the House. The conferees expect that the funds provided for Federal motor vehicle fleet procurement will help to stimulate the market for high-efficiency motor vehicles and will increase the fuel efficiency and reduce carbon emissions of the Federal motor vehicle fleet. The conferees remain hopeful that domestically produced plug-in hybrid-electric vehicles will be commercially available in sufficient quantities before September 30, 2010, such that these funds could be used to acquire this technology for the Federal fleet. Vehicles must be replaced on at least a one-for-one basis. Each vehicle purchased must have a higher fuel economy, as measured by EPA, than the vehicle being replaced and the overall government-purchased vehicles must have an improved fuel economy at least 10 percent greater than the vehicles being replaced.

OFFICE OF INSPECTOR GENERAL

The conference agreement provides $7,000,000 for the General Services Administration Office of Inspector General, as proposed by the Senate, instead of $15,000,000 as proposed by the House. Funds are available through September 30, 2013 for oversight and audit of programs, activities, and projects under this title.

RECOVERY ACT ACCOUNTABILITY AND TRANSPARENCY BOARD

The conference agreement provides $84,000,000 for the Recovery Act Accountability and Transparency Board, instead of $14,000,000 as provided by the House and $7,000,000 as provided by the Senate. Funding will support activities related to accountability, transparency, and oversight of spending under the Act. Funds may be transferred to support the operations of the Recovery Independent Advisory Panel established under section 1541 of the Act and for technical and administrative services and support provided by the General Services Administration. Funds may also be transferred to the Office of Management and Budget for coordinating and overseeing the implementation of the reporting requirements established under section 1526 of the Act. Funds may be transferred not less than 15 days following the notification of such transfer to the Committees on Appropriations of the House of Representatives and the Senate.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

The conference agreement provides $69,000,000 for Salaries and Expenses of the Small Business Administration, instead of $84,000,000 as proposed by the Senate. The House did not include funds for this account. Of the amount provided, $24,000,000 is for marketing, management, and technical assistance under the Microloan program, $20,000,000 is for improving, streamlining, and automating information technology systems related to lender processes and lender oversight, and $25,000,000 is for administrative expenses to ensure the efficient and effective management of small business programs.

OFFICE OF INSPECTOR GENERAL

The conference agreement provides $10,000,000 for the Office of Inspector General, as proposed by the House and the Senate. Funds are made available through September 30, 2013 for oversight and audit of programs, activities, and projects under this title.

SURETY BOND GUARANTEES REVOLVING FUND

The conference agreement provides $15,000,000 for the Surety Bond Guarantees Revolving Fund, as proposed by the Senate. The House did not include funds for this account.

BUSINESS LOANS PROGRAM ACCOUNT

The conference agreement provides $636,000,000 for the Business Loans Program Account, instead of $430,000,000 as proposed by the House and $621,000,000 as proposed by the Senate. Of this amount, $6,000,000 is for the cost of direct loans provided under the Microloan program. The remaining $630,000,000 will implement the fee reductions and new loan guarantee authorities under sections 501 and 506 of this title.

ADMINISTRATIVE PROVISIONS—SMALL BUSINESS ADMINISTRATION

Section 501 authorizes temporary fee reductions or eliminations in the 7(a) loan guarantee program and the 504 loan program. The Senate proposed similar language.

Section 502 authorizes up to a 90 percent Small Business Administration guarantee on 7(a) loans. The House proposed similar language.

Section 503 authorizes the establishment of a SBA Secondary Market Guarantee Authority to provide a Federal guarantee for pools of first lien 504 loans that are to be sold to third-party investors. The House proposed similar language.

Section 504 authorizes SBA to refinance community development loans under its 504 program and revises the job creation goals of the program. The House and the Senate proposed similar language.

Section 505 simplifies the maximum leverage limits and aggregate investment limits required of Small Business Investment Companies. The House and the Senate proposed similar language.

Section 506 authorizes the Small Business Administration to carry out a program to provide loans on a deferred basis to viable small business concerns that have a qualifying small business loan and are experiencing immediate financial hardship.

Section 507 requires the Government Accountability Office to report to Congress on the implementation of the Small Business Administration provisions. The House proposed a similar provision.

Section 508 provides an increase in the surety bond maximum amount and modifies size standards. The Senate proposed similar language.

Section 509 establishes a secondary market lending authority within the Small Business Administration. The House proposed similar language.

The conference agreement does not include a provision, proposed by the House, to establish a new lending and refinancing authority within the Small Business Administration.

The conference agreement does not include a provision, proposed by the Senate, regarding the 7(a) loan maximum amount.

The conference agreement does not include a provision, proposed by the Senate, regarding definitions under the heading ''Small Business Administration'' in this title. The conference agreement includes provisions relating to definitions of terms within the individual sections.

TITLE VI—DEPARTMENT OF HOMELAND SECURITY

OFFICE OF THE UNDER SECRETARY FOR MANAGEMENT

The conferees provide $200,000,000 for the Office of the Under Secretary for Management instead of $198,000,000 as proposed by the Senate and no funding proposed by the House. These funds are for planning, design, and construction costs necessary to consolidate the Department of Homeland Security (DHS) headquarters. DHS estimates that this project will create direct employment opportunities for 32,800 people in the region, largely within the construction and renovation industry. The conferees include bill language as proposed by the Senate to require an expenditure plan.

OFFICE OF INSPECTOR GENERAL

The conferees provide $5,000,000 for the Office of Inspector General (OIG) as proposed by the Senate instead of $2,000,000 as proposed by the House. Funding is available until September 30, 2012. These funds shall be used for oversight and audit programs, grants, and projects funded in this Title. The OIG estimates that this funding will provide for approximately 25 temporary federal positions and 40 contractor positions.

U.S. CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

The conferees provide $160,000,000 for U.S. Customs and Border Protection (CBP) Salaries and Expenses instead of $100,000,000 as proposed by the House and $198,000,000 as proposed by the Senate. This includes $100,000,000 for the procurement and deployment of new or replacement non-intrusive inspection (NII) systems, and $60,000,000 for tactical communications. DHS estimates that funding for NII systems will create 148 new government and private sector jobs, and funding for tactical communications will create an estimated 319 contract positions, as well as manufacturing and systems software jobs. The conferees include bill language as proposed by the Senate to require an expenditure plan.

BORDER SECURITY FENCING, INFRASTRUCTURE, AND TECHNOLOGY

The conferees provide $100,000,000 for Border Security Fencing, Infrastructure, and Technology instead of $200,000,000 as proposed by the Senate and no funding proposed by the House. The conferees include bill language as proposed by the Senate to require an expenditure plan.

CONSTRUCTION

The conferees provide $420,000,000 for Construction, instead of $150,000,000 as proposed by the House and $800,000,000 as proposed by the Senate. The conferees include bill language as proposed by the Senate to make funding available for planning, management, design, alteration, and construction of land ports of entry that are owned by U.S. Customs and Border Protection. Up to five percent of these funds may be used to enhance management and oversight of this construction. DHS estimates that this project will create employment for 4,584 people in the border communities, largely within the construction and renovation industry. The conferees include bill language as proposed by the Senate to require an expenditure plan.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

AUTOMATION MODERNIZATION

The conferees provide $20,000,000 for Automation Modernization instead of $27,800,000 as proposed by the Senate and no funding proposed by the House. U.S. Immigration and Customs Enforcement has estimated this investment will create more than 120 new jobs related to the planning, manufacture, programming and installation of this equipment. The conferees include bill language as proposed by the Senate to require an expenditure plan.

TRANSPORTATION SECURITY ADMINISTRATION

AVIATION SECURITY

The conferees provide $1,000,000,000 for Aviation Security as proposed by the Senate instead of $500,000,000 as proposed by the House. This funding shall be used to procure and install checked baggage explosives detection systems and checkpoint explosives detection equipment. The Assistant Secretary of the Transportation Security Administration (TSA) should prioritize the award of these funds based on risk to accelerate the installation at locations with completed design plans. Funds must be competitively awarded. TSA estimates that this funding will create about 3,537 manufacturing and construction jobs as well as a small number of Federal positions.

The conferees include bill language as proposed by the Senate to require an expenditure plan. Consistent with direction provided previously for fiscal year 2009, if a new requirement occurs after the expenditure plan is submitted, TSA shall reassess and reallocate these funds after notifying the Committees on Appropriations. In addition, TSA shall brief the Committees quarterly on these expenditures.

COAST GUARD

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

The conferees provide $98,000,000 for Acquisition, Construction, and Improvements instead of $450,000,000 as proposed by the Senate and no funding proposed by the House. This funding cannot be used for pre-acquisition survey, design, or construction of a new polar icebreaker. The conferees include bill language as proposed by the Senate to require an expenditure plan. The Coast Guard estimates that this funding will create or preserve at least 435 jobs.

ALTERATION OF BRIDGES

The conferees provide $142,000,000 for Alteration of Bridges instead of $150,000,000 as proposed by the House and $240,400,000 as proposed by the Senate. The conferees include bill language as proposed by the Senate to require an expenditure plan. The Coast Guard estimates that this funding will create approximately 1,200 jobs.

FEDERAL EMERGENCY MANAGEMENT AGENCY

STATE AND LOCAL PROGRAMS

The conferees provide $300,000,000 for State and Local Programs instead of $950,000,000 as proposed by the Senate and no funding proposed by the House. Of the amount made available, $150,000,000 is for Public Transportation Security Assistance and Railroad Security Assistance, including Amtrak security, and $150,000,000 is for Port Security Grants. The Secretary shall not require a cost share for grants provided for Public Transportation Security Assistance and Railroad Security Assistance (including Amtrak security). In addition, the bill includes a provision waiving the cost-share for Port Security Grants funded in this Act.

The conferees expect funding provided under this heading to support nearly 2,900 jobs based on an estimate by the Department of Homeland Security. The conferees direct that priority be given to construction projects which address the most significant risks and can also be completed in a timely fashion.

FIREFIGHTER ASSISTANCE GRANTS

The conferees provide $210,000,000 for firefighter assistance grants instead of $500,000,000 as proposed by the Senate and no funding proposed by the House. As proposed by the Senate, funds are provided for modifying, upgrading or constructing non-Federal fire stations, not to exceed $15,000,000 per grant. The conferees expect this funding to support nearly 2,000 jobs based on an estimate by the Department of Homeland Security.

DISASTER ASSISTANCE DIRECT LOAN PROGRAM ACCOUNT

The conferees include bill language as proposed by the Senate allowing loans related to calendar year 2008 disasters to exceed $5,000,000 and equal not more than 50 percent of the operating budget of local governments if that local government has suffered a loss of 25 percent or more in tax revenues. The House bill contained no comparable provision.

EMERGENCY FOOD AND SHELTER

The conferees provide $100,000,000 for Emergency Food and Shelter as proposed by the Senate instead of $200,000,000 as proposed by the House.

GENERAL PROVISIONS—THIS TITLE

Section 601. The conferees include a provision, as proposed by the Senate, related to Hurricanes Katrina and Rita establishing an arbitration panel under the Federal Emergency Management Agency.

Section 602. The conferees include a provision, as proposed by the Senate, regarding the Federal Emergency Management Agency's hazard mitigation grant program related to Hurricanes Katrina and Rita.

Section 603. The conferees include a provision, as proposed by the House, waiving the cost-share for grants under section 34 of the Federal Fire Prevention and Control Act of 1974 for fiscal years 2009 and 2010.

Section 604. The conferees include and modify a provision, as proposed by the House, related to the procurement of apparel and textile products by the Department of Homeland Security. This language is modeled after the Berry Amendment (10 U.S.C. 2533a), which has required the Department of Defense to purchase domestically-manufactured textiles and apparel.

PROVISIONS NOT ADOPTED

The conferees do not include section 1114 of the House bill, which relates to the E-Verify program; and sections 7001 through 7004 of the House bill, which House relate to authorization of the Basic Pilot system.

TITLE VII—DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

The conference agreement provides $125,000,000 for management of lands and resources instead of $135,000,000 proposed by the Senate; there was no House proposal. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the American public. While maximizing jobs, the Bureau should consider projects on all Bureau managed lands including deferred maintenance, abandoned mine and well site remediation, road and trail maintenance, watershed improvement, and high priority habitat restoration.

CONSTRUCTION

The conference agreement provides $180,000,000 for construction as proposed by the Senate instead of $325,000,000 proposed by the House. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the American public. While maximizing jobs, the Bureau should consider priority road, bridge, and trail repair or decommissioning, critical deferred maintenance projects, facilities construction and renovation, and remediation of abandoned mine and well sites on all Bureau managed lands.

WILDLAND FIRE MANAGEMENT

The conference agreement provides $15,000,000 for wildland fire management as proposed by the Senate; there was no House proposal. The funds should be used for high priority hazardous fuels reduction projects on Federal lands.

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

The conference agreement provides $165,000,000 for resource management, as proposed by the Senate; there was no House proposal for this account. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the American public. While maximizing jobs, the Service should consider priority critical deferred maintenance and capital improvement projects, trail maintenance, and habitat restoration on National Wildlife Refuges, National Fish Hatcheries, and other Service properties.

CONSTRUCTION

The conference agreement provides $115,000,000 for construction instead of $110,000,000 as proposed by the Senate and $300,000,000 as proposed by the House. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the American public. While maximizing jobs, the Service should consider priority construction, reconstruction and repair, critical deferred maintenance and capital improvement projects, road maintenance, energy conservation projects and habitat restoration on National Wildlife Refuges, National Fish Hatcheries and other Service properties.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

Appropriates $146,000,000 for operation of the national park system instead of $158,000,000, as proposed by the Senate. The House bill included all National Park Service funding under the construction account. Eligible projects to be funded within this account include but are not limited to repair and rehabilitation of facilities and other infrastructure, trail maintenance projects and other critical infrastructure needs. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects by the National Park Service be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the Park System and its visitors.

CENTENNIAL CHALLENGE

No funds are included for the Centennial Challenge program in the conference agreement. The House bill included $100,000,000 for this program. No funding was included by the Senate.

HISTORIC PRESERVATION FUND

$15,000,000 has been included for historic preservation grants for historically black colleges and universities as authorized by the Historic Preservation Fund Act, as amended. Projects will be selected competitively but the agreement waives matching requirements for grants made with these funds. The House bill included $15,000,000 for this activity under the ''Construction'' account. The Senate bill did not fund this program.

CONSTRUCTION

Appropriates $589,000,000 for Construction as proposed by the Senate instead of $1,700,000,000 as proposed by the House. Eligible projects include but are not limited to major facility construction, road maintenance, abandoned mine cleanup, equipment replacement, and preservation and rehabilitation of historic assets. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects by the National Park Service be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the Park System and its visitors. Funding for historically black colleges and universities has been provided under the Historic Preservation Fund account.

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

The conference agreement provides $140,000,000 for Surveys, Investigations and Research instead of $135,000,000 proposed by the Senate and $200,000,000 proposed by the House. The Survey should consider a wide variety of activities, including repair, construction and restoration of facilities; equipment replacement and upgrades including stream gages, seismic and volcano monitoring systems; national map activities; and other critical deferred maintenance and improvement projects which can maximize jobs and provide lasting improvement to our Nation's science capacity.

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

The conference agreement includes $40,000,000 for the operation of Indian programs as proposed by the Senate; there was no House proposal for this account. While maximizing jobs, the Bureau should fund workforce development and training programs and the housing improvement program.

CONSTRUCTION

The conference agreement provides $450,000,000 for construction instead of $522,000,000 as proposed by the Senate and $500,000,000 as proposed by the House. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the American public. While maximizing jobs, the Bureau should consider priority critical facility improvement and repair, repair and restoration of roads, school replacement, school improvement and repair and detention center maintenance and repair.

INDIAN GUARANTEED LOAN PROGRAM

The conference agreement includes $10,000,000 for construction as proposed by the Senate; there was no House proposal for this account.

DEPARTMENTAL OFFICES

INSULAR AFFAIRS

ASSISTANCE TO TERRITORIES

The conference agreement provides no funding for Assistance to Territories as proposed by the House instead of $62,000,000 proposed the Senate. The managers note that the territories receive funding under many of the infrastructure programs elsewhere in this bill.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

The conference agreement provides $15,000,000 for the Office of Inspector General as proposed by the Senate in this title and as proposed by the House as part of Title I, section 1107. In order to provide adequate oversight of the Department of the Interior, these funds are available through September 30, 2012.

DEPARTMENT-WIDE PROGRAMS

CENTRAL HAZARDOUS MATERIALS FUND

The conference agreement does not provide funding for the central hazardous materials fund as proposed by the House instead of $20,000,000 proposed by the Senate.

ENVIRONMENTAL PROTECTION AGENCY

The amended bill includes $7,220,000,000 for the Environmental Protection Agency instead of $9,420,000,000 as proposed by the House and $7,200,000,000 as proposed by the Senate. For each account, the amended bill includes provisions to fund the Agency's program oversight and management costs. The Conferees have included an Administrative Provision which makes available until September 30, 2011 the funds provided for Agency program management and oversight and allows funds appropriated in the State and Tribal Assistance Grants account for that purpose to be transferred to the Environmental Programs and Management account, as needed.

OFFICE OF INSPECTOR GENERAL

The amended bill provides $20,000,000 for the Office of Inspector General account, as proposed by the House and instead of unspecified amounts included in each administrative set aside by the Senate. These funds are available until September 30, 2012.

HAZARDOUS SUBSTANCE SUPERFUND

The amended bill provides $600,000,000 for the Hazardous Substance Superfund as proposed by the Senate and instead of $800,000,000 as proposed by the House. The funds are limited to the Superfund Remedial program, as proposed by the House. The bill allows the Administrator to retain up to 3 percent of the funds for program management and oversight. The Administrator is directed to coordinate oversight activities with the Inspector General.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND PROGRAM

The amended bill provides $200,000,000 for the Leaking Underground Storage Tank Trust Fund Account as proposed by both the House and the Senate. The funds are provided for clean up of leaking underground storage tanks as authorized by section 9003(h) of the Solid Waste Disposal Act. The bill allows the Administrator to retain up to 1.5 percent of the funds for program management and oversight. To expedite use of these funds, the bill waives the state matching requirements in section 9003(h)(7)(B) of the Solid Waste Disposal Act.

STATE AND TRIBAL ASSISTANCE GRANTS

(INCLUDING TRANSFERS OF FUNDS)

The amended bill provides $6,400,000,000 for the State and Tribal Assistance Grants account as proposed by the Senate and instead of $8,400,000,000 as proposed by the House. The amended bill includes the following program funding levels and directives:

Clean Water and Drinking Water State Revolving Funds: The amended bill provides $4,000,000,000 for the Clean Water State Revolving Funds and $2,000,000,000 for the Drinking Water State Revolving Funds. To provide for the Agency's management and oversight of these programs, the bill allows the Administrator to retain up to 1 percent of the combined total provided for the Revolving Funds and provides transfer authority to the Environmental Programs and Management account as needed. To expedite use of the funds, the bill waives the mandatory 20 percent State and District of Columbia matching requirements for both Revolving Funds.

To ensure that the funds appropriated herein for the Revolving Funds are used expeditiously to create jobs, the Conferees have included two important provisions. First, the Administrator is directed to reallocate Revolving Fund monies where projects are not under contract or construction within 12 months of the date of enactment. Second, bill language directs priority funding to projects on State priority lists that are ready to proceed to construction within 12 months of enactment.

The bill includes language to require that not less than 50 percent of the capitalization grants each State receives be used to provide assistance for additional subsidization in the form of forgiveness of principal, negative interest loans, or grants, or any combination of these. This provision provides relief to communities by requiring a greater Federal share for local clean and drinking water projects and provides flexibility for States to reach communities that would otherwise not have the resources to repay a loan with interest. The Conferees expect EPA to strongly encourage the States to maximize the use of additional subsidies and to work with the States to ensure expedited award of grants under the additional subsidy provisions. The Conferees also expect the States to continue implementation of their base loan programs funded through the annual appropriations bill. The bill does not include language proposed by the House that would require a specific amount for communities that meet affordability criteria set by the Governor. However, the Conferees expect the States to target, as much as possible, the additional subsidized monies to communities that could not otherwise afford an SRF loan.

The bill requires not less than 20 percent of each Revolving Fund be available for projects to address to green infrastructure, water and/or energy efficiency, innovative water quality improvements, decentralized wastewater treatment, stormwater runoff mitigation, and water conservation. The bill allows States to use less than 20 percent for these types of projects only if the States lack sufficient applications. Further, the States must certify to the Agency that they lack sufficient, eligible applications for these types of projects prior to using funds for conventional projects.

Consistent with the annual appropriations bill, the Conferees have increased the tribal set-aside from the Clean Water State Revolving Funds to up to 1.5 percent of the total amount appropriated. Language has also been included to allow EPA to transfer to the Indian Health Service up to 4 percent of the tribal set-aside amount in each Revolving Fund for administration and management of the projects in Indian country. This amount is consistent with the amount allowed by law for the States to manage their capitalization grants.

Language also has been included to prohibit the use of both Revolving Funds for the purchase of land or easements and to prohibit other set asides under section 1452(k) of the Safe Drinking Water Act that do not directly create jobs. To ensure that funds are used to create jobs, the bill also limits the use of the Revolving Funds to buy, refinance or restructure debt incurred prior to October 1, 2008.

Brownfields Projects: The amended bill provides $100,000,000 for Brownfields projects, as proposed by the both House and the Senate. The funds are provided to implement section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as proposed by the House. The bill allows the Administrator to retain up to 3.5 percent of the funds for program management and oversight, with transfer authority to the Environmental Programs and Management account as needed. Bill language also waives the cost share requirements under section 104(k)(9)(B)(iii) of CERCLA.

Diesel Emission Reduction Act (DERA) Grants: The amended bill provides $300,000,000 for DERA grants as proposed by both the House and the Senate. The bill allows the Administrator to retain up to 2 percent of the funds for program management and oversight, with transfer authority to the Environmental Programs and Management account as needed. The amended bill does not include language proposed by the Senate to waive the statutory limitation on State funds. Instead, the Conferees have included language to waive the State Grant and Loan Program matching incentive provisions of DERA. The Conferees expect the DERA funds provided here to be used on projects that spur job creation, while achieving direct, measurable reductions in diesel emissions.

Competitive Grants: The Conferees expect the Agency to award both the Brownfields and DERA funds in an expeditious manner, consistent with fair and open competition. To ensure the additional goal of creating jobs as quickly as possible, the Agency may make awards for meritorious and quality proposals submitted under competitions that were initiated within the past 18 months.

ADMINISTRATIVE PROVISIONS, ENVIRONMENTAL PROTECTION AGENCY

(INCLUDING TRANSFERS OF FUNDS)

The amended bill includes language that makes set-asides for program management and oversight available through September 30, 2011. It also allows the funds provided for this purpose in the State and Tribal Assistance Grants account to be transferred to the Environmental Programs and Management account, as needed.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

CAPITAL IMPROVEMENT AND MAINTENANCE

The conference agreement provides $650,000,000 for Capital Improvement and Maintenance as proposed by both the House and the Senate. The conference agreement provides flexibility to the agency in determining the allocation of this funding among various program activities and sub-activities. The conferees encourage that selection of individual projects be based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and which creates lasting value for the American public. While maximizing jobs, the Service should consider projects involving reconstruction, capital improvement, decommissioning, and maintenance of forest roads, bridges and trails; alternative energy technologies, and deferred maintenance at Federal facilities; and remediation of abandoned mine sites, and other related critical habitat, forest improvement and watershed enhancement projects.

WILDLAND FIRE MANAGEMENT

The conference agreement provides $500,000,000 for Wildland Fire Management instead of $485,000,000 proposed by the Senate and $850,000,000 proposed by the House. This includes $250,000,000 for hazardous fuels reduction, forest health protection, rehabilitation and hazard mitigation activities on Federal lands and $250,000,000 for cooperative activities to benefit State and private lands. The conference agreement provides flexibility to the Service to allocate funds among existing State and private assistance programs to choose programs that provide the maximum public benefit. The Conferees encourage the Service to select individual projects based on a prioritization process which weighs the capacity of proposals to create the largest number of jobs in the shortest period of time and to create lasting value for the American public. The bill allows the Service to use up to $50,000,000 to make competitive grants for the purpose of creating incentives for increased use of biomass from federal and non-federal forested lands. To better address current economic conditions at the state and local level, funds provided for State and private forestry activities shall not be subject to matching or cost share requirements.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

The conference agreement includes $85,000,000 for Indian Health Services instead of $135,000,000 as proposed by the Senate; the House had no proposal for this account. The funding is for Health Information Technology for infrastructure development and deployment.

INDIAN HEALTH FACILITIES

The conference agreement includes $415,000,000 for Indian Health Facilities instead of $410,000,000 as proposed by the Senate and $550,000,000 as proposed by the House. Within this amount, $100,000,000 is for maintenance and improvement, $68,000,000 is for sanitation facilities construction, $227,000,000 is for health care facilities construction, and $20,000,000 is for equipment.

The Indian Health Service is directed to use the funding provided for health care facilities construction to complete ongoing high priority facilities construction projects.

The agreement includes language proposed by the Senate that exempts the funds provided in this bill for the purchase of medical equipment from spending caps carried in the annual appropriation bill in order to provide the maximum flexibility to the Service in meeting the highest priority needs of the tribes.

Funds are provided for the Department of Health and Human Services (HHS) under title VIII (Labor, Health and Human Services, and Education) of this Act for the purpose of providing oversight capability over all HHS programs, including the Indian Health Service.

OTHER RELATED AGENCIES

SMITHSONIAN INSTITUTION

FACILITIES CAPITAL

$25,000,000 is included in the bill for the Smithsonian Institution. The House bill included $150,000,000 for the Smithsonian and the Senate bill included $75,000,000.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

NATIONAL ENDOWMENT FOR THE ARTS

GRANTS AND ADMINISTRATION

The conference agreement includes a total of $50,000,000 for the National Endowment for the Arts as proposed by the House. No funds were included in the Senate bill for this purpose.

GENERAL PROVISIONS—TITLE VII

INTERIOR, ENVIRONMENT AND RELATED AGENCIES

Sec. 701. The agreement includes language proposed by the Senate requiring that agencies receiving funding in the Interior and Environment sections of this Act submit a general spending plan for these appropriations to the Committees on Appropriations within 30 days of enactment and that they submit detailed project level information within 90 days of enactment. The Conferees further direct that the agencies submit bi-annual progress reports on implementation of the provisions of this Act under their jurisdiction.

Sec. 702. Modifies language proposed by the Senate requiring that the Secretaries of Interior and Agriculture utilize the Public Lands Corps, the Youth Conservation Corps, the Job Corps and the Student Conservation Corps where practicable. The House bill did not include a similar provision.

Sec. 703. Includes a new general provision not included in either the House or Senate bills providing limited transfer authority to move not to exceed 10 percent of funds from one appropriation to another if such move will increase the number of jobs created or the speed with which projects can be undertaken. Transfers are limited to accounts within a particular agency.

Administrative and support costs: The Conferees have agreed that, except where otherwise provided in the bill or this accompanying statement, amounts for administrative and support costs associated with the implementation of title VII activities of this Act shall not exceed five percent of any specific appropriation. The conferees note that this amount is a cap and encourage agencies to balance carefully the goal of proper management and fiscal prudence when setting funding levels for administrative support. In staffing up to handle the increased, but temporary, workloads associated with funding provided in the bill, it is important that the agencies limit the permanent expansion of their workforces and utilize temporary, term or contract personnel as much as possible.

TITLE VIII—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

The conference agreement includes $3,950,000,000 for Workforce Investment Act programs, instead of $4,000,000,000 as proposed by the House and $3,250,000,000 as proposed by the Senate.

Within this amount, $2,950,000,000 is provided for formula grants to the States for training and employment services. These funds are to be allotted to States within 30 days of enactment. Since these funds will be made available during program year 2008, they shall remain available to the States only as long as the other funds allotted in that program year.μμThe conferees intend for these funds to be spent quickly and effectively. To facilitate increased training of individuals for high-demand occupations, the conference agreement modifies language proposed by the Senate to provide the authority for local workforce investment boards to contract with institutions of higher education and other eligible training providers as long as that authority is not used to limit customer choice.

Within the State formula grant programs, $500,000,000 is provided for services for adults. The conference agreement includes language proposed by the Senate to ensure that supportive services and needs-related payments are available to support the employment and training needs of priority populations, including recipients of public assistance and other low-income individuals.

For youth services, $1,200,000,000 is provided. The conferees are particularly interested in these funds being used to create summer employment opportunities for youth and language applying the work readiness performance indicator to such summer jobs is included as an appropriate measure for those activities. Year-round youth activities are also envisioned and the age of eligibility for youth services provided with the additional funds is extended through age 24 to allow local programs to reach young adults who have become disconnected from both education and the labor market.

For dislocated worker services $1,250,000,000 is provided. The conferees urge the Secretary to provide guidance on how States and local workforce areas can establish policies that assure that supportive services and needs-related payments that may be necessary for an individual's participation in job training are a part of the dislocated worker service strategy.

The conferees believe that the Department should integrate reporting on the expenditure of these additional formula funds into its regular reporting system, including the provision of needs-related payments and supportive services, the number of individuals from priority service populations participating in employment and training activities, and the number of youth engaged in summer employment programs. The conferees strongly urge the Department to establish appropriate procedures for monitoring the execution of priority of service provisions.

The conference agreement also includes $200,000,000 for the dislocated worker assistance national reserve, as proposed by the Senate, instead of $500,000,000 as proposed by the House. These funds will allow the Secretary of Labor to award national emergency grants to respond to plant closings, mass layoffs and other worker dislocations. The funds in the national reserve are also available for dislocated worker activities for the outlying areas, consistent with the provisions of the Workforce Investment Act.

The conference agreement includes $50,000,000 for the YouthBuild program, as proposed by the House, instead of $100,000,000 as proposed by the Senate. These funds will allow for expanded services for at-risk youth, who gain education and occupational credentials while constructing or rehabilitating affordable housing. The conference agreement includes language to allow YouthBuild grantees to serve individuals who have dropped out of school and reenrolled in an alternative school, if that reenrollment is part of a sequential service strategy.

The conference agreement includes $750,000,000 for a program of competitive grants for worker training and placement in high growth and emerging industry sectors, as proposed by the House, rather than $250,000,000 for a similar program proposed by the Senate. Within the amount provided, $500,000,000 is designated for projects that prepare workers for careers in energy efficiency and renewable energy as described in the Green Jobs Act of 2007. Priority consideration for the balance of funds shall be given to projects that prepare workers for careers in the health care sector, which continues to grow despite the economic downturn. The conferees believe that training for wireless and broadband deployment is an eligible activity for grants for high growth and emerging industry sectors, along with advanced manufacturing and other high demand industry sectors identified by local workforce areas. In carrying out the program of competitive grants for worker training and placement in high growth and emerging industry sectors, the conferees expect the Department to use a limited portion of the program funds for technical assistance and related research.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

The conference agreement includes $120,000,000 for the Community Service Employment for Older Americans program, as proposed by both the House and the Senate. The economic recovery funds are to be distributed to current grantees to support additional employment opportunities for low income seniors. The wages paid to these low-income seniors will provide a direct stimulus to the economies of local communities, which will also benefit from the community service work performed by participants. The conference agreement includes language to allow for the recapture and reobligation of such funds, as proposed by the Senate and as authorized under Title V of the Older Americans Act.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

The conference agreement includes $400,000,000, as proposed by the Senate, instead of $500,000,000 as proposed by the House. Within this amount, $250,000,000 is designated for reemployment services to connect unemployment insurance claimants to employment and training opportunities that will facilitate their reentry to employment. The funds provided will be distributed by the existing Wagner-Peyser formula, as proposed by the Senate, rather than under an alternative formula proposed by the House.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $80,000,000 within the Departmental Management account for worker protection, oversight, and coordination activities, as proposed by the House. The Senate provided funds for this and other purposes through a set-aside of funds available to the Department rather than through a direct appropriation. The conference agreement modifies language providing the Secretary of Labor with the ability to transfer such funds to a number of Department of Labor agencies which have responsibility for enforcement of worker protection laws that apply to the infrastructure investments in this economic recovery bill, and for oversight and coordination of recovery activities, including those provided for unemployment insurance.

OFFICE OF JOB CORPS

The conference agreement includes $250,000,000 for the Office of Job Corps, rather than $300,000,000 as proposed by the House and $160,000,000 as proposed by the Senate. The funds will support construction and modernization of a network of residential facilities serving at-risk youth. The funds will allow the Office of Job Corps to move forward on a number of ready-to-go rehabilitation and construction projects, including those where competitions have already been concluded. The conference agreement modifies language proposed by the House to allow funds to be used in support of multi-year arrangements where such arrangement will result in construction that can commence within 120 days of enactment. A portion of the funds are available for the operational needs of the Job Corps program, including activities to provide additional training for careers in the energy efficiency, renewable energy, and environmental protection industries.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $6,000,000 for the Department of Labor Office of Inspector General, as proposed by the House, rather than $3,000,000 as proposed by the Senate. These funds will be available through September 30, 2012 to support oversight and audit of Department of Labor programs, grants, and projects funded in this Act.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

The conference agreement includes $2,500,000,000 for health resources and services instead of $2,188,000,000 as proposed by the House and $1,958,000,000 as proposed by the Senate.

The conference agreement includes $500,000,000 for services provided at community health centers as proposed by the House. The Senate did not provide similar funding. These funds are to be used to support new sites and service areas, to increase services at existing sites, and to provide supplemental payments for spikes in uninsured populations. Grants for new sites and service areas are to be two years in length as startup is phased in. The conferees encourage the Health Resources and Services Administration (HRSA) to consider supporting currently unfunded but approved community health center applications.

The agreement also includes $1,500,000,000 for construction, renovation and equipment, and for the acquisition of health information technology systems, for community health centers, including health center controlled networks receiving operating grants under section 330 of the Public Health Service (''PHS'') Act, notwithstanding the limitation in section 330(e)(3). The House proposed $1,000,000,000 for this activity, while the Senate proposed $1,870,000,000.

No funding is provided for a competitive lease procurement to renovate or replace the headquarters building for the Public Health Service. The House and Senate proposed $88,000,000 for this purpose.

The conference agreement provides $500,000,000 for health professions training programs instead of $600,000,000 as proposed by the House. Within this total, $300,000,000 is allocated for National Health Service Corps (NHSC) recruitment and field activities, with $75,000,000 available through September 30, 2011 for extending service contracts and the recapture and reallocation of funds in the event that a participant fails to fulfill his or her term of service. Twenty percent of the NHSC funding shall be used for field operations.

The remaining $200,000,000 is allocated for all the disciplines trained through the primary care medicine and dentistry program, the public health and preventive medicine program, the scholarship and loan repayment programs authorized in Title VII (Health Professions) and Title VIII (Nurse Training) of the PHS Act, and grants to training programs for equipment. Funds may also be used to foster cross-State licensing agreements for healthcare specialists.

The conference agreement provides that up to 0.5 percent of the funds provided in this account may be used for administration. HRSA is required to provide an operating plan to the Committees on Appropriations of the House of Representatives and the Senate within 90 days of enactment of this Act describing activities to be supported and timelines for expenditure, as well as a report every six months on actual obligations and expenditures.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

The conference agreement does not include funding for building and facilities at the Centers for Disease Control and Prevention (CDC). The House proposed $462,000,000 and the Senate proposed $412,000,000 for this activity.

NATIONAL INSTITUTES OF HEALTH

The conference agreement provides $10,000,000,000 for the National Institutes of Health (NIH) as proposed by the Senate instead of $3,500,000,000 as proposed by the House. The components of this total are as follows:

NATIONAL CENTER FOR RESEARCH RESOURCES

The conference agreement includes $1,300,000,000 for the National Center for Research Resources (NCRR) instead of $1,500,000,000 as proposed by the House and $300,000,000 as proposed by the Senate. Bill language identifies $1,000,000,000 of this total for competitive awards for the construction and renovation of extramural research facilities. The conference agreement also provides $300,000,000 for the acquisition of shared instrumentation and other capital research equipment. The conference agreement includes bill language proposed by the House for extramural facilities relating to waiver of non-Federal match requirements, primate centers, and limitation on the term of Federal interest. The conference agreement includes language proposed by the House mandating several reporting requirements on the use of the funds. The conferees expect that NCRR will give priority to those applications that are expected to generate demonstrable energy-saving or beneficial environmental effects.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

The conference agreement provides $8,200,000,000 for the Office of the Director instead of $1,500,000,000 as proposed by the House and $9,200,000,000 as proposed by the Senate. Of this amount, $7,400,000,000 is designated for transfer to Institutes and Centers and to the Common Fund instead of $7,850,000,000 as proposed by the Senate. The conference agreement adopts the Senate guidance that, to the extent possible, the $800,000,000 retained in the Office of the Director shall be used for purposes that can be completed within two years; priority shall be placed on short-term grants that focus on specific scientific challenges, new research that expands the scope of ongoing projects, and research on public and international health priorities. Bill language is included to permit the Director of NIH to use $400,000,000 of the funds provided in this account for the flexible research authority authorized in section 215 of Division G of P.L. 110–161.

The funds available to NIH can be used to enhance central research support activities, such as equipment for the clinical center or intramural activities, centralized information support systems, and other related activities as determined by the Director. The conferees intend that NIH take advantage of scientific opportunities using any funding mechanisms and authorities at the agency's disposal that maximize scientific and health benefit. The conferees include bill language indicating that the funds provided in this Act to NIH are not subject to Small Business Innovation Research and Small Business Technology Transfer set-aside requirements.

BUILDINGS AND FACILITIES

The conference agreement provides $500,000,000 for Buildings and Facilities as proposed by the House and the Senate. Bill language permits funding to be used for construction as well as renovation, as proposed by the Senate. The House language permitted only renovation. These funds are to be used to construct, improve, and repair NIH buildings and facilities, including projects identified in the Master Plan for Building 10.

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

HEALTHCARE RESEARCH AND QUALITY

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $1,100,000,000 for comparative effectiveness research, which is the same level as proposed by both the House and the Senate. The conference agreement uses the term, ''comparative effectiveness research'', as proposed by the House and deletes without prejudice the term ''clinical'', which was included by the Senate. Within the total, $300,000,000 shall be administered by the Agency for Healthcare Research and Quality (AHRQ), $400,000,000 shall be transferred to the National Institutes of Health (NIH), and $400,000,000 shall be allocated at the discretion of the Secretary of Health and Human Services.

The conferees do not intend for the comparative effectiveness research funding included in the conference agreement to be used to mandate coverage, reimbursement, or other policies for any public or private payer. The funding in the conference agreement shall be used to conduct or support research to evaluate and compare the clinical outcomes, effectiveness, risk, and benefits of two or more medical treatments and services that address a particular medical condition.

Further, the conferees recognize that a ''one-size-fits-all'' approach to patient treatment is not the most medically appropriate solution to treating various conditions and include language to ensure that subpopulations are considered when research is conducted or supported with the funds provided in the conference agreement.

ADMINISTRATION FOR CHILDREN AND FAMILIES

LOW-INCOME HOME ENERGY ASSISTANCE

The conference agreement does not include funding for the Low-Income Home Energy Assistance Program proposed by the House. The Senate did not provide funding for this program.

PAYMENTS TO STATES FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

The conference agreement includes $2,000,000,000 for the Child Care and Development Block Grant, as proposed by both the House and Senate. The conference agreement adopts the Senate language to make the entire amount available upon enactment, instead of the House language to divide the amount by fiscal year. The conference agreement also adopts the Senate proposal to set aside $255,186,000 of these funds for quality improvement activities, of which $93,587,000 shall be for activities to improve the quality of infant and toddler care.

SOCIAL SERVICES BLOCK GRANT

The conference agreement does not include funding for the Social Services Block Grant proposed by the Senate. The House did not provide funding for this program.

CHILDREN AND FAMILIES SERVICES PROGRAMS

The conference agreement includes $3,150,000,000 for Children and Families Services Programs, instead of $3,200,000,000 as proposed by the House and $1,250,000,000 as proposed by the Senate. The conference agreement adopts the Senate language to make the entire amount available upon enactment, instead of the House language to divide the amount by fiscal year.

Within the total provided for Children and Families Services Programs, $1,000,000,000 is provided for Head Start, as proposed by the House, instead of $500,000,000 as proposed by the Senate. The Head Start funds shall be allocated according to the current statutory formula. The conferees expect the Department of Health and Human Services (HHS) to work with Head Start grantees in order to manage these resources in order to sustain fiscal year 2009 awards through fiscal year 2010.

The conference agreement also provides $1,100,000,000 for Early Head Start as proposed by the House, instead of $550,000,000 as proposed by the Senate. These funds will be awarded on a competitive basis. The conferees expect HHS to manage these resources in order to sustain fiscal year 2009 awards through fiscal year 2010. The conferees intend for regional and American Indian and Alaska Native Early Head Start programs and Migrant and Seasonal Head Start programs to benefit from the Early Head Start funds, taking into consideration the needs of the communities served by such programs. The conferees remind the Secretary of the authority to temporarily increase or waive the limit on the Federal share of a Head Start or Early Head Start grant under the circumstances described in the authorizing statute and support the Secretary's exercise of that authority where appropriate.

Within the total provided for Children and Families Services Programs, $1,000,000,000 is provided for the Community Services Block Grant (CSBG), as proposed by the House, instead of $200,000,000 as proposed by the Senate. The conference agreement adopts the Senate language to make the entire amount available upon enactment, instead of the House language to divide the amount by fiscal year. The agreement includes bill language requiring States to reserve 1 percent of their allocation for benefit coordination services and to distribute the remaining funds directly to local eligible entities. It also permits States to increase the income eligibility ceiling from 125 percent to 200 percent of the Federal poverty level for services furnished under the CSBG Act during fiscal years 2009 and 2010, as proposed by the House. The Senate did not propose similar language.

Within the total provided for Children and Families Services Programs, $50,000,000 is provided under section 1110 of the Social Security Act to establish a new initiative to award capacity-building grants directly to nonprofit organizations, instead of $100,000,000 for the Compassion Capital Fund as proposed by the House. The Senate did not propose funds for this purpose in this account. The conferees intend that this program will expand the delivery of social services to individuals and communities affected by the economic downturn. The conferees expect that grantees have clear and measurable goals, and must be able to evaluate the success of their program.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

The conference agreement includes $100,000,000 for senior meals programs as proposed by the Senate, instead of $200,000,000 as proposed by the House. Within this amount, $65,000,000 is provided for Congregate Nutrition Services and $32,000,000 is provided for Home-Delivered Nutrition Services under Title III of the Older Americans Act of 1965, and $3,000,000 is provided for Native American nutrition services under Title VI of such Act. The conference agreement adopts the Senate proposal that makes all of these funds available upon enactment.

OFFICE OF THE SECRETARY

OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $2,000,000,000 for this activity, as proposed by the House. The Senate provided $3,000,000,000. The conferees include bill language creating a 0.25 percent set-aside of the funds provided for the Office of the National Coordinator for Health Information Technology for management and oversight activities. The House proposed similar language. Within the funds provided, the conferees appropriate $300,000,000 to support regional or sub-national efforts toward health information exchange. The conferees include bill language proposed by the House regarding certain operating plan requirements for the Office of the National Coordinator.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $17,000,000 for the Office of Inspector General instead of $19,000,000 as proposed by both the House and Senate. These funds are available until September 30, 2012 as proposed by the Senate instead of September 30, 2013 as proposed by the House.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

The conference agreement includes $50,000,000 for the Public Health and Social Services Emergency Fund (PHSSEF), instead of $900,000,000 as proposed by the House. The Senate did not propose funding for PHSSEF. Funding is provided to improve information technology security at the Department of Health and Human Services as proposed by the House—the Senate did not propose funding for this activity. As proposed by the Senate, the conference agreement does not include funding for pandemic influenza preparedness and biomedical advanced research and development. The House proposed $420,000,000 for pandemic influenza and $430,000,000 for biomedical advanced research and development.

PREVENTION AND WELLNESS FUND

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $1,000,000,000 for the Prevention and Wellness Fund, instead of $3,000,000,000 as proposed by the House. The Senate did not propose funding for a Prevention and Wellness Fund. As proposed by the House, up to 0.5 percent of the funds provided may be used for management and oversight expenses. Additionally, the conference agreement includes language proposed by the House that funding may be transferred to other appropriation accounts of the Department of Health and Human Services (HHS), as determined by the Secretary of HHS to be appropriate.

Within the total, the conference agreement includes $300,000,000 to be transferred to the Centers for Disease Control and Prevention (CDC) to carry out the section 317 immunization program rather than $954,000,000 as proposed by the House. The Senate did not propose funding for this activity.

Also within the total, the conference agreement includes $50,000,000 to be provided to States for carrying out activities to implement healthcare-associated infections (HAI) reduction strategies. The House proposed $150,000,000 for similar HAI prevention activities. The Senate did not propose funding for similar activities.

Also within the total, the conference agreement includes $650,000,000 to carry out evidence-based clinical and community-based prevention and wellness strategies authorized by the Public Health Service Act, as determined by the Secretary, that deliver specific, measurable health outcomes that address chronic disease rates. The House proposed $500,000,000 for similar activities. The Senate did not propose funding for similar activities.

DEPARTMENT OF EDUCATION

EDUCATION FOR THE DISADVANTAGED

The conference agreement includes $13,000,000,000 for the Education for the Disadvantaged account, as proposed by the House. The Senate proposed $12,400,000,000 for this account. The total conference agreement includes $10,000,000,000 for title I formula grants and $3,000,000,000 for School Improvement grants. Both the House and the Senate proposed $11,000,000,000 for title I formula grants, but the House proposed $2,000,000,000 for School Improvement grants, and the Senate proposed $1,400,000,000.

The conferees intend that these funds should be available during school years 2009–2010 and 2010–2011 to help school districts mitigate the effect of the recent reduction in local revenues and State support for education.

The conferees specify that within the total provided for title I formula grants, $5,000,000,000 shall be allocated through the targeted formula and the same amount should be allocated through the education finance incentive grant formula. This language was proposed by the House and the Senate.

The conferees expect States to use some of the funding provided for early childhood programs and activities, as proposed by the Senate. The House did not propose similar language.

The conferees direct the Department to encourage States to use 40 percent of their School Improvement allocation for middle and high schools, as proposed by the Senate. The House did not propose similar language.

Each school district that receives this funding shall report to its State educational agency, a school-by-school listing of per pupil expenditures, from State and local services, during the 2008–2009 academic year, no later than December 1, 2009 as proposed by the Senate. Further, the conferees require each State to compile and submit this information to the Secretary no later than March 1, 2010.

IMPACT AID

The conference agreement includes $100,000,000 for the Impact Aid account, as proposed by the House. The Senate did not propose funding for this account.

The conferees modify current law, exclusively for the purposes of the American Recovery and Reinvestment Act, to allow for greater participation of school districts impacted by both students whose parents are associated with the military and students residing on tribal lands, and to allow funding to be better targeted to districts that have ''shovel ready'' facility projects, including those that address health and safety and ADA compliance issues, among other things.

SCHOOL IMPROVEMENT PROGRAMS

The conference agreement includes $720,000,000 for the School Improvement Programs account, instead of the $1,066,000,000 as proposed by the House and $1,070,000,000 as proposed by the Senate. Within the total, the conference agreement includes $650,000,000 for the Enhancing Education through Technology program. Both the House and Senate proposed $1,000,000,000 for this program. The conference agreement also includes $70,000,000 for Education for the Homeless Children and Youth program, which is the same amount proposed by the Senate. The House proposed $66,000,000 for this program.

The conferees intend that these funds should be available during school years 2009–2010 and 2010–2011 to help school districts mitigate the effect of the recent reduction in local revenues and State support for education.

The amount provided for the Education for Homeless Children and Youth programs reflects the conferees' understanding of the impact the economic crisis has had on this group of disadvantaged students, and their commitment to helping mitigate the effects. The Secretary shall provide each State a grant that is proportionate to the number of homeless students identified as such during the 2007–2008 academic year relative to the number of homeless children nationally during the same year. States shall award subgrants to local educational agencies on a competitive basis, or using a formula based on the number of homeless students identified in each school district in the State. This language was proposed by the Senate; the House did not propose similar language.

INNOVATION AND IMPROVEMENT

The conference agreement includes $200,000,000 for the Innovation and Improvement account, instead of the $225,000,000 proposed by the House. The Senate did not propose any money for this account. All of the funding provided is for the Teacher Incentive Fund (TIF) program.

The conferees require the Institute for Education Sciences to conduct a rigorous national evaluation of TIF to assess the impact of performance-based teacher and principal compensation systems. This language was proposed by the House; the Senate did not propose similar language.

The conferees specify that these funds must be expended as directed in the 5th, 6th, and 7th provisos under the ''Innovation and Improvement'' account in the Department of Education Appropriations Act, 2008. This language was proposed by the House; the Senate did not propose similar language.

The conferees provide that 1 percent of the total appropriation shall be for management and oversight of the Teacher Incentive Fund. This language was proposed by the House; the Senate did not propose similar language.

The conference agreement does not provide funding for the Credit Enhancement for Charter Schools program.

SPECIAL EDUCATION

The conference agreement includes $12,200,000,000 for the Special Education account, instead of $13,600,000,000 as proposed by the House and $13,500,000,000 as proposed by the Senate. Within the total, the conference agreement includes $11,300,000,000 for section 611 of part B, $400,000,000 for section 619 of part B, and $500,000,000 for part C of IDEA. The House proposed $13,000,000,000 for section 611and $600,000,000 for part C, whereas the Senate proposed the same amount for section 611 and $500,000,000 for part C.

The conferees intend that these funds should be available during school years 2009–2010 and 2010–2011 to help school districts mitigate the effect of the recent reduction in local revenues and State support for education.

Within the amount provided for part C of IDEA, the Secretary is required to reserve the amount needed for grants under section 643(e), and allocate any remaining funds in accordance with section 643(c) of IDEA as specified by both the House and Senate.

The conferees provide that the amount set aside for the Department of Interior transfer for Native Americans shall be equal to the lesser amount available during fiscal year 2008, increased by inflation or the percentage increase in the funds appropriated under section 611(i) (Secretary of the Interior). This language was proposed by the Senate, the House did not propose similar language.

REHABILITATION SERVICES AND DISABILITY RESEARCH

The conference agreement includes $680,000,000 for the Rehabilitation Services and Disability Research account as opposed to $700,000,000 as proposed by the House and $610,000,000 as proposed by the Senate. Within the total provided, $540,000,000 is available for Vocational Rehabilitation State Grants, as opposed to $500,000,000 proposed by the House and the Senate. The conferees include $140,000,000 for Independent Living programs. The House proposed $200,000,000 for Independent Living programs, whereas the Senate proposed $110,000,000 for Independent Living programs. Specifically, of the $140,000,000 available for Independent Living programs, the funding is allocated as follows: $18,200,000 for State Grants; $87,500,000 for Independent Living Centers; and $34,300,000 for Services for Older Blind Individuals.

STUDENT FINANCIAL ASSISTANCE

The conference agreement includes $15,840,000,000 for the Student Financial Assistance account as opposed to $16,126,000,000 as proposed by the House and $13,930,000,000 as proposed by the Senate. Within the total provided, $15,640,000,000 shall be available for Pell Grants, and $200,000,000 shall be available for Work-Study. The House proposed $15,636,000,000 for Pell Grants and $490,000,000 for Work-Study; whereas the Senate proposed $13,869,000,000 for Pell Grants and no money for Work-Study.

The conference agreement does not provide funding for Perkins Loans.

The conference agreement specifies that funding is available to support a $4,860 maximum Pell Grant award for the 2009–2010 award year, as specified in the House bill. With the additional $490 in mandatory funding, combined with the increase in the fiscal year 2009 omnibus, the maximum Pell Grant award will be $5,350. This language was proposed by the House; the Senate did not propose similar language.

STUDENT AID ADMINISTRATION

The conference agreement includes $60,000,000 for the Student Aid Administration account, as opposed to the $50,000,000 as proposed by the House and $0 as proposed by the Senate.

HIGHER EDUCATION

The conference agreement includes $100,000,000 for the Higher Education account, the same amount proposed by the House. The Senate proposed $50,000,000.

INSTITUTE OF EDUCATION SCIENCES

The conference agreement includes $250,000,000 for the Institute of Education Sciences account, as proposed by the House. The Senate did not propose any funding for this program. Within this total, up to $5,000,000 may be used for State data coordinator and for awards to public or private organizations or agencies to improve data coordination, as proposed by the House.

DEPARTMENTAL MANAGEMENT

OFFICE OF THE INSPECTOR GENERAL

The conference agreement includes $14,000,000 for the Office of the Inspector General, as proposed by the House and the Senate.

RELATED AGENCIES

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $160,000,000 for the operating expenses of the programs administered by the Corporation for National and Community Service (CNCS), which is the same level as proposed by both the House and the Senate. The conference agreement includes language, as proposed by the Senate, permitting funds to be used to provide adjustments to awards for which the Chief Executive Officer of CNCS determines that a waiver of the Federal share limitation is warranted.

Within the total provided for Operating Expenses, the conference agreement includes the following amounts:

(1) $89,000,000 shall be used to make additional awards to existing AmeriCorps State and national grantees and to provide adjustments to awards made prior to September 30, 2010 for which the Chief Executive Officer of the CNCS determines that a waiver is warranted the—House proposed similar language with regard to the existing grantees and the Senate proposed similar waiver language;

(2) $6,000,000 shall be transferred to CNCS ''Salaries and Expenses'' for necessary expenses relating to information technology upgrades, of which up to $800,000 may be used to administer the funds provided for CNCS programs—the House proposed similar language with regard to management and oversight of funds and the Senate proposed similar language with regard to information technology upgrades;

(3) not less than $65,000,000, as proposed by the Senate, for the AmeriCorps Volunteers in Service to America (VISTA) program—the House did not propose similar language; and,

(4) up to 20 percent of the funding provided for AmeriCorps State and National grants may be used for national direct grants.

The conference agreement does not include the funding set-asides proposed by the Senate for the National Civilian Community Corps, one-time supplement grants to State commissions, or national service research activities. The House did not propose similar language.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $1,000,000 for the Office of Inspector General, which is the same level as that proposed by both the House and Senate.

NATIONAL SERVICE TRUST

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $40,000,000 for the National Service Trust (Trust), to be available until expended, which is the same level as that proposed by both the House and the Senate. The conference agreement includes language that allows funds appropriated for the Trust to be invested without regard to apportionment requirements. Additionally, bill language is included allowing for funds to be transferred to the Trust from the Operating Expenses account upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted to the Committees on Appropriations of the House of Representatives and the Senate.

SOCIAL SECURITY ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $1,000,000,000 for the Social Security Administration (SSA), instead of $900,000,000 as proposed by the House and $890,000,000 as proposed by the Senate. Funds are provided for both infrastructure improvements and critical agency operations.

Within the amount provided, $500,000,000 is provided for a replacement of the SSA National Computer Center (NCC), which is nearly 30 years old and will soon be unable to support the critical systems necessary to SSA's mission. Funds may also be used for the technology costs associated with the new center. Language proposed by both the House and Senate is modified to provide for critical oversight of the site selection, construction and operation of the NCC, and the Committees on Appropriations of the House and the Senate expect regular updates on the progress on site selection and key construction milestones prior to solicitations of bids for these activities.

Within the amount provided, $500,000,000 is provided for processing disability and retirement workloads, including information technology acquisitions and research in support of such activities. These additional funds will allow SSA to process a growing workload of claims in a timely manner and to accelerate activities to reduce the backlog of disability claims. As the largest repository of electronic medical images in the world, SSA has a vital interest in exploring how health information technology can be integrated into the disability process through the widespread adoption of electronic medical records.µ The funds provided for agency operations therefore include resources for SSA health information technology research and activities to facilitate the adoption of electronic medical records in disability claims.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $2,000,000 for the Social Security Administration Office of Inspector General, as proposed by the House, rather than $3,000,000 as proposed by the Senate. These funds will be available through September 30, 2012 to support oversight and audit of Social Security Administration activities funded in this Act.

GENERAL PROVISIONS—THIS TITLE

ADMINISTRATION AND OVERSIGHT OF DEPARTMENT OF LABOR ACTIVITIES

The conference agreement includes a provision similar to one proposed by the Senate that provides that up to 1 percent of the funds made available to the Department of Labor in this title may be used for the administration, management, and oversight of the programs, grants, and activities funded by such appropriation, including the evaluation of the use of such funds, subject to the provision of an operating plan.µ The House bill contained a set-aside for similar purposes.

MINIMUM WAGE STUDY

The conference agreement includes a modification of a provision proposed by the Senate, requiring the Government Accountability Office (GAO) to conduct a study to assess the impact of minimum wage increases that have occurred, and are scheduled to occur, in American Samoa and the Commonwealth of Northern Mariana Islands. To provide sufficient economic information for this study, additional Federal agency economic data collection in the U.S. territories is required.

FEDERAL COORDINATING COUNCIL FOR COMPARATIVE EFFECTIVENESS RESEARCH

The conference agreement includes a general provision establishing a Federal Coordinating Council for Comparative Effectiveness Research (Council), as proposed by the House. The Senate language proposed a similar Council, but included the word, ''Clinical'', in the title and throughout the bill language.

The conference agreement includes language to clarify that the purpose of the Council is to reduce duplication of comparative effectiveness research activities within the Federal government. Duties of the Council are to (1) foster coordination of comparative effectiveness and related health services research conducted or supported by the Federal government; and (2) advise the President and Congress on strategies with respect to the infrastructure needs of comparative effectiveness research and organizational expenditures.

Additionally, the conference agreement includes language that nothing shall be construed to permit the Council to mandate coverage, reimbursement, or other policies for any public or private payer. Further, the conference agreement includes language to clarify that none of the reports submitted or recommendations made by the Council shall be construed as mandates or clinical guidelines for payment, coverage, or treatment.

GRANTS FOR IMPACT AID CONSTRUCTION

The conference agreement authorizes Impact Aid construction payments. Neither the House nor Senate included this provision.

MANDATORY PELL GRANTS

The conference agreement provides $1,474,000,000 for the mandatory part of the Pell Grant program, as proposed by the House. The Senate did not propose any funding for this program.

The additional funding will enable the mandatory add-on to be provided in both award years 2009–2010 and 2010–2011, for a total maximum Pell Grant award of $5,350 in award year 2009–2010.

PROMPT ALLOCATION OF FUNDS FOR EDUCATION

The conference agreement includes a provision enabling the Department of Education to quickly disperse funds provided under this Act. Neither the House nor Senate included this provision.

TITLE IX—LEGISLATIVE BRANCH

GOVERNMENT ACCOUNTABILITY OFFICE

SALARIES AND EXPENSES

The conference agreement provides $25,000,000 as proposed by the House instead of $20,000,000 as proposed by the Senate for the Government Accountability Office to hire temporary personnel and obtain contract services to support the agency's oversight responsibilities under this Act.

GENERAL PROVISIONS—THIS TITLE

Section 901. Charges the Government Accountability Office (GAO) with bimonthly reviews and reporting on selected States and localities' use of funds provided in this Act. These reports are to be posted on the Internet and linked to the website established under this Act by the Recovery Accountability and Transparency Board. GAO is authorized to examine any records related to the obligation and use of funds made available in this Act.

Section 902. Provides GAO authority to examine records related to contracts awarded under this Act and to interview relevant employees.

TITLE X—MILITARY CONSTRUCTION AND VETERANS AFFAIRS

Job creation.—The conferees note that the Associated General Contractors of America estimates that each $1,000,000,000 in non-residential construction spending will create or sustain 28,500 jobs. Based on this estimate and data provided by the Department of Defense and the Department of Veterans Affairs, the conferees estimate that the construction funds and other programs in this title will create or sustain 97,200 jobs.

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION, ARMY

The conferees agree to provide $180,000,000, instead of $920,000,000 as proposed by the House and $637,875,000 as proposed by the Senate. Within the amount, the conferees agree to provide $80,000,000 for child development centers and $100,000,000 for warrior transition complexes.

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

The conferees agree to provide $280,000,000, instead of $350,000,000 as proposed by the House and $990,092,000 as proposed by the Senate. Within the amount, the conferees agree to provide $100,000,000 for troop housing, $80,000,000 for child development centers, and $100,000,000 for energy conservation and alternative energy projects.

MILITARY CONSTRUCTION, AIR FORCE

The conferees agree to provide $180,000,000, instead of $280,000,000 as proposed by the House and $871,332,000 as proposed by the Senate. Within the amount, the conferees agree to provide $100,000,000 for troop housing and $80,000,000 for child development centers.

MILITARY CONSTRUCTION, DEFENSE-WIDE

The conferees agree to provide $1,450,000,000, instead of $3,750,000,000 as proposed by the House and $118,560,000 as proposed by the Senate. Within the amount, the conferees agree to provide $1,330,000,000 for the construction of hospitals and $120,000,000 for the Energy Conservation Investment Program.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

The conferees agree to provide $50,000,000, instead of $140,000,000 as proposed by the House and $150,000,000 as proposed by the Senate.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

The conferees agree to provide $50,000,000, instead of $70,000,000 as proposed by the House and $110,000,000 as proposed by the Senate.

MILITARY CONSTRUCTION, ARMY RESERVE

The conferees agree to provide no funds as proposed by the Senate, instead of $100,000,000 as proposed by the House.

MILITARY CONSTRUCTION, NAVY RESERVE

The conferees agree to provide no funds as proposed by the Senate, instead of $30,000,000 as proposed by the House.

MILITARY CONSTRUCTION, AIR FORCE RESERVE

The conferees agree to provide no funds as proposed by the Senate, instead of $60,000,000 as proposed by the House.

FAMILY HOUSING CONSTRUCTION, ARMY

The conferees agree to provide $34,507,000, instead of no funds as proposed by the House and $34,570,000 as proposed by the Senate.

FAMILY HOUSING OPERATION AND MAINTENANCE, ARMY

The conferees agree to provide $3,932,000 as proposed by the Senate, instead of no funds as proposed by the House.

FAMILY HOUSING CONSTRUCTION, AIR FORCE

The conferees agree to provide $80,100,000 as proposed by the Senate, instead of no funds as proposed by the House.

FAMILY HOUSING OPERATION AND MAINTENANCE, AIR FORCE

The conferees agree to provide $16,461,000 as proposed by the Senate, instead of no funds as proposed by the House.

HOMEOWNERS ASSISTANCE FUND

The conferees agree to provide $555,000,000, instead of no funds as proposed by the House and $410,973,000 as proposed by the Senate.

DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990

The conferees agree to provide no funds as proposed by the Senate, instead of $300,000,000 as proposed by the House.

ADMINISTRATIVE PROVISION

The conferees agree to include a provision (Sec. 1001) as proposed by the Senate, with technical changes, providing for a temporary expansion of homeowners assistance to respond to the foreclosure and credit crisis.

DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL SUPPORT AND COMPLIANCE

The conferees agree to provide no funds as proposed by the House, instead of $5,000,000 as proposed by the Senate.

MEDICAL FACILITIES

The conferees agree to provide $1,000,000,000, instead of $950,000,000 as proposed by the House and $1,370,459,000 as proposed by the Senate.

NATIONAL CEMETERY ADMINISTRATION

The conferees agree to provide $50,000,000 as proposed by the House, instead of $64,961,000 as proposed by the Senate.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

The conferees agree to provide $150,000,000 for a temporary increase in claims processing staff, instead of no funds as proposed by the House and $1,125,000 as proposed by the Senate for contract administration.

INFORMATION TECHNOLOGY SYSTEMS

The conferees agree to provide $50,000,000 for the Veterans Benefits Administration, instead of no funds as proposed by the House and $195,000,000 as proposed by the Senate.

OFFICE OF INSPECTOR GENERAL

The conferees agree to provide $1,000,000 as proposed by the House, instead of $4,400,000 as proposed by the Senate.

CONSTRUCTION, MAJOR PROJECTS

The conferees agree to provide no funds as proposed by the House, instead of $1,105,333,000 as proposed by the Senate.

CONSTRUCTION, MINOR PROJECTS

The conferees agree to provide no funds as proposed by the House, instead of $939,836,000 as proposed by the Senate.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

The conferees agree to provide $150,000,000, instead of no funds as proposed by the House and $257,986,000 as proposed by the Senate.

ADMINISTRATIVE PROVISION

The conferees agree to include a provision (Sec. 1002) authorizing the Filipino Veterans Equity Compensation Fund.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

The conferees agree to provide no funds as proposed by the House, instead of $60,300,000 as proposed by the Senate.

TITLE XI—STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

The conference agreement includes $90,000,000 for urgent domestic facilities requirements for passport and training functions, the same amount as proposed by the Senate. The House did not include any funds for this purpose. Funds under the heading are available for obligation through September 30, 2010.

The Department of State estimates that these investments will create up to 655 jobs in the United States and improve the operational and training capabilities of the Department. The conference agreement includes funds to expand passport agencies, to continue design and begin construction of a consolidated security training facility, and to enlarge domestic facilities to accommodate increased language training requirements for diplomatic and development personnel. The conferees direct that funds made available for a consolidated security training facility should be obligated in accordance with United States General Services Administration procedures.

The conference agreement requires the Secretary of State to submit to the Committees on Appropriations a detailed spending plan for funds made available under the heading not later than 90 days after enactment of this Act. For passport agencies, the spending plan is to be developed in consultation with the Department of Homeland Security and the General Services Administration to coordinate and/or co-locate such agencies with other Federal facilities, to the extent feasible. Funds provided shall be subject to the regular notification procedures of the Committees on Appropriations.

CAPITAL INVESTMENT FUND

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $290,000,000 for immediate information technology security and upgrades to support mission-critical operations, instead of $276,000,000 as proposed by the House and $228,000,000 as proposed by the Senate. Funds under the heading are available for obligation through September 30, 2010.

Within the funds made available under the heading, the conference agreement directs that up to $38,000,000 shall be transferred to, and merged with, funds made available under the heading ''Capital Investment Fund'' of the United States Agency for International Development (USAID) for immediate information technology investments. The conferees direct that the Inspector General of USAID allocate sufficient resources to conduct oversight of the transferred funds.

The Department of State and USAID estimate that these investments will create at least 400 jobs in the United States and improve the security, efficiency, and capability of Department of State and USAID information technology systems. These investments will address the critical requirement of establishing back-up information management facilities in the United States to protect the systems from mission failures, enhance cyber-security, and secure immediate hardware and software upgrades.

The conference agreement includes language requiring the Secretary of State and the USAID Administrator to coordinate information technology systems, where appropriate, in order to increase efficiencies and eliminate redundancies. Such coordination should factor in the costs, service requirements, and program needs of both agencies and should include efforts to co-locate backup information management facilities and improve cyber-security.

The conference agreement requires the Secretary of State and the USAID Administrator to submit to the Committees on Appropriations, not later than 90 days after enactment of this Act, a detailed spending plan for funds made available under the heading. Funds provided shall be subject to the regular notification procedures of the Committees on Appropriations.

OFFICE OF INSPECTOR GENERAL

The conference agreement includes $2,000,000 for the Office of Inspector General to conduct oversight of the funds made available to the Department of State by this Act, instead of $1,500,000 as proposed by the Senate. The House bill did not include a separate appropriation for this purpose. Funds provided are available for obligation through September 30, 2010.

INTERNATIONAL COMMISSIONS

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

The conference agreement includes $220,000,000 for immediate repair and rehabilitation requirements in the water quantity program, instead of $224,000,000 as proposed by the House and Senate. Funds are available for obligation through September 30, 2010.

These funds will be used for immediate infrastructure upgrades along 506 miles of flood control levees to rehabilitate the following projects identified by the International Boundary and Water Commission—United States and Mexico in their fiscal year 2009 budget request as unfunded needs: Rio Grande Flood Control System; Safety of Dams; Colorado Boundary; and Capacity Preservation. The Department of State estimates that these investments will create 305 jobs in the United States.

Within the amount provided, the conference agreement provides that up to $2,000,000 may be transferred to, and merged with, funds made available under the heading ''Salaries and Expenses'' of the Commission. The conference agreement also requires the Secretary of State to submit to the Committees on Appropriations, not later than 90 days after enactment of this Act, a detailed spending plan for funds made available under the heading. Funds provided shall be subject to the regular notification procedures of the Committees on Appropriations.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

FUNDS APPROPRIATED TO THE PRESIDENT

CAPITAL INVESTMENT FUND

The conference agreement does not include a direct appropriation under this heading of $58,000,000 as proposed by the Senate. Instead, the agreement directs the transfer to USAID of up to $38,000,000, from funds made available in this Act under the heading ''Capital Investment Fund'' of the Department of State, for immediate information technology investments. The House bill did not include funds for this purpose. Funds transferred are subject to the regular notification procedures of the Committees on Appropriations.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT OFFICE OF INSPECTOR GENERAL

The conference agreement does not include $500,000 under this heading, as proposed by the Senate. The Office of Inspector General of the United States Agency for International Development is directed to conduct oversight of the funds transferred in this Act to USAID from within available funds.

TITLE XII—TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SUPPLEMENTAL DISCRETIONARY GRANTS FOR A NATIONAL SURFACE TRANSPORTATION SYSTEM

The conference agreement provides $1,500,000,000 instead of $5,500,000,000 as proposed by the Senate. The House did not include a similar provision. Funds will be used to award grants on a competitive basis for projects across all surface transportation modes that will have a significant impact on the Nation, a metropolitan area or a region. Provisions require the Secretary to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities.

FEDERAL AVIATION ADMINISTRATION

SUPPLEMENTAL FUNDING FOR FACILITIES AND EQUIPMENT

The conference agreement includes $200,000,000 as proposed by the Senate. The House did not include a similar provision. Within the funds provided, $50,000,000 is included to upgrade the Federal Aviation Administration's (FAA) power systems; $50,000,000 is included to modernize aging en route air traffic control centers; $80,000,000 to replace air traffic control towers and TRACONs; and, $20,000,000 is included to install airport lighting, navigation and landing equipment.

GRANTS-IN-AID FOR AIRPORTS

The conference agreement provides $1,100,000,000 as proposed by the Senate instead of $3,000,000,000 as proposed by the House. Funds will be used by the Federal Aviation Administration to provide discretionary airport grants to repair and improve critical infrastructure at our nation's airports. These investments will serve to provide important safety and capacity benefits.

FEDERAL HIGHWAY ADMINISTRATION

HIGHWAY INFRASTRUCTURE INVESTMENT

The conference agreement provides $27,500,000,000, instead of $30,000,000,000 as proposed by the House and $27,060,000,000 as proposed by the Senate. Funds are distributed by formula, with a portion of the funds within each State being suballocated by population areas. Set asides are also provided for: management and oversight; Indian reservation roads; park roads and parkways; forest highways; refuge roads; ferry boats; on-the-job training programs focused on minorities, women, and the socially and economically disadvantaged; a bonding assistance program for minority and disadvantaged businesses; Puerto Rico and the territories; and environmentally friendly transportation enhancements.

FEDERAL RAILROAD ADMINISTRATION

CAPITAL ASSISTANCE FOR HIGH SPEED RAIL CORRIDORS AND INTERCITY PASSENGER RAIL SERVICE

The conference agreement provides $8,000,000,000 instead of $300,000,000 as proposed by the House and $2,250,000,000 as proposed by the Senate. The conferees appropriated funds for purposes outlined in both the Capital Assistance to States and the High Speed Passenger Rail program under a combined heading. The conferees have provided the Secretary flexibility in allocating resources between the programs to advance the goal of deploying intercity high speed rail systems in the United States. The Capital Assistance to States program first received funding in fiscal year 2008. The High Speed Passenger Rail program is a new initiative recently authorized under the Passenger Rail Investment and Improvement Act of 2008.

CAPITAL GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

The conference agreement provides $1,300,000,000 instead of $800,000,000 as proposed by the House and $850,000,000 as proposed by the Senate. Of the total funds appropriated, the conferees provide $450,000,000 for capital grants for security improvements to include life safety improvements. The conferees also provide that no more than 60% of the remaining funds shall be spent for capital improvements on the Northeast Corridor.

FEDERAL TRANSIT ADMINISTRATION

TRANSIT CAPITAL ASSISTANCE

The conference agreement provides $6,900,000,000 instead of $8,400,000,000 as proposed by the Senate and $7,500,000,000 as proposed by the House. Within the total amount, 80 percent of the funds shall be provided through the Federal Transit Administration's (FTA) urbanized formula; 10 percent shall be provided through FTA's rural formula, and, 10 percent shall be provided through FTA's growing states and high density formula. In addition, the conference agreement provides 2.5 percent of the rural funds for tribal transit needs and includes $100,000,000 (instead of $200,000,000 as proposed by the Senate) for discretionary grants to public transit agencies for capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transit agencies.

FIXED GUIDEWAY INFRASTRUCTURE INVESTMENT

The conference agreement provides $750,000,000 instead of $2,000,000,000 as proposed by the House. The Senate did not include a similar provision. These funds will be distributed through an existing authorized formula for capital projects to modernize or improve existing fixed guideway systems, including purchase and rehabilitation of rolling stock, track, equipment and facilities. It is estimated that the state-of-good-repair capital backlog for existing fixed guideway systems is nearly $50 billion.

CAPITAL INVESTMENT GRANTS

The conference agreement provides $750,000,000 instead of $2,500,000,000 as proposed by the House. The Senate did not include a similar provision. The funds will be distributed on a discretionary basis for New Starts and Small Starts projects that are already in construction or are nearly ready to begin construction.

MARITIME ADMINISTRATION

SUPPLEMENTAL GRANTS FOR ASSISTANCE TO SMALL SHIPYARDS

The conference agreement provides $100,000,000 for grants to small shipyards as proposed by the Senate. The House did not include a similar provision.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

The conference agreement provides $20,000,000 as proposed by the House and the Senate.

GENERAL PROVISION—DEPARTMENT OF TRANSPORTATION

Section 1201 ensures continued State investment in certain identified programs for which the State receives funding in this Act and requires grant recipients to report regularly on the use of those funds as proposed by the House. The Senate did not include a similar provision.

The conference agreement does not include a provision as proposed by the Senate which extends the Federal Transit Administration's contingent commitment authority.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

PUBLIC HOUSING CAPITAL FUND

The conference agreement provides $4,000,000,000, instead of $5,000,000,000 as proposed by both the House and the Senate. This funding will assist public housing authorities in rehabilitating and retrofitting public housing units, including increasing the energy efficiency of units and making critical safety repairs. Of the funding provided, $3,000,000,000 will be distributed to public housing authorities through the existing formula and $1,000,000,000 will be awarded through a competitive process.

NATIVE AMERICAN HOUSING BLOCK GRANTS

The conference agreement provides $510,000,000, as proposed by the Senate, instead of $500,000,000, as proposed by the House. This funding will rehabilitate and improve energy efficiency in housing units maintained by Native American housing programs. Half of the funding will be distributed by formula and half will be competitively awarded to projects that can be started quickly.

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT FUND

The conference agreement provides $3,000,000,000, of which $1,000,000,000 is appropriated for the Community Development Block Grant program and $2,000,000,000 is available for the Neighborhood Stabilization Program. This funding is provided instead of the $5,190,000,000 proposed by the House. Funding was not provided in the Senate. The Neighborhood Stabilization Program funding will assist states, local governments, and nonprofits in the purchase and rehabilitation of foreclosed, vacant properties in order to create more affordable housing and reduce neighborhood blight.

HOME INVESTMENT PARTNERSHIPS PROGRAM

The conference agreement provides $2,250,000,000, as proposed by the Senate, instead of $1,500,000,000, as proposed by the House. Funds are provided to coordinate with the Low Income Housing Tax Credit to fill financing gaps caused by the collapse of the tax credit market and to jumpstart stalled housing development projects, thereby creating jobs.

SELF-HELP AND ASSISTED HOMEOWNERSHIP OPPORTUNITY PROGRAM

The conference agreement does not provide funding for this account. The House proposed $10,000,000 for this account, but the Senate did not propose funding under this heading.

HOMELESSNESS PREVENTION FUND

The conference agreement provides $1,500,000,000, as proposed by both the House and the Senate. Funding will provide short term rental assistance, housing relocation, and stabilization services for families who may become homeless due to the economic crisis. Funds are distributed by formula.

The conference agreement directs the Secretary of HUD to submit a report to the House and Senate Committees on Appropriations one year after enactment of the Act that details how the funding provided in this account has been used to alleviate the effects of the Nation's current economic recession and prevent homelessness.

HOUSING PROGRAMS

ASSISTED HOUSING STABILITY AND ENERGY AND GREEN RETROFIT INVESTMENTS

The conference agreement provides $2,250,000,000 as proposed by the Senate instead of $2,500,000,000 as proposed by the

House. Of this amount, $2,000,000,000 will provide full-year payments to landlords participating in the Section 8 Project-Based program, and $250,000,000 will support a program to upgrade HUD sponsored low-income housing to increase energy efficiency, including new insulation, windows, and furnaces.

OFFICE OF LEAD HAZARD CONTROL AND HEALTHY HOMES

The conference agreement provides $100,000,000, as proposed by both the House and the Senate. Funding is provided for competitive grants to local governments and nonprofit organizations to remove lead-based paint hazards in low-income housing. Projects that were highly rated in 2008 competitions but were not funded due to constrained resources will be the focus of these resources, thereby ensuring that the funds are spent quickly and effectively.

MANAGEMENT AND ADMINISTRATION

OFFICE OF INSPECTOR GENERAL

The conference agreement provides $15,000,000 as proposed by the House and Senate. This funding will assist the IG in monitoring the use of these funds to ensure that funding provided in this bill is used in an effective and efficient manner.

GENERAL PROVISIONS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Section 1202 raises the Federal Housing Administration (FHA) loan limits for calendar year 2009 to the level set in calendar year 2008, as proposed by the House.

Section 1203 raises the Government Sponsored Enterprise (GSE) conforming loan limit for calendar year 2009, as proposed by the House.

Section 1204 raises the Home Equity Conversion Mortgage (HECM) loan limit for calendar year 2009, as proposed by the House.

The conference agreement does not include a provision as proposed by the Senate regarding changes to the Hope for Homeowners program.

TITLE XIII—HEALTH INFORMATION TECHNOLOGY

HEALTH INFORMATION TECHNOLOGY

Short Title; Table of Contents of Title. (House bill Sec. 4001; Senate bill Sec. 13101; Conference agreement Sec. 13001)

This provision specifies that the title may be cited as the "Health Information Technology for Economic and Clinical Health Act" or the "HITECH Act."

SUBTITLE A—PROMOTION OF HEALTH INFORMATION TECHNOLOGY

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

ONCHIT; Standards Development and Adoption. (House bill Sec. 4101; Senate bill Sec. 13101; Conference agreement Sec. 13101)

Current Law

There are no existing statutory provisions regarding the current Office of the National Coordinator for Health Information Technology (ONCHIT) within the Department of Health and Human Services (HHS). ONCHIT was created by Executive Order 13335, signed by the President on April 27, 2004. The National Coordinator was instructed to develop, maintain, and direct a strategic plan to guide the nationwide implementation of interoperable health information technology (HIT) in the public and private health care sectors. In 2005, the Secretary created the American Health Information Community (AHIC), a public-private advisory body, to make recommendations to the Secretary on how to accelerate the development and adoption of interoperable HIT using a market-driven approach. The AHIC charter required it to provide the Secretary with recommendations to create a successor entity based in the private sector. AHIC Successor, Inc. was established in July 2008 to transition AHIC's accomplishments into a new public-private partnership. That partnership, the National eHealth Collaborative (NeHC), was launched on January 8, 2009.

ONCHIT awarded a contract to the American National Standards Institute (ANSI) to establish a public-private collaborative, known as the Healthcare Information Technology Standards Panel (HITSP), to harmonize existing HIT standards and identify and establish standards to fill gaps. To date, the Secretary has recognized over 100 harmonized standards, including many that allow interoperability of electronic health records (EHRs). To ensure that these standards are incorporated into products, a second contract was awarded to the Certification Commission for Healthcare Information Technology (CCHIT), a private, nonprofit organization created by HIT industry associations, which establishes criteria for certifying products that use recognized standards. CCHIT has certified over 150 ambulatory and inpatient EHR products.

House Bill

The House bill would establish in the Public Health Service Act (PHSA; 42 USC 201 et seq.) a new Title XXX—Health Information Technology and Quality, comprising the following sections.

Sec. 3000. Definitions. The House bill defines the following terms: certified EHR technology, enterprise integration, health care provider, health information, health information technology, health plan, HIT Policy Committee, HIT Standards Committee, individually identifiable health information, laboratory, National Coordinator, pharmacist, qualified electronic health record, and state.

Sec. 3001. Office of the National Coordinator for Health Information Technology. The House bill would establish within HHS the Office of the National Coordinator for Health Information Technology (ONCHIT). The National Coordinator would be appointed by the Secretary and report directly to the Secretary. The National Coordinator would be charged with the following duties. First, the National Coordinator would be required to review and determine whether to endorse standards recommended by the HIT Standards Committee (described below). Second, the National Coordinator would be responsible for coordinating HIT policy and programs within HHS and with those of other federal agencies and would be a leading member in the establishment of the HIT Policy Committee and the HIT Standards Committee and act as a liaison among these Committees and the federal government. Third, the National Coordinator would be required to update the Federal Health IT Strategic Plan (developed as of June 3, 2008) to include specific objectives, milestones, and metrics with respect to the electronic exchange and use of health information, the utilization of an EHR for each person in the United States by 2014, and the incorporation of privacy and security protections for the electronic exchange of an individual's health information, among other things. The plan would include measurable outcome goals and the National Coordinator would be required to republish the plan, including all updates. Fourth, the National Coordinator would maintain and update a website to post relevant information about the work related to efforts to promote a nationwide health information technology infrastructure. Fifth, the National Coordinator would be required, in consultation with the National Institute of Standards and Technology (NIST), to develop a program for the voluntary certification of HIT as being in compliance with applicable certification criteria adopted by the Secretary. Sixth, the National Coordination would have to prepare several reports, including a report on any additional funding or authority needed to evaluate and develop standards for a nationwide health information technology infrastructure; a report on lessons learned from HIT implementation by major public and private health care systems; a report on the benefits and costs of the electronic use and exchange of health information; an assessment of the impact of HIT on communities with health disparities and in areas that serve uninsured, underinsured, and medically underserved individuals; and an estimate of the public and private resources needed annually to achieve utilization of an EHR for each person in the United States by 2014. Seventh, the National Coordinator would be required to establish a national governance mechanism for the national health information network. Finally, the National Coordinator would be permitted to accept or request federal detailees and would be required, within 12 months of enactment, to appoint a Chief Privacy Officer of the Office of the National Coordinator to advise the National Coordinator on privacy, security, and data stewardship.

Sec. 3002. HIT Policy Committee. The House bill would establish an HIT Policy committee to make policy recommendations to the National Coordinator relating to the implementation of a nationwide health information technology infrastructure. The duties of the HIT Policy Committee would include providing recommendations on a policy framework for the development and adoption of a nationwide health information technology infrastructure, recommending areas in which standards are needed for the electronic exchange and use of health information, and recommending an order of priority for the development of such standards. The Committee would be required to provide recommendations in six areas: (1) technologies that protect the privacy and security of electronic health information; (2) a nationwide HIT infrastructure that enables electronic information exchange; (3) nationwide adoption of certified EHRs; (4) EHR technologies that allow for an accounting of disclosures; (5) using EHRs to improve health care quality; and (6) encryption technologies that render individually identifiable health information unusable, unreadable, and indecipherable to unauthorized individuals. The bill describes other areas that the committee might consider, including using HIT to reduce medical errors, and telemedicine. The membership of the HIT Policy Committee would reflect (at least) providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant federal agencies, and individuals with technical expertise on health care quality and privacy and security. The National Coordinator must ensure that the Committee's recommendations are considered in the development of policies, and the Secretary would be required to publish all of the Committee's recommendations in the Federal Register and post them on a website. The provisions of the Federal Advisory Committee Act, other than section 14, would apply to the HIT Policy Committee.

Sec. 3003. HIT Standards Committee. The House bill would establish an HIT Standards Committee to recommend to the National Coordinator standards, implementation specifications, and certification criteria for the electronic exchange of health information. Duties of the HIT Standards Committee would include the development and pilot testing of standards, and serving as a forum for the participation of a broad range of stakeholders to provide input on the development, harmonization, and recognition of standards. Not later than 90 days after enactment, the HIT Standards Committee would outline (and annually update) a schedule for assessing the policy recommendations developed by the HIT Policy Committee, and this schedule would be published in the Federal Register. In addition, the Committee would be required to conduct open public meetings and develop a process to allow for public comment on this schedule. The membership of the HIT Standards Committee would reflect (at least) providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant federal agencies, and individuals with technical expertise on health care quality and privacy and security. The National Coordinator would be required to ensure that the Committee's recommendations are considered in the development of policies; the Secretary would be authorized to provide financial assistance to Committee members that are non-profit or consumer advocacy groups in order to defray costs associated with participating in the Committee's activities, and the Committee would be required to publish all its recommendations in the Federal Register and post them on a website. The provisions of the Federal Advisory Committee Act, other than section 14, would apply to the HIT Standards Committee.

Sec. 3004. Process for Adoption of endorsed Recommendations; Adoption of Initial Set of Standards, Implementation Specifications, and Certification Criteria. The House bill would require the Secretary, within 90 days of receiving from the National Coordinator a recommendation for HIT standards, implementation specifications, or certification criteria, to determine in consultation with representatives of other relevant federal agencies, whether or not to propose adoption of such standards, implementation specifications, or certification criteria. Adoption would be accomplished through regulation, whereas a decision by the Secretary not to adopt would have to be conveyed in writing to the National Coordinator and the HIT Standard Committee. The Secretary would be required to adopt, through rulemaking, an initial set of standards by December 31, 2009.

Sec. 3005. Application and Use of Adopted Standards and Implementation Specifications by Federal Agencies. The House bill refers to Section 4111 (see below) for the requirements relating to the application and use of adopted standards by federal agencies.

Sec. 3006. Voluntary Application and Use of Adopted Standards and Implementation Specifications by Private Entities. The House bill would make the application and use of adopted standards voluntary for private entities.

Sec. 3007. Federal Health Information Technology. The House bill would require the National Coordinator to support the development, routine updating and provision of qualified EHR technology unless the Secretary determined that the needs and demands of providers are being substantially and adequately met through the marketplace. The National Coordinator would be permitted to charge a nominal fee to providers for the adoption of this health information technology system.

Sec. 3008. Transitions. The House bill would provide for the transfer of all functions, personnel, assets, liabilities, and administrative actions of the existing ONCHIT, created under Executive Order 13335, to the new ONCHIT established by this Act. Similarly, all functions, personnel, assets, liabilities applicable to AHIC Successor, Inc., now operating as the National eHealth Collaborative (NeHC), would be transferred to the HIT Policy Committee or the HIT Standards Committee, as appropriate. Nothing in the bill would require the creation of a new entity to the extent that the existing ONCHIT is consistent with the provision of Section 3001. Similarly, nothing in the bill would prohibit NeHC from modifying its charter, duties, membership, and other functions to be consistent with Sections 3002 and 3003 in a manner that would permit the Secretary to recognize it as the HIT Policy Committee or the HIT Standards Committee.

Sec. 3009. Relation to HIPAA Privacy and Security Law. The House bill specifies that this title may not be construed as having any effect on the authorities of the Secretary under HIPAA privacy and security law.

Sec. 3010. Authorization for Appropriations. The House bill would authorize an appropriation of $250 million for FY2009 for implementing this subtitle.

Senate Bill

The Senate bill includes the same provisions as the House bill, other than an authorization for appropriations (Sec. 3010), but with the following additional language: (1) the definition of health care provider is broader than in the House bill; (2) the duties of the National Coordinator would include reviewing federal HIT investments to ensure that federal HIT programs are meeting the objectives of the strategic plan, and providing comments and advice on federal HIT programs at the request of the Office of Management and Budget (OMB); (3) the updated HIT Strategic Plan would include specific plans for ensuring that populations with unique needs, such as children, are appropriately addressed in the technology design; (4) the Secretary would be authorized to recognize an entity or entities for harmonizing or updating standards and implementation specifications; and (5) the National Coordinator's report on resource requirements for achieving nationwide EHR utilization by 2014 would include resources for health informatics and management education programs to ensure a sufficient HIT workforce.

In addition, the Senate bill would require the HIT Policy Committee to provide recommendations on the use of electronic systems to collect patient demographic data (consistent with the evaluation of health disparities data under Sec. 1809 of the Social Security Act) and on technologies and design features that address the needs of children and other vulnerable populations, instead of providing recommendations on encryption technologies as required in the House bill. To the list of other areas that the HIT Policy Committee might consider, the Senate bill includes methods for allowing individuals and their caregivers secure access to protected health information. Unlike the House bill, the Senate bill specifies the size and composition of the HIT Policy Committee, and outlines certain details of its operation.

The Senate bill includes additional provisions regarding the operations of the HIT Standards Committee. They include conducting open and public meetings, adopting a consensus approach to standards development and harmonization, and providing an opportunity for public comment. Unlike the House bill, which would make the HIT Standards Committee subject to the Federal Advisory Committee Act, the Senate bill would apply OMB Circular A–119 (Federal Participation in the Development and Use of Voluntary Consensus Standards) to the Committee. It also would require the Secretary, as necessary and consistent with the HIT Standards Committee's published schedule, to adopt additional standards, implementation specifications, and certification criteria following the adoption of the initial set of requirements by December 31, 2009.

The Senate bill's transition provision states that nothing in the bill would require the creation of a new ONCHIT, to the extent that the existing office is consistent with the Act. Further, nothing in the bill would prohibit National eHealth Collaborative from modifying its structure and function in order to be recognized as the HIT Standards Committee. Finally, the Senate bill specifies that until recommendations are made by the HIT Policy Committee, recommendations of the HIT Standards Committee would have to be consistent with the most recent recommendations of AHIC Successor, Inc.

Conference Agreement

The conference agreement is largely similar to the provisions in both bills. Here are some additions or distinctions:

Sec. 3000.

Definitions. The conference agreement includes a broader definition of health care provider, including additions by the Senate and House. The conference agreement clarified the definition of health information technology to include internet based products and HIT aimed at usage by patients. The term ''qualified electronic health record'' includes computerized provider order entry systems.

Sec. 3001.

Office of the National Coordinator of Health Information Technology. The duties of the National Coordinator include the review of federal health information technology investments from the Senate bill.

The elements of the strategic plan developed by the National Coordinator include the Senate language regarding strategies to enhance increase prevention and coordination of community resources and plans for ensuring that populations with unique needs are addressed in technology design, as appropriate.

The section on harmonization included in the Senate bill was modified and moved to Section 3003 and ensures that harmonization standards or updates developed by other entities can be recognized by the HIT Standards Committee.

The conference agreement retains the intent of the Senate language requiring the National Coordinator to estimate resources needed to establish a sufficient health information technology workforce.

To the extent that this section calls the National Coordinator to ensure that every person in the United States have an EHR by 2014, this goal is not intended to require individuals to receive services from providers that have electronic health records and is aimed at having the National Coordinator take steps to help providers adopt electronic health records. This provision does not constitute a legal requirement on any patient to have an electronic health record. For religious or other reasons, non-traditional health care providers may also choose not to use an electronic health record.

Sec. 3002.

HIT Policy Committee. The conference agreement includes the House language on areas required for consideration regarding security of transmitted individually identifiable health information and includes the Senate language regarding collection of demographic data and modified the Senate language regarding technology to address the needs of children.

The language on other areas of consideration includes the Senate language regarding methods to facilitate secure access by an individual to their protected health information and modified the Senate language regarding access to such information by a family member, caregiver, or guardian acting on behalf of a patient.

The conference agreement adopted the Senate specifics on the membership of the HIT Policy Committee. The conference agreement modified the language by increasing the members appointed by the Secretary and those representing patients or consumers and modified the Senate language regarding participation on the Committee and to allow the Secretary to fill seats if membership has not been filled by 45 days after enactment.

Sec. 3003.

HIT Standards Committee. The Conference report includes provisions from the House and Senate bills. The principal changes from the House-passed bill are: (1) there is a new provision allowing the Standards Committee to recognize harmonized standards from an outside entity; (2) there is a new provision requiring balanced membership and that that no single sector unduly influence the recommendations or procedures of the committee; and (3) there is a new provision requiring the involvement of outside experts with relevant expertise. The principal change from the Senate-passed bill is that the Standards Committee is subject to the Federal Advisory Committee Act.

Sec. 3004.

Process for Adoption of endorsed Recommendations; Adoption of Initial Set of Standards, Implementation Specifications, and Certification Criteria. The Conference report includes provisions from the House and Senate bills. The principal change from the House-passed bill and the Senate-passed bill is that there is explicit authority to allow the Secretary to issue the initial set of standards as interim final rules. This clarification should not be read to impact the authority or discretion of the Secretary in future regulations regarding standards.

Sec. 3005.

Application and Use of Adopted Standards and Implementation Specifications by Federal Agencies. The conference report includes this provision unaltered.

Sec. 3006.

Voluntary Application and Use of Adopted Standards and Implementation Specifications by Private Entities. The Conference report contains the same policy as the House and Senate bills, with language modified for technical purposes.

Sec. 3007.

Federal Health Information Technology. The Conference report includes provisions from the House and Senate bills. The principal change from the House-passed bill is that the Secretary is authorized to ''make available'' rather than ''provide'' the technology specified under the Section. The principal change from the Senate-passed bill is that only the Secretary is charged with making the assessment of market failure.

Sec. 3008.

Transitions. The Conference report contains the same policy as the House and Senate with language modified for technical purposes.

Sec. 3009.

Relation to HIPAA Privacy and Security Law. The Conference report contains the same Policy as the House and Senate bills, with language modified for technical purposes. In addition, the conference report includes a provision clarifying the discretion of the Secretary.

Sec. 3010.

Authorization for Appropriations. The Conference report does not include this section.

Technical Amendment. (House bill Sec. 4102; Senate bill Sec. 13102; Conference agreement Sec. 13102)

Current Law

Under HIPAA, the definition of a health plan (42 USC 1320(d)(5)) includes Parts A, B, and C of the Medicare program.

House Bill

The House bill would amend the HIPAA definition of health plan to include Medicare Part D.

Senate Bill

Same provision.

Conference Agreement

Same provision.

PART II—APPLICATION AND USE OF ADOPTED HEALTH. INFORMATION TECHNOLOGY STANDARDS; REPORTS

Coordination of Federal Activities with Adopted Standards and Implementation Specifications. (House bill Sec. 4111; Senate bill Sec. 13111; Conference agreement Sec. 13111)

Current Law

No provisions; however, in August 2006, the President issued Executive Order 13410 committing federal agencies that purchase and deliver health care to require the use of HIT that is based on interoperability standards recognized by the Secretary.

House Bill

The House bill would require federal agencies that implement, acquire, or upgrade HIT systems for the electronic exchange of health information to use HIT systems and products that meet the standards adopted by the Secretary under this Act. The President would be required to ensure that federal activities involving the collection and submission of health information are consistent with such standards within three years of their adoption.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Application to Private Entities. (House bill Sec. 4112; Senate bill Sec. 13112; Conference agreement Sec. 13112)

Current Law

No provisions.

House Bill

The House bill would require health care payers and providers that contract with the federal government to use HIT systems and products that meet the standards adopted by the Secretary under this Act.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Study and Reports. (House bill Sec. 4113; Senate bill Sec. 13113; Conference agreement Sec. 13113)

Current Law

No provisions.

House Bill

The House bill would require the Secretary, within two years and annually thereafter, to report to Congress on efforts to facilitate the adoption of a nationwide system for the electronic exchange of health information; to conduct a study, not later than two years after enactment, that examines methods to create efficient reimbursement incentives for improving health care quality in Federally qualified health centers, rural health clinical and free clinics; and to conduct a study, not later than 24 months after enactment, of matters relating to the potential use of new aging services technology to assist seniors, individuals with disabilities and their caregivers throughout the aging process.

Senate Bill

Same provision.

Conference Agreement

Same provision.

SUBTITLE B—TESTING OF HEALTH INFORMATION TECHNOLOGY

National Institute for Standards and Technology Testing. (House bill Sec. 4201; Senate bill Sec. 13201; Conference agreement Sec. 13201)

Current Law

No provisions; however, ONCHIT is working with the National Institute for Standards and Technology (NISI) on testing HIT standards. NIST is assisting with the HITSP standards harmonization process and with CCHIT's certification activities.

House Bill

The House bill would require NIST, in coordination with the HIT Standards Committee, to test HIT standards, as well as support the establishment of a voluntary testing program by accredited testing laboratories.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Research and Development Programs. (House bill Sec. 4202; Senate bill Sec. 13202; Conference agreement Sec. 13202)

Current Law

No provisions.

House Bill

The House bill would require NIST, in consultation with the National Science Foundation and other federal agencies, to award competitive grants to universities (or research consortia) to establish multidisciplinary Centers for Health Care Information Enterprise Integration. The purpose of the Centers would be to generate innovative approaches to the development of a fully interoperable national health care infrastructure, as well as to develop and use HIT. The bill requires the National High-Performance Computing Program to coordinate federal research and development programs related to the deployment of HIT.

Senate Bill

The Senate would authorize but not require the National High-Performance Computing Program to review federal research and development programs relating to the deployment of HIT.

Conference Agreement

The conference agreement has the Senate language with an amendment. The Conference agreement retains the House and Senate language directing NIST to award competitive grants to universities to establish multidisciplinary Centers for Health Care Information Enterprise Integration. With respect to the National High-Performance Computing Program, the agreement notes that the ongoing work of the National Information Technology Research and Development (NITRD) program authorized by section 101 of the High-Performance Computing Act of 1991 (15 U.S.C. 5511) shall include health information technology research and development.

SUBTITLE C—INCENTIVES FOR THE USE OF HEALTH INFORMATION TECHNOLOGY

PART I—GRANTS AND LOANS FUNDING

Grant, Loan, and Demonstration Programs. (House bill Sec. 4301; Senate bill Sec. 13301; Conference agreement Sec. 13301)

Current Law

No provisions; however, since 2004, the Agency for Healthcare Research and Quality (AHRQ) has awarded $260 million to support and stimulate investment in HIT. AHRQ-funded projects, many of which are focused on rural and underserved populations, cover a broad range of HIT tools and systems including EHRs, personal health records (a term that refers to health information collected by and under the control of the patient), e-prescribing, privacy and security, quality measurement, and Medicaid technical assistance.

House Bill

The House bill would amend PHSA Title XXX (as added by this Act) by adding a new Subtitle B—Incentives for the Use of Information Technology.

Sec. 3011. Immediate Funding to Strengthen the Health Information Technology Infrastructure. The House bill would require the Secretary, using funds appropriated under Section 3018 and in a manner consistent with the National Coordinator's strategic plan, to invest in HIT so as to promote the use and exchange of electronic health information. The Secretary must, to the greatest extent practicable, ensure that the funds are used to acquire HIT that meets current standards and certification criteria. Funds would be administered through different agencies with relevant expertise, including ONCHIT, AHRQ, CMS, the Centers for Disease Control and Prevention (CDC), and the Indian Health Service (IHS), to support the following: (1) HIT architecture to support the secure electronic exchange of information; (2) electronic health records for providers not eligible for HIT incentive payments under Medicare and Medicaid; (3) training and dissemination of information on best practices to integrate HIT into health care delivery; (4) telemedicine; (5) interoperable clinical data repositories; (6) technologies and best practices for protecting health information; and (7) HIT use by public health departments. The Secretary must invest $300 million to support regional health information exchanges, and may use funds to carry out other activities authorized under this Act and other relevant laws.

Sec. 3012. Health Information Technology Implementation Assistance. The House bill would require the National Coordinator, in consultation with NIST and other agencies with experience in IT services, to establish an HIT extension program to assist providers in adopting and using certified EHR technology. The Secretary would be required to create an HIT Research Center to serve as a forum for exchanging knowledge and experience, disseminating information on lessons learned and best practices, providing technical assistance to health information networks, and learning about using HIT in medically underserved communities.

The Secretary also would be required to support HIT Regional Extension Centers, affiliated with nonprofit organizations, to provide assistance to providers in the region. Priority would be given to public, nonprofit, and critical access hospitals, community health centers, individual and small group practices, and entities that serve the uninsured, underinsured, and medically underserved individuals. Centers would be permitted to receive up to 4 years of funding to cover up to 50% of their capital and annual operating and maintenance expenditures. The Secretary would be required, within 90 days of enactment, to publish a notice describing the program and the availability of funds. Each regional center receiving funding would be required to submit to a biennial evaluation of its performance against specified objectives. Continued funding after two years of support would be contingent on receiving a positive evaluation.

Sec. 3013. State Grants to Promote Health Information Technology. The National Coordinator would be authorized to award planning and implementation grants to states or qualified state-designated entities to facilitate and expand electronic health information exchange. To qualify as a state-designated entity, an entity would have to be a nonprofit organization with broad stakeholder representation on its governing board and adopt nondiscrimination and conflict of interest policies. In order to receive an implementation grant, a state or qualified state-designated entity would have to submit a plan describing the activities to be carried out (consistent with the National Coordinator's strategic plan) to facilitate and expand electronic health information exchange. The Secretary would be required annually to evaluate the grant activity under this section and implement the lessons learned from each evaluation in the subsequent round of awards in such a manner as to realize the greatest improvement in health care quality, decrease in costs, and the most effective and secure electronic information exchange. Grants would require a match of at least $1 for each $10 of federal funds in FY2011, at least $1 for each $7 of federal funds in FY2012, and at least $1 for each $3 of federal funds in FY2013 and each subsequent fiscal year. For fiscal years before FY2011, the Secretary would determine whether a state match is required.

Sec. 3104. Competitive Grants to States and Indian Tribes for the Development of Loan Programs to Facilitate the Widespread Adoption of Certified EHR Technology. The House bill would authorize the National Coordinator to award competitive grants to states or Indian tribes to establish loan programs for health care providers to purchase certified EHR technology, train personnel in the use of such technology, and improve the secure electronic exchange of health information. To be eligible, grantees would be required to: (1) establish a qualified HIT loan fund; (2) submit a strategic plan, updated annually, describing the intended uses of the funds and providing assurances that loans will only be given to health care providers that submit required reports on quality measures and use the certified EHR technology supported by the loan for the electronic exchange of health information to improve the quality of care; and (3) provide matching funds of at least $1 for every $5 of federal funding. Loans would be repayable over a period of up to 10 years. Each year, the National Coordinator would be required to provide a report to Congress summarizing the annual reports submitted by grantees. Awards would not be permitted before January 1, 2010.

Sec. 3015. Demonstration Program to Integrate Information Technology into Clinical Education. The House bill would authorize the Secretary to create a demonstration program for awarding competitive grants to medical, dental, and nursing schools, and to other graduate health education programs to integrate HIT into the clinical education of health care professionals. To be eligible, grantees would have to submit a strategic plan. A grant could not cover more than 50% of the costs of any activity for which assistance is provided, though the Secretary would have the authority to waive that cost-sharing requirement. The Secretary would be required annually to report to designated House and Senate Committees on the demonstrations, with recommendations.

Sec. 3016. Information Technology Professionals in Health Care. The House bill would require the Secretary, in consultation with the Director of the National Science Foundation, to provide financial assistance to universities to establish or expand medical informatics programs. A grant could not cover more than 50% of the costs of any activity for which assistance is provided, though the Secretary would have the authority to waive that cost-sharing requirement.

Sec. 3017. General Grant and Loan Provision. The Secretary would be permitted to require that grantees, within one year of receiving an award, report on the effectiveness of the activities for which the funds were provided and the impact of the project on health care quality and safety. The House bill would require the National Coordinator annually to evaluate the grant activities under this title and implement the lessons learned from each evaluation in the subsequent round of awards in such a manner as to realize the greatest improvement in the quality and efficiency of health care.

Sec. 3018. Authorization for Appropriations. The House bill would authorize the appropriation of such sums as may be necessary for each of FY2009 through FY2013 to carry out this subtitle. Amounts so appropriated would remain available until expended.

Senate Bill

The Senate bill includes the same provisions as the House bill, but with the following additional language: (1) the list of activities for which state implementation grants may be used includes establishing models that promote lifetime access to health records; and (2) the use of loan funds by providers may include upgrading HIT to meet certification criteria.

Conference Agreement

The Conference report includes the provision from the Senate that the use of loan funds by providers may include upgrading HIT to meet certification criteria. The Conference report does not include the provision from the Senate that the list of activities for which state implementation grants may be used includes establishing models that promote lifetime access to health records.

The Conference report modifies Section 3011 to no longer include a specific description of $300 million in funding for promoting regional and sub-national health information exchange. This funding is reflected in the corresponding sections of the Economic Recovery and Reinvestment Act that appropriate funds for activities authorized under this title.

The Conference report modifies Section 3016 to no longer require matching funds from universities participating in this program.

As a result of the incentives and appropriations for health information technology provided in this bill, it is expected that nonprofit organizations may be formed to facilitate the electronic use and exchange of health-related information consistent with standards adopted by HHS, and that such organizations may seek exemption from income tax as organizations described in IRC sec. 501(c)(3). Consequently, if a nonprofit organization otherwise organized and operated exclusively for exempt purposes described in IRC sec. 501(c)(3) engages in activities to facilitate the electronic use or exchange of health-related information to advance the purposes of the bill, consistent with standards adopted by HHS, such activities will be considered activities that substantially further an exempt purpose under IRC sec. 501(c)(3), specifically the purpose of lessening the burdens of government. Private benefit attributable to cost savings realized from the conduct of such activities will be viewed as incidental to the accomplishment of the nonprofit organization's exempt purpose.

SUBTITLE D—PRIVACY

Definitions. (House bill Sec. 4400; Senate bill Sec. 13400; Conference agreement Sec. 13400)

Current Law

Under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA; P.L. 104–191), Congress set itself a three-year deadline to enact health information privacy legislation. If, as turned out to be the case, lawmakers were unable to pass such legislation before the deadline, the HHS Secretary was instructed to promulgate regulations containing standards to protect the privacy of individually identifiable health information. The HIPAA privacy rule (45 CFR Parts 160, 164) established a set of patient rights, including the right of access to one's medical information, and placed certain limitations on when and how health plans and health care providers may use and disclose such protected health information (PHI). Generally, plans and providers may use and disclose health information for the purpose of treatment, payment, and other health care operations without the individual's authorization and with few restrictions. In certain other circumstances (e.g., disclosures to family members and friends), the rule requires plans and providers to give the individual the opportunity to object to the disclosure. The rule also permits the use and disclosure of health information without the individual's permission for various specified activities (e.g., public health oversight, law enforcement) that are not directly connected to the treatment of the individual. For all uses and disclosures of health information that are not otherwise required or permitted by the rule, plans and providers must obtain a patient's written authorization.

The HIPAA privacy rule also permits health plans and health care providers—referred to as HIPAA covered entities—to share health information with their business associates who provide a wide variety of functions for them, including legal, actuarial, accounting, data aggregation, management, administrative, accreditation, and financial services. A covered entity is permitted to disclose health information to a business associate or to allow a business associate to create or receive health information on its behalf, provided the covered entity receives satisfactory assurance in the form of a written contract that the business associate will appropriately safeguard the information.

In addition to health information privacy standards, HIPAA's Administrative Simplification provisions instructed the Secretary to issue security standards to safeguard PHI in electronic form against unauthorized access, use, and disclosure. The security rule (45 CFR Parts 160, 164) specifies a series of administrative, technical, and physical security procedures for providers and plans to use to ensure the confidentiality of electronic health information.

House Bill

The House bill defines the following key privacy and security terms, in most cases by reference to definitions in the HIPAA Administrative Simplification standards: breach, business associate, covered entity, disclose, electronic health record, electronic medical record, health care operations, health care provider, health plan, National Coordinator, payment, personal health record, protected health information, Secretary, security, state, treatment, use, and vendor of personal health records.

Senate Bill

Same provision.

Conference Agreement

The Conference report includes some technical modifications to the definitions.

One set of such modifications is included in the definition of ''breach''. The Conference report includes a technical change to clarify that some inadvertent disclosures can constitute a breach under the meaning of this subtitle. The conference report clarifies the definition to stipulate that disclosures (as defined in 45 CFR 164.103) constitute a breach, except as otherwise provided under the definition. The definition provides that a disclosure where a person would not reasonably be able to retain the information disclosed is not a breach. Also not a breach is any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility provided that any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

Another set of such modifications pertains to the definition of Personal Health Records. Specifically, the report clarifies that Personal Health Records are ''managed, shared, and controlled by or primarily for the individual.'' This technical change clarifies that PHRs include the kinds of records managed by or for individuals, but does not include the kinds of records managed by or primarily for commercial enterprises, such as life insurance companies that maintain such records for their own business purposes. By extension, a life insurance company would not be considered a PHR vendor under this subtitle. A second clarification in the definition of PHR is the use of the term ''PHR individual identifiable health information'' (as defined in section 13407(0(2)). In the House and Senate bills, the term ''individually identifiable health information'' was used. Use of that term would have required that, to be considered a PHR, an electronic record would have to include information that was ''created or received by a health care provider, health plan, employer, or health care clearinghouse.'' However, there is increasing use of electronic records that contain personal health information that has not been created or received by a health care provider, health plan, employer, or health care clearinghouse. Use of the term ''individually identifiable health information'' would have thus improperly narrowed the scope of the term Personal Health Record under this subtitle. Thus, the conference report included the broader term, PHR individual identifiable health information, so that the scope of the term Personal Health Record would properly include electronic records of personal health information, regardless of whether they have been ''created or received by a health care provider, health plan, employer, or health care clearinghouse.''

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

Application of Security Provisions and Penalties to Business Associates of Covered Entities; Annual Guidance on Security Provisions. (House bill Sec. 4401; Senate bill Sec. 13401; Conference agreement Sec. 13401)

Current Law

The Security Rule promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA) include three sets of safeguards: administrative, physical, and technical, required of covered entities (providers, health plans and healthcare clearinghouses). Administrative safeguards include such functions as assigning or delegating security responsibilities to employees, as well as security training requirements. Physical safeguards are intended to protect electronic systems and data from threats, environmental hazards, and unauthorized access. Technical safeguards are primarily IT functions used to protect and control access to data.

HIPAA permits business associates (those who perform business functions for covered entities) to create, receive, maintain or transmit electronic health information on behalf of that covered entity, provided the covered entity receives satisfactory assurance in the form of a written contract that the business associate will implement administrative, technical, and physical safeguards that reasonably and appropriately protect the information.

Violations cannot be enforced directly against business associates. Although providers and health plans are not liable for, or required to monitor, the actions of their business associates, if it finds out about a material breach or violation of the contract by a business associate, it must take reasonable steps to remedy the situation, and, if unsuccessful, terminate the contract. If termination is not feasible, the covered entity must notify HHS.

House Bill

The House bill would apply the HIPAA security standards and the civil and criminal penalties for violating those standards to business associates in the same manner as they apply to the providers and health plans for whom they are working. It also would require the Secretary, in consultation with stakeholders, to issue annual guidance on the most effective and appropriate technical safeguards, including the technologies that render information unusable, unreadable, or indecipherable recommended by the HIT Policy Committee, for protecting electronic health information.

Senate Bill

Same provision, but without any reference to recommended safeguard technologies standards.

Conference Agreement

The conference agreement includes language contained in the House bill.

Notification in the Case of Breach. (House bill Sec. 4402; Senate bill Sec. 13402; Conference agreement Sec. 13402)

Current Law

The Privacy and Security Rules promulgated pursuant to HIPAA does not require covered entities, providers, health plans or healthcare clearinghouses, to notify HHS or individuals of a breach of the privacy, security, or integrity of their protected health information.

House Bill

In the event of a breach of unsecured PHI that is discovered by a covered entity, the House bill would require the covered entity to notify each individual whose information has been, or is reasonably believed to have been, accessed, acquired, or disclosed as a result of such breach. Exceptions to the breach notification requirement are for unintentional acquisition, access, use or disclosure of protected health information. For a breach of unsecured PHI under the control of a business associate, the business associate upon discovery of the breach would be required to notify the covered entity. Notice of the breach would have to be provided to the Secretary and prominent media outlets serving a particular area if more than 500 individuals in that area were impacted. If the breach impacted fewer than 500 individuals, the covered entity involved would have to maintain a log of such breaches and annually submit it to the Secretary.

The House bill would define unsecured PHI as information that is not secured through the use of a technology or methodology identified by the Secretary as rendering the information unusable, unreadable, and undecipherable to unauthorized individuals.

The House bill would require the Secretary each year to report to appropriate committees in Congress on the number and type of breaches, actions taken in response, and recommendations made by the National Coordinator on how to reduce the number of breaches. Within 180 days of enactment, the Secretary would be required to issue interim final regulations to implement this section. The provisions in the section would apply to breaches discovered at least 30 days after the regulations were published.

Senate Bill

Same provision, but without any reference to recommended encryption standards in issuing annual guidance on securing PHI.

Conference Agreement

Similar provision to the House bill with one difference; notifications in cases of unintentional disclosures would be required unless such disclosure is to an individual authorized to access health information at the same facility.

Education on Health Information Privacy. (House bill Sec. 4403; Senate bill Sec. 13403; Conference agreement Sec. 13403)

Current Law

The Privacy Rule promulgated pursuant to HIPAA requires each covered entity to designate a privacy official for the development and implementation of its policies and procedures.

House Bill

Within six months of enactment, the House bill would require the Secretary to designate a privacy advisor in each HHS regional office to offer education and guidance to covered entities and business associates on their federal health information privacy and security rights and responsibilities. Within 12 months of enactment, OCR would be required to develop and maintain a national education program to educate the public about their privacy rights and the potential uses of their PHI.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Application of Privacy Provisions and Penalties to Business Associates of Covered Entities. (House bill Sec. 4404; Senate bill Sec. 13404; Conference agreement Sec. 13404)

Current Law

The Privacy Rule promulgated pursuant to HIPAA permits a covered entity to disclose health information to a business associate or to allow a business associate to create or receive health information on its behalf, provided the covered entity receives satisfactory assurance in the form of a written contract that the business associate will appropriately safeguard the information.

Violations cannot be enforced directly against business associates. Although covered entities are not liable for, or required to monitor, the actions of their business associates, if it finds out about a material breach or violation of the contract by a business associate, it must take reasonable steps to remedy the situation, and, if unsuccessful, terminate the contract. If termination is not feasible, the covered entity must notify HHS.

House Bill

The House bill would apply the HIPAA Privacy Rule, the additional privacy requirements, and the civil and criminal penalties for violating those standards to business associates in the same manner as they apply to the providers and health plans for whom they are working.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Restrictions on Certain Disclosures and Sales of Health Information; Accounting of Certain Protected Health Information Disclosures; Access to Certain Information in Electronic Format. (House bill Sec. 4405; Senate bill Sec. 13405; Conference agreement Sec. 13405)

Current Law

The privacy rule established several individual privacy rights. First, it established a new federal legal right for individuals to see and obtain a copy of their own PHI in the form or format requested by the individual, if it is readily producible in such form or format. If not, then the information must be provided in hard copy or such form or format as agreed to by the covered entity and the individual. The covered entity can impose reasonable, cost-based fees for providing the information. Second, the rule gives individuals the right to amend or supplement their own PHI. The covered entity must act on an individual's request for amendment within 60 days of receiving the request. That deadline may be extended up to 30 days. Third, individuals have the right to request that a covered entity restrict the use and disclosure of their PHI for the purposes of treatment, payment, or health care operations. However, the covered entity is not required to agree to such a restriction unless it has entered into an agreement to restrict, in which case it must abide by the agreement. Finally, individuals have the right to an accounting of disclosures of their PHI by a covered entity during the previous six years, with certain exceptions. For example, a covered entity is not required to provide an accounting of disclosures that have been made to carry out treatment, payment, and health care operations.

The privacy rule incorporates a minimum necessary standard. Whenever a covered entity uses or discloses PHI or requests such information from another covered entity, it must make reasonable efforts to limit the information to the minimum necessary to accomplish the intended purpose of the use or disclosure. There are a number of circumstances in which the minimum necessary standard does not apply; for example, disclosures to or requests by a health care provider for treatment purposes. The rule also permits the disclosure of a ''limited data set'' for certain specified purposes (e.g., research), pursuant to a data use agreement with the recipient. A limited data set, while not meeting the rule's definition of de-identified information (see below), has most direct identifiers removed and is considered by HHS to pose a low privacy risk.

House Bill

The House bill would give individuals the right to receive an electronic copy of their PHI, if it is maintained in an electronic health record. Any associated fee charged by the covered entity could only cover its labor costs for providing the electronic copy. The bill would require a health care provider to honor a patient's request that the PHI regarding a specific health care item or service not be disclosed to a health plan for purposes of payment or health care operations, if the patient paid out-of-pocket in full for that item or service. The House bill also would give an individual the right to receive an accounting of PHI disclosures made by covered entities or their business associates for treatment, payment, and health care operations during the previous three years, if the disclosures were through an electronic health record. Within 18 months of adopting standards on accounting of disclosures (as required under PHSA Section 3002, as added by Section 4101 of this Act), the Secretary would be required to issue regulations on what information shall be collected about each disclosure. For current users of electronic health records, the accounting requirements would apply to disclosures made on or after January 1, 2014. For covered entities yet to acquire electronic health records, the accounting requirements would apply to disclosures on or after January 1, 2011, or the date of electronic health record acquisition, whichever is later.

The House bill would require covered entities to limit the use, disclosure, or, request of PHI, to the extent practicable, to a limited data set or, if needed, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request. This requirement would sunset at such a time as the Secretary issues guidance on what constitutes minimum necessary. The Secretary would have 18 months to issue such guidance. In addition, the bill would clarify that the entity disclosing the PHI (as opposed to the requester) makes the minimum necessary determination. The HIPAA privacy rule's exceptions to the minimum necessary standard would continue to apply.

Within 18 months of enactment, the Secretary would be required to issue regulations to eliminate from the definition of health care operations those activities that can reasonably and efficiently be conducted with de-identified information or that should require authorization for the use or disclosure of PHI.

The House bill would prohibit the sale of PHI by a covered entity or business associate without patient authorization except in certain specified circumstances, such as to recoup the costs of preparing and transmitting data for public health or research activities (as defined in the HIPAA privacy rule), or to provide an individual with a copy of his or her PHI. Within 18 months of enactment, the Secretary would be required to issue regulations governing the sale of PHI.

Finally, the House bill specifies that none of its provisions would constitute a waiver of any health privacy privilege otherwise applicable to an individual.

Senate Bill

The Senate bill includes all the same provisions as the House bill, other than the final provision protecting an individual's health privacy privileges, but with the following additional language: (1) in developing guidance on what constitutes minimum necessary, the Secretary would be required to take into consideration the information necessary to improve patient outcomes and to manage chronic disease; (2) in developing regulations on the accounting of disclosures through an EHR, the Secretary would be required to take into account an individual's interest in learning when the PHI was disclosed and to whom, as well as the cost of accounting for such disclosures; (3) regarding the definition of health care operations, the Secretary would be required to review and evaluate the definition and, to the extent necessary, eliminate those activities that could reasonably and efficiently be conducted using de-identified information or that should require authorization; (4) the Secretary could not require the use of de-identified information or require authorization for the use and disclosure of information for activities within a covered entity that are described in paragraph one of the definition of health care operations; and (6) in developing regulation governing the sale of PHI, the Secretary would be required to evaluate the impact of charging an amount to cover the costs of preparing and transmitting data for public health or research activities.

Conference Agreement

The conference agreement maintains most of these provisions but makes small modifications. The conference agreement takes the Senate changes on issuing guidance on what constitutes minimum necessary and what factors have to be considered. The conference agreement requires an accounting of disclosures but has a longer timeframe for allowing providers to come into compliance with this requirement than the House bill and shorter than the Senate bill. The requirement to account for disclosures under this section is prospective. For example, a covered entity that acquires an electronic health record as of June 30, 2012 would be required to account for disclosures made through that electronic health record as of June 30, 2012 and forward. The covered entity would be required to retain that accounting for a period of three years. Thus, if an individual requested an accounting for disclosures on June 30, 2015, the covered entity would be required to provide that accounting for the period of June 30, 2012 to June 30, 2015, with respect to such individual, consistent with the requirements of Section 13405. However, if an individual requested an accounting of disclosures on June 30, 2013, the covered entity would be required to provide such accounting only for the period of June 30, 2012 to June 30, 2013.

Section 13405(c)(4) of the Senate-passed bill included a provision allowing the imposition of a reasonable fee for the accounting for disclosures required under this Section. However, this statutory provision was duplicative of an existing provision under 45 CFR 164.528(c)(2) which already allows for the imposition of a reasonable fee for providing such accounting, so the provision from the Senate passed bill was struck.

The conference agreement strikes the provision requiring the Secretary to review the definition of health care operations. The conference agreement permits the sale of protected health information in cases of research but only limited to costs of preparing and transmitting data. It also permits the sale of protected health information for public health activities the Secretary is required to study and determine whether costs should be limited. The conference agreement allows an individual to request their health information in an electronic format if it is maintained in such a format for a reasonable cost based fee as it was in the House and Senate bills. The conference agreement permits the individual to designate that the information be sent to another entity or person. Finally, the conference agreement specifies that none of its provisions would constitute a waiver of any health privacy privilege otherwise applicable to an individual, but moves this provision to section 13421 Relationship to Other Laws.

Conditions of Certain Contacts as Part of Health Care Operations. (House bill Sec. 4406; Senate bill Sec. 13406; Conference agreement Sec. 13406)

Current Law

Generally, covered entities may use and disclose health information for the purpose of treatment, payment, and other health care operations without the individual's authorization and with few restrictions. Health care operations are broadly defined to include quality assessment and improvement activities, case management and care coordination, evaluation of health care professionals, underwriting, legal services, business planning, customer services, grievance resolution, and fundraising.

Under the Privacy Rule promulgated pursuant to HIPAA, a covered entity may not disclose health information to a third party (e.g., pharmaceutical company), in exchange for direct or indirect remuneration, for the marketing activities of the third party without first obtaining a patient's authorization. Similarly, a covered entity may not use or disclose health information for its own marketing activities without authorization. Marketing is defined as a communication about a product or service that encourages the recipient to purchase or use the product or service. However, communications made by a covered entity (or its business associate) to encourage a patient to purchase or use a health care-related product or service are excluded from this definition and, therefore, do not require the patient's authorization, even if the covered entity is paid by a third party to engage in such activities.

House Bill

The House bill would clarify that a marketing communication by a covered entity or business associate about a product or service that encourages the recipient to purchase or use the product or service may not be considered a health care operation, unless the communication relates to a health care-related product or service. Further, it would prohibit a covered entity or business associate from receiving direct or indirect payment for marketing a health care-related product or service without first obtaining the recipient's authorization. Business associates would be permitted to receive payment from a covered entity for making any such communication on behalf of the covered entity that is consistent with the contract. Fundraising using a patient's protected health information would not be permitted without a patient's authorization.

Senate Bill

Like the House bill, the Senate bill would clarify that a marketing communication by a covered entity or business associate about a product or service that encourages the recipient to purchase or use the product or service may not be considered a health care operation, unless the communication relates to a health care-related product or service. Further, the Senate bill states that a communication about a health care-related product or service would be permitted as a healthcare operation including where the covered entity receives payment for making the communications where (1) the communication only describes a health care item or service previously prescribed for or administered to the recipient, or (2) the covered entity or business associate obtains authorization. Finally, the Senate bill does not include the House provision on fundraising.

Conference Agreement

The conference agreement retains the general rules about marketing in both the House and Senate bills. The conference report makes an exception and allows providers to be paid reasonable fees as determined by the Secretary to make a communication to their patients about a drug or biologic that the patient is currently prescribed. The conference agreement continues to permit fundraising activities by the provider using a patient's protected health information so long as any written fundraising provide an opportunity to opt out of future fundraising communications. If the recipient chooses to opt out of future fundraising communications, that choice is treated as a revocation of authorization under 45 CFR 164.508. All the protections that apply under 45 CFR 164.508 to an individual who has revoked an authorization would thus apply to a recipient of communications who chooses to opt out of receiving future fundraising communications, including the right not to be denied treatment as a result of making that choice.

Temporary Breach Notification Requirement for Vendors of Personal Health Records and Other Non-HIPAA Covered Entities. (House bill Sec. 4407; Senate bill Sec. 13407; Conference agreement Sec. 13407)

Current Law

There is no Federal law that requires entities to notify individual when their health information has been breached.

House Bill

The House bill would require personal health record (PHR) vendors and entities offering products and services through a PHR vendor's website, upon discovery of a breach of security of unsecured PHR health information, to notify the individuals impacted and the FTC. Further, third party service providers that provide services to PHR vendors and to other entities offering products and services through a PHR vendor's website and, as a result, that handle unsecured PHR health information would, following the discovery of a breach of security of such information, be required to notify the vendor or other entity. The requirements in Section 4402 for the content and timeliness of notifications also would apply to this section. Unsecured PHR health information means PHR health information that is not protected through the use of a technology or methodology specified by the Secretary in guidance issued pursuant to Section 4402.

The FTC would be required to notify HHS of any breach notices it received and would given enforcement authority regarding such breaches of unsecured PHR health information. Within 180 days, the Secretary would be required to issue interim final regulations to implement this section. The provisions in the section would apply to breaches discovered no sooner than 30 days after the regulations are published. The provisions in this section would no longer apply to breaches occurring after HHS or FTC had adopted new privacy and security standards for non-HIPAA covered entities, including requirements relating to breach notification.

Senate Bill

The Senate bill includes the same provisions.

Conference Agreement

The conference agreement is the same as the House and Senate language with minor clarifications. The conference agreement requires the FTC issue regulations as opposed to the Secretary of HHS. The conference agreement applies the breach notification provision to entities that access and receive health information to and from a personal health record.

Business Associate Contracts Required for Certain Entities. (House bill Sec. 4408; Senate bill Sec. 13408; Conference agreement Sec. 13408)

Current Law

A covered entity (a provider, health plan, of clearinghouse) is permitted to disclose health information to a business associate or to allow a business associate to create or receive health information on its behalf, provided the covered entity receives satisfactory assurance in the form of a written contract that the business associate will appropriately safeguard the information. Current law does not explicitly include or exclude regional health information exchanges, regional health information organizations, and others offering personal health records for a covered entity from regulation under the Privacy Rule promulgated under HIPAA.

House Bill

The House bill requires organizations that contract with covered entities for the purpose of exchanging electronic health information, for example, Health Information Exchanges, Regional Health Information Organizations (RHIOs), and PHR vendors that offer their products through or for a provider or health plan, to have business associate contracts with those providers or health plans.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Clarification of Application of Wrongful Disclosures Criminal Penalties. (House bill Sec. 4409; Senate bill Sec. 13409; Conference agreement Sec. 13409)

Current Law

The HIPAA criminal penalties include fines of up to $250,000 and up to 10 years in prison for disclosing or obtaining health information with the intent to sell, transfer or use it for commercial advantage, personal gain, or malicious harm. In July 2005, the Justice Department Office of Legal Counsel (OLC) addressed which persons may be prosecuted under HIPAA and concluded that only a covered entity could be criminally liable.

House Bill

The House bill clarifies that criminal penalties for wrongful disclosure of PHI apply to individuals who without authorization obtain or disclose such information maintained by a covered entity, whether they are employees or not.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Improved Enforcement. (House bill Sec. 4410; Senate bill Sec. 13410; Conference agreement Sec. 13410)

Current Law

HIPAA authorized the Secretary to impose civil monetary penalties on any person failing to comply with the privacy and security standards. The maximum civil fine is $100 per violation and up to $25,000 for all violations of an identical requirement or prohibition during a calendar year. Civil monetary penalties may not be imposed if (1) the violation is a criminal offense under HIPAA's criminal penalty provisions (see below); (2) the person did not have actual or constructive knowledge of the violation; or (3) the failure to comply was due to reasonable cause and not to willful neglect, and the failure to comply was corrected during a 30-day period beginning on the first date the person liable for the penalty knew, or by exercising reasonable diligence would have known, that the failure to comply occurred. For certain wrongful disclosures of PHI, OCR may refer the case to the Department of Justice for criminal prosecution. HIPAA's criminal penalties include fines of up to $250,000 and up to 10 years in prison for disclosing or obtaining health information with the intent to sell, transfer or use it for commercial advantage, personal gain, or malicious harm.

House Bill

The House bill would amend HIPAA to permit OCR to pursue an investigation and the imposition of civil monetary penalties against any individual for an alleged criminal violation of the Privacy and Security Rule of HIPAA if the Justice Department had not prosecuted the individual. In addition, the bill would amend HIPAA to require a formal investigation of complaints and the imposition of civil monetary penalties for violations due to willful neglect. The Secretary would be required to issue regulations within 18 months to implement those amendments. The bill also would require that any civil monetary penalties collected be transferred to OCR to be used for enforcing the HIPAA privacy and security standards. Within 18 months of enactment, GAO would be required to submit recommendations for giving a percentage of any civil monetary penalties collected to the individuals harmed. Based on those recommendations, the Secretary, within three years of enactment, would be required to establish by regulation a methodology to distribute a percentage of any collected penalties to harmed individuals.

The House bill would increase and tier the penalties for violations of HIPAA. It would preserve the current requirement that a civil fine not be imposed if the violation was due to reasonable cause and was corrected within 30 days.

Finally, the House bill would authorize State Attorneys General to bring a civil action in Federal district court against individuals who violate the HIPAA privacy and security standards, in order to enjoin further such violation and seek damages of up to $100 per violation, capped at $25,000 for all violations of an identical requirement or prohibition in any calendar year. State action against a person would not be permitted if a federal civil action against that same individual was pending. Nothing in this section would prevent OCR from continuing to use corrective action without a penalty in cases where the person did not know, and by exercising reasonable diligence would not have known, about the violation.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Audits. (House bill Sec. 4411; Senate bill Sec. 13411; Conference agreement Sec. 13411)

Current Law

The Secretary is authorized to conduct compliance reviews to determine whether covered entities are complying with HIPAA standards.

House Bill

The House bill would require the Secretary to perform periodic audits to ensure compliance with the Privacy and Security Rule promulgated pursuant to HIPAA and the requirements of this subtitle.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Special Rule for Information to Reduce Medication Errors and Improve Patient Safety. (House bill Sec. 4412)

Current Law

Under the privacy rule, communications made by a covered entity (or its business associate) to encourage a patient to purchase or use a health care-related product or service are excluded from the definition of marketing and, therefore, do not require the patient's authorization, even if the covered entity is paid by a third party to engage in such activities.

House Bill

The House bill states that none of the privacy provisions in the bill would prevent a pharmacist from communicating with patients to reduce medication errors and improve patient safety provided there is no remuneration other than for treatment of the individual and payment for such treatment. The Secretary would be permitted by regulation to allow pharmacists to receive reasonable, cost-based payment for such communications, if it is determined that this would improve patient care and protect PHI.

Senate Bill

Tile Senate bill does not include this same provision, but has corresponding limitation in section 13406 of the Senate bill.

Conference Agreement

The conference agreement does not include this same provision, but has corresponding limitations in section 13406.

PART H—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

Relationship to Other Laws. (House bill Sec. 4421; Senate bill Sec. 13421; Conference agreement Sec. 13421)

Current Law

Under Section 1178 of the Social Security Act, as amended by HIPAA, the security standards preempt any contrary provision of state law, with certain specified exceptions (e.g., public health reporting). Pursuant to HIPAA Section 264, however, the privacy rule does not preempt a contrary provision of state law that is more protective of patient medical privacy. Psychotherapy notes (i.e., notes recorded by a mental health professional during counseling) are afforded special protection under the privacy rule. Almost all uses and disclosures of such information require patient authorization.

House Bill

The House bill would apply the preemption provisions in SSA Section 1178 to the requirements of this subtitle and preserve the HIPAA privacy and security standards to the extent that they are consistent with the subtitle. The Secretary would be required by rulemaking to amend such standards as necessary to make them consistent with this subtitle.

Senate Bill

The Senate bill includes the same provisions; with the additional requirement that the Secretary revise the definition of psychotherapy notes to include test data that are part of a mental health evaluation.

Conference Agreement

The conference agreement takes language from the House bill. The provision related to psychotherapy notes is moved in the conference report.

Regulatory References. (House bill Sec. 4422; Senate bill Sec. 13422; Conference agreement Sec. 13422)

Current Law

No provision.

House Bill

The House bill states that each reference in this subtitle to a federal regulation refers to the most recent version of the regulation.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Effective Date. (House bill Sec. 4423; Senate bill Sec. 13423; Conference agreement Sec. 13423)

Current Law

No provision.

House Bill

Except as otherwise specifically provided, the provisions in this subtitle would become effective 12 months after enactment.

Senate Bill

Same provision.

Conference Agreement

Same provision.

Studies, Reports, Guidance. (House bill Sec. 4424; Senate bill Sec. 13424; Conference agreement Sec. 13424)

Current Law

Any person who believes a covered entity is not complying with the privacy rule may file a complaint with HHS. The rule authorizes the Secretary to conduct investigations to determine whether covered entities are in compliance. HIPAA does not require the Secretary to issue a compliance report.

The HIPAA Administrative Simplification standards apply to individual and group health plans that provide or pay for medical care; health care clearinghouses (i.e., entities that facilitate and process the flow of information between health care providers and payers); and health care providers. In addition, the privacy and security standards apply to business associates with whom covered entities share health information. They do not apply directly to other entities that collect and maintain health information, including Health Information Exchanges, RHIOs, and PHR vendors, unless they are acting as providers or plans.

The HIPAA standards are intended to protect individually identifiable health information; de-identified information is not subject to the regulations. Under the privacy rule, health information is de-identified if 18 specific identifiers (e.g., name, social security number, address) have been removed, or if a qualified statistician, using accepted principles, determines that the risk if very small that the individual could be identified.

Generally, plans and providers may use and disclose health information for the purpose of treatment, payment, and other health care operations without the individual's authorization and with few restrictions. Covered entities may, but are not required, to obtain an individual's general consent to use or disclose PHI for treatment, payment, or health care operations.

House Bill

The Secretary would be required annually to submit to specified Congressional Committees and post online a compliance report containing information on (1) the number and nature of complaints of alleged violations and how they were resolved, including the imposition of civil fines, (2) the number of covered entities receiving technical assistance in order to achieve compliance, as well as the types of assistance provided, (3) the number of audits performed and a summary of their findings, and (4) the Secretary's plan for the following year for improving compliance with and enforcement of the HIPAA standards and the provisions of this subtitle.

The House bill would require the Secretary, within one year and in consultation with the Federal Trade Commission (FTC), to study the application of health information privacy and security requirements (including breach notification) to non-HIPAA covered entities and report the findings to specified House (Ways and Means, Energy and Commerce) and Senate (Finance, HELP) Committees. The report should include an examination of PHR vendors and other entities that offer products and services through the websites of PHR vendors and covered entities, provide a determination of which federal agency is best equipped to enforce new requirements for non-HIPAA covered entities, and include a time frame for implementing regulations.

The House bill would require the Secretary, within one year of enactment and in consultation with stakeholders, to issue guidance on how best to implement the HIPAA privacy rule's requirements for de-identifying PHI.

The House bill would require GAO, within one year, to report to the House Ways and Means and Energy and Commerce Committees and the Senate Finance Committee on best practices related to the disclosure of PHI among health care providers for the purpose of treatment. The report must include an examination of practices implemented by states and other entities, such as health information exchanges, and how those practices improve the quality of care, as well as an examination of the use of electronic informed consent for disclosing PHI for treatment, payment, and health care operations.

Senate Bill

The Senate bill includes the same provisions, with the additional requirement that GAO, within one year, report to Congress and the Secretary on the impact of the bill's privacy provisions on health care costs.

Conference Agreement

The conference agreement maintains most all study language and add a study to requires the Secretary to review the definition of "psychotherapy notes" with regard to including test data that are part of a mental health evaluation. The Secretary may revise the definition by regulation based on the recommendations of the study. In addition, the conference agreement broadened the study added by the Senate on the impact of the bill's privacy provisions on health care costs. It requires the GAO to study all impact of all the provisions of the HITECH Act on health care costs, adoption of electronic health record by providers, and reductions in medical errors and other quality improvements.

TITLE XIV—STATE FISCAL STABILIZATION FUND

DEPARTMENT OF EDUCATION

STATE FISCAL STABILIZATION FUND

The conference agreement provides $53,600,000,000 for a State Fiscal Stabilization Fund, instead of $79,000,000,000 as provided by the House and $39,000,000,000 as provided by the Senate. The conference agreement makes the entire amount available upon enactment of the bill as proposed by the Senate. House bill designated half of these funds to become available on July 1, 2009, and half of the funds to become available on July 1, 2010. The economic recovery bill includes these funds in order to provide fiscal relief to the States to prevent tax increases and cutbacks in critical education and other services.

GENERAL PROVISIONS—THIS TITLE

ALLOCATIONS

The conference agreement provides that up to one-half of 1 percent of the State Fiscal Stabilization Fund is allocated to the outlying areas, based on their respective needs; an additional $14,000,000 is allocated to the Department of Education for administration, oversight, and evaluation; and $5,000,000,000 is reserved for the Secretary of Education for State Incentive Grants and an Innovation Fund. The agreement provides that any remaining funds shall be allocated to States on the following basis: 61 percent based on population ages 5 through 24 and 39 percent based on total population. The House and Senate included similar provisions, except that the House bill provided $15,000,000,000 and the Senate bill provided $7,500,000,000 for State Incentive Grants and an Innovation Fund.

STATE USES OF FUNDS

The conference agreement requires Governors to use 81.8 percent of their State allocations to support elementary, secondary, and higher education. Funding received must first be used to restore State aid to school districts under the State's primary elementary and secondary education funding formulae to the greater of the fiscal year 2008 or 2009 level in each of fiscal years 2009, 2010, and 2011, and, where applicable, to allow existing formula increases for elementary and secondary education for fiscal years 2010 and 2011 to be implemented; and to restore State support to public institutions of higher education to the greater of the fiscal year 2008 or fiscal year 2009 level, to the extent feasible given available Stabilization funds. Any remaining education funds must be allocated to school districts based on the Federal Title I formula. The conference agreement also provides that Governors shall use 18.2 percent of State allocations for public safety and other government services, which may include education services. These funds may also be used for elementary, secondary, and higher education modernization, renovation and repair activities that are consistent with State laws. The agreement also provides that Governors shall consider for modernization funding any institution of higher education in the State that meets certain criteria.

The House and Senate bills contained similar provisions, except that the House bill did not provide for Stabilization funds to be used for existing formula increases for elementary and secondary education for fiscal years 2010 and 2011, while the Senate bill did not provide Stabilization funds for a Governor's discretionary fund for public safety and other government services. Neither House nor Senate bill provided for the use of these funds for facility modernization activities.

USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES

The conference agreement provides that school districts receiving Stabilization funds may only use the funds for activities authorized under the Elementary and Secondary Education Act (ESEA), the Individuals with Disabilities Act (IDEA), the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins), and for school modernization, renovation, and repair of public school facilities (including charter schools), which may include modernization, renovation, and repairs consistent with a recognized green building rating system. School district modernization activities must be consistent with State laws.

The House and Senate bills included similar provisions, except that neither bill permitted funds for capital projects unless authorized under ESEA, IDEA, or the Perkins Act.

USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION

The conference agreement provides that public institutions of higher education receiving Stabilization funds must use these funds for educational and general expenditures, and in such a way as to mitigate the need to raise tuition and fees, or for modernization, renovation, or repairs of facilities that are primarily used for instruction, research, or student housing. Use of funds for endowments and certain types of facilities such as athletic stadiums are prohibited. The House and Senate bills included similar provisions, except that neither bill permitted funds for higher education modernization, renovation, or repair projects.

STATE APPLICATIONS

The conference agreement requires that Governors shall submit applications in order to receive Stabilization funds, which shall include certain assurances, provide baseline data regarding each of the areas described in such assurances, and describe how States intend to use their allocations. Such assurances shall include that the State will: in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary, secondary, and public postsecondary education at least at the levels in fiscal year 2006, and address 4 key areas: (1) achieve equity in teacher distribution, (2) establish a longitudinal data system that includes the elements described in the America COMPETES Act, (3) enhance the quality of academic assessments relating to English language learners and students with disabilities, and improve State academic content standards and student academic achievement standards, and (4) ensure compliance with corrective actions required for low-performing schools. The agreement further provides that, in order to receive an Incentive Grant, a Governor shall: submit an application that describes the State's progress in each of the assurances and how the State would use grant funding to continue making progress toward meeting the State's student academic achievement standards. The House and Senate bills contained similar provisions, except both bills included slightly difference requirements pertaining to assurances.

STATE INCENTIVE GRANTS

The conference agreement authorizes the Secretary of Education to award, in fiscal year 2010, Incentive Grants to States that have made significant progress in achieving equity in teacher distribution, establishing a longitudinal data system, and enhancing assessments for English language learners and students with disabilities. Each State receiving an Incentive Grant shall use at least 50 percent of its grant to provide school districts with subgrants based on their most recent relative Title I allocations. The House and Senate bills included similar provisions.

INNOVATION FUND

The conference agreement authorizes up to $650,000,000 for an Innovation Fund, awarded by the Secretary of Education, which shall consist of academic achievement awards to recognize school districts, or partnerships between nonprofit organizations and State educational agencies, school districts, or one or more schools that have made achievement gains. The House and Senate bills included similar provisions.

STATE REPORTS

The conference agreement requires that a State receiving Stabilization funds shall submit an annual report to the Secretary describing the uses of funds provided within the State; the distribution of funds received; the number of jobs saved or created; tax increases averted; the State's progress in reducing inequities in the distribution of highly-qualified teachers, developing a longitudinal data system, and implementing valid assessments; actions taken to limit tuition and fee increases at public institutions of higher education; and the extent to which public institutions of higher education maintained, increased, or decreased enrollments of in-State students. The House and Senate bills included similar provisions.

EVALUATION

The conference agreement requires the Government Accountability Office to conduct evaluations of the programs under this title, which shall include, but not be limited to, the impact of the funding provided on the progress made toward closing achievement gaps. The House and Senate bills included identical provisions.

SECRETARY'S REPORT TO CONGRESS

The conference agreement provides that the Secretary of Education shall submit a report to certain committees of the House of Representatives and the Senate that evaluates the information provided in the State reports submitted under section 14008. The House and Senate bills included identical provisions.

PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE

The conference agreement provides that no recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools, except provided in section 14003. The House and Senate bills included similar provisions, although the House bill did not include such exception.

FISCAL RELIEF

The conference agreement provides that the Secretary of Education may waive or modify any requirement of this title relating to maintenance of effort, for States and school districts that have experienced a precipitous decline in financial resources. In granting such a waiver, the Secretary shall determine that the State or school district will maintain the proportionate share of total revenues for elementary and secondary education as in the preceding fiscal year. The House bill did not include a similar provision. The Senate bill included different provisions to waive maintenance of effort and the use of Federal funds to supplement, not supplant, non-Federal funds.

DEFINITIONS

The conference agreement defines certain terms used in this title. The House and Senate bills included nearly identical provisions.

TITLE XV—ACCOUNTABILITY AND TRANSPARENCY

Sec. 1501. Definitions.—The conference agreement includes a section providing various definitions for purposes of this title, as proposed by the Senate.

SUBTITLE A—TRANSPARENCY AND OVERSIGHT REQUIREMENTS

Sec. 1511. Certifications.—With respect to funds under this Act made available to state or local governments for infrastructure investments, the conference agreement requires a certification from the governor, mayor or other chief executive that the project in question has received the full review and vetting required by law and is an appropriate use of taxpayer dollars. This is a modification of provisions contained in both the House and Senate versions of this legislation.

Sec. 1512. Reports on Use of Funds.—The conference agreement requires reporting of various matters by governments and organizations receiving funds from the Federal government under this Act, including amounts received, projects or activities for which the funds are to be used, estimated numbers of jobs created or retained, and information regarding subcontracts and subgrants. This is a modification of provisions in the House and Senate bills.

Sec. 1513. Reports of the Council of Economic Advisors.—The conference report requires quarterly reports from the Council of Economic Advisors regarding the estimated impact of this Act on employment, economic growth, and other key economic indicators. Similar provisions were proposed by the House and the Senate.

Sec. 1514. Inspector General Reviews.—The conference report includes a modified version of a House provision requiring agency inspectors general to review any concerns raised by the public about specific investments using funds made available in this Act, and to relay findings of their reviews to the head of the agency concerned. Subsection (b) of the House provision, relating to inspector general access to records, has been deleted because the matter is addressed more comprehensively in section 1515 of the conference report.

Sec. 1515. Inspector General Access to Records.—The agreement includes a modification of a House provision authorizing agency inspectors general to examine records and interview employees of contractors and grantees receiving funds under this Act. The House provision related only to contractors but applied to the Government Accountability Office (GAO) as well as inspectors general. GAO access is addressed in a separate provision in the Legislative Branch title of this conference report.

SUBTITLE B—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Sec. 1521. Establishment of Board.—The conference agreement, like the House and Senate bills, establishes a Recovery Accountability and Transparency Board to coordinate and conduct oversight of Federal spending under this Act to prevent fraud, waste, and abuse.

Sec. 1522. Composition of Board.—The conference agreement specifies that the Board shall be chaired by an individual to be designated by the President, and shall consist of inspectors general of certain specified agencies and such others as the President may designate. This is quite similar to the Senate provision. The House version called for a somewhat smaller Board chaired by the President's Chief Performance Officer and made up of a combination of inspectors general and agency deputy secretaries.

Secs. 1523 through 1525. Board Functions, Powers and Personnel.—These sections of the conference report, which generally follow the Senate provisions, set out the functions and powers of the Board and provide various authorities related to personnel, details, and information and assistance from other Federal agencies.

Sec. 1526. Board Website.—The conference report requires the Board to establish a website to foster greater accountability and transparency in use of funds in this Act, and specifies a number of categories of information to be posted on that website. This is a modification of language from both the House and the Senate.

Sec. 1527. Independence of Inspectors General.—Like the House and Senate bills, the conference report specifies that it is not intended to affect the independent authority of inspectors general as to whether to conduct audits or investigations of funds under this Act, but requires an inspector general (IG) which rejects a Board recommendation regarding investigations to submit a report to the Board, the agency head, and congressional committees stating the reasons for that action. The conference report adds language clarifying that the decision of an IG is to be final.

Sec. 1529. Authorization of Appropriations.—The conference report, like the Senate bill, authorizes appropriations of such sums as may be necessary for the Board. The House version did not contain an explicit authorization, but did make an appropriation. In the conference report, an appropriation for the Board is contained in the Financial Services and General Government title.

The conferees note that funding appropriated to the Board will support activities related to accountability, transparency, and oversight of spending under the Act. ''Funds may be transferred to support the operations of the Recovery Independent Advisory Panel established under section 1541 of the Act and for technical and administrative services and support provided by the General Services Administration.µ Funds may also be transferred to the Office of Management and Budget for coordinating and overseeing the implementation of the reporting requirements established under section 1526 of the Act.''

Sec. 1530. Termination of the Board.—The conference report terminates the Board on September 30, 2013—one year later than proposed by the Senate. The House proposed to terminate the Board 1 year after 90 percent of funds appropriated in this Act have been spent.

SUBTITLE C—RECOVERY INDEPENDENT ADVISORY PANEL

Secs. 1541 through 1546. Independent Advisory Panel.—Like both the House and Senate bills, the conference report establishes an Independent Advisory Panel to advise the Board. The conference report is very similar to the Senate version.

SUBTITLE D—ADDITIONAL ACCOUNTABILITY AND TRANSPARENCY REQUIREMENTS

Sec. 1551. Authority To Establish Separate Funding Accounts.—The conference agreement contains new language requiring funds appropriated in this Act to be made available in separate Treasury accounts to facilitate tracking of these funds, unless a waiver is granted by the Director of the Office of Management and Budget.

Sec. 1552. Set-Aside for State and Local Government Reporting and Recordkeeping.—The conference agreement includes new language allowing agencies, after notice and comment rulemaking, to reasonably adjust limits on administrative expenditures for Federal grants to help recipients defray costs of data collection requirements under this Act.

Sec. 1553. Protecting State and Local Government and Contractor Whistleblowers.—The conference agreement includes language providing new protections against reprisals for employees of State and local governments or private contractors who disclose to Federal officials information reasonably believed to be evidence of gross mismanagement, gross waste, or violations of law related to contracts or grants using funds in this Act. This is a modification of provisions appearing in both versions of the legislation. Among other things, the conference version modifies time limits on investigations of complaints and clarifies the burden of proof required to establish violations.

Sec. 1554. Special Contracting Provisions.—The conference report includes a modification of a provision proposed by the House specifying that, to the maximum extent feasible, contracts using funds in this Act shall be awarded as fixed-price contracts and through competitive procedures.

Protection for Federal Whistleblowers.—The conference report does not include language proposed by the House relating to protections for Federal employee whistleblowers.

TITLE—XVI GENERAL PROVISIONS—THIS ACT

Section 1601 provides that each amount appropriated or made available in this Act is in addition to amounts otherwise appropriated for the fiscal year involved. Further, enactment of this Act shall have no effect on the availability of amounts under the continuing resolution for fiscal year 2009.

Section 1602 provides for quick-start activities. For infrastructure investment funds, recipients of funds provided in this Act should give preference to activities that can be started and completed expeditiously, with a goal of using at least 50 percent for activities that can be initiated within 120 days of enactment. Also recipients should use grant funds in a manner that maximizes job creation and economic benefit.

Section 1603 provides that funds appropriated in this Act shall be available until September 30, 2010, unless expressly provided otherwise in this Act.

Section 1604 prohibits the use of funds for particular activities.

Section 1605 provides for the use of American iron, steel and manufactured goods, except in certain instances. Section 1605(d) is not intended to repeal by implication the President's authority under Title III of the Trade Agreements Act of 1979. The conferees anticipate that the Administration will rely on the authority under 19 U.S.C. 2511(b) to the extent necessary to comply with U.S. obligations under the WTO Agreement on Government Procurement and under U.S. free trade agreements and so that section 1605 will not apply to least developed countries to the same extent that it does not apply to the parties to those international agreements. The conferees also note that waiver authority under section 2511(b)(2) has not been used.

Section 1606 provides for specific wage rate requirements. All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal government pursuant to this Act shall be paid not less than the wages prevailing in the locality for similar projects as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

Section 1607 provides additional funding distribution and assurance of the appropriate use of funds. Not later than 45 days after the enactment of this Act, the governor of each state shall certify that the state will request and use funds provided by this Act to the state and its agencies. If funds made available to a state in any division of this Act are not accepted for use by its governor, then acceptance by the state legislature, by adoption of a concurrent resolution, shall be sufficient to provide funding to the state. After adoption of a concurrent resolution, funding to the State will be for distribution to local governments, councils of governments, public entities, and public-private entities within the State, either by formula or at the State's discretion.

Section 1608 amends section 107(b) of the Emergency Economic Stabilization Act of 2008 (relating to contracting procedures) to include individuals with disabilities and businesses owned by such individuals.

Section 1609 makes various findings regarding the National Environmental Policy Act (NEPA). In addition, this section provides that adequate resources within this Act must be devoted to ensuring that NEPA reviews are completed expeditiously. The President shall report quarterly to the appropriate congressional committees regarding NEPA requirements and documentation for projects funded in this Act.

Section 1610 prohibits the use of funds for contracts and grants not awarded in accordance with the Federal Property and Administration Services Act, or chapter 137 of title 10, United States Code and Federal Acquisition Regulation, or as otherwise authorized by statute. The provision is not intended to override other specific statutory authorizations for procurements, including the Small Business Act and the Javits-Wagner-O'Day Act.

Section 1611 provides that it shall be unlawful for any recipient of funding of Title I of the Emergency Economic Stabilization Act of 2008 or section 13 of the Federal Reserve Act to hire any nonimmigrant described in section 101(a)(15)(h)(i)(b) of the Immigration and Nationality Act unless the recipient is in compliance with the requirements for an.H–1B dependent employer as defined in that Act. This requirement is effective for a two-year period beginning on the date of enactment of this Act.

Section 1612 provides limited transfer authority. The conferees recognize the challenges that the Administration will face in determining how best to respond to the current economic crisis. Accordingly, the Senate and House passed bills each included permissive authority to reprogram or transfer funds within certain agencies and programs to mitigate these concerns.

It is clearly understood that as the Administration attempts to find the best means to respond to the crisis, the priority and utility of different programs could shift. As such, the conferees have agreed to provide authority during current fiscal year for Agency heads to transfer up to 1% of certain funds within their jurisdiction from the amounts provided in this Act. The conferees do not intend for this 1% transfer provision to either nullify or expand upon the transfer authorities provided for selected agencies and programs elsewhere in this Act. The Committees on Appropriations intend to carefully monitor the use of this authority and expect Agency heads to exercise its use in accordance with established reprogramming practices and only after consulting with the Committees on Appropriations before pursuing any transfer.

The conference agreement does not include the following provisions proposed by the House: requirements for timely award of grants; use it or lose it requirements for grantees; set-asides for management and oversight; as these issues' have been addressed, in certain circumstances, within the appropriate appropriating paragraphs. In addition, the conference agreement does not include the following provisions proposed by the House: requirements regarding funding for the State of Illinois; and requirements for participation in E-Verify.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 2009 recommended by the Committee of Conference, comparisons to the House and Senate bills for 2009 follow:

[in thousands of dollars]

House bill, fiscal year 2009	361,038,500
Senate bill, fiscal year 2009	289,794,425
Conference agreement, fiscal year 2009	311,197,500
Conference agreement compared with:.	
House bill, fiscal year 2009	−49,841,000
Senate bill, fiscal year 2009	+21,403,075

DIVISION B—TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, AND OTHER PROVISIONS

TITLE I—TAX PROVISIONS

A. TAX RELIEF FOR INDIVIDUALS AND FAMILIES

1. Making Work Pay Credit (sec. 1001 of the House bill, sec. 1001 of the Senate amendment, sec. 1001 of the conference agreement, and new sec. 36A of the Code)

PRESENT LAW

Earned income tax credit

Low- and moderate-income workers may be eligible for the refundable earned income tax credit (''EITC''). Eligibility for the EITC is based on earned income, adjusted gross income, investment income, filing status, and immigration and work status in the United States. The amount of the EITC is based on the presence and number of qualifying children in the worker's family, as well as on adjusted gross income and earned income.

The EITC generally equals a specified percentage of earned income [1] up to a maximum dollar amount. The maximum amount applies over a certain income range and then diminishes to zero over a specified phaseout range. For taxpayers with earned income (or adjusted gross income (''AGI''), if greater) in excess of the beginning of the phaseout range, the maximum EITC amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed.

The EITC is a refundable credit, meaning that if the amount of the credit exceeds the taxpayer's Federal income tax liability, the excess is payable to the taxpayer as a direct transfer payment. Under an advance payment system, eligible taxpayers may elect to receive the credit in their paychecks, rather than waiting to claim a refund on their tax returns filed by April 15 of the following year.

Child credit

An individual may claim a tax credit for each qualifying child under the age of 17. The amount of the credit per child is $1,000 through 2010 and $500 thereafter. A child who is not a citizen, national, or resident of the United States cannot be a qualifying child.

The credit is phased out for individuals with income over certain threshold amounts. Specifically, the otherwise allowable child tax credit is reduced by $50 for each $1,000 (or fraction thereof) of modified adjusted gross income over $75,000 for single individuals or heads of households, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate returns. For purposes of this limitation, modified adjusted gross income includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories.

[1] Earned income is defined as (1) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income, plus (2) the amount of the individual's net self-employment earnings.

The credit is allowable against the regular tax and the alternative minimum tax. To the extent the child credit exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit (the additional child tax credit) equal to 15 percent of earned income in excess of a threshold dollar amount (the ''earned income'' formula). The threshold dollar amount is $12,550 (for 2009), and is indexed for inflation.

Families with three or more children may determine the additional child tax credit using the ''alternative formula,'' if this results in a larger credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income tax credit.

Earned income is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. Unlike the EITC, which also includes the preceding items in its definition of earned income, the additional child tax credit is based only on earned income to the extent it is included in computing taxable income. For example, some ministers' parsonage allowances are considered self-employment income, and thus are considered earned income for purposes of computing the EITC, but the allowances are excluded from gross income for individual income tax purposes, and thus are not considered earned income for purposes of the additional child tax credit.

HOUSE BILL

In general

The provision provides eligible individuals a refundable income tax credit for two years (taxable years beginning in 2009 and 2010).

The credit is the lesser of (1) 6.2 percent of an individual's earned income or (2) $500 ($1,000 in the case of a joint return). For these purposes, the earned income definition is the same as for the earned income tax credit with two modifications. First, earned income for these purposes does not include net earnings from self-employment which are not taken into account in computing taxable income. Second, earned income for these purposes includes combat pay excluded from gross income under section 112.[2]

The credit is phased out at a rate of two percent of the eligible individual's modified adjusted gross income above $75,000 ($150,000 in the case of a joint return). For these purposes an eligible individual's modified adjusted gross income is the eligible individual's adjusted gross income increased by any amount excluded from gross income under sections 911, 931, or 933. An eligible individual means any individual other than: (1) a nonresident alien; (2) an individual with respect to whom another individual may claim a dependency deduction for a taxable year beginning in a calendar year in which the eligible individual's taxable year begins; and (3) an estate or trust. Each eligible individual must satisfy identical taxpayer identification number requirements to those applicable to the earned income tax credit.

Treatment of the U.S. possessions

Mirror code possessions[3]

The U.S. Treasury will make payments to each mirror code possession in an amount equal to the aggregate amount of the credits allowable by reason of the provision to that possession's residents against its income tax. This amount will be determined by the Treasury Secretary based on information provided by the government of the respective possession. For purposes of these payments, a possession is a mirror code possession if the income tax liability of residents of the possession under that possession's income tax system is determined by reference to the U.S. income tax laws as if the possession were the United States.

Non-mirror code possessions[4]

To each possession that does not have a mirror code tax system, the U.S. Treasury will make two payments (for 2009 and 2010, respectively) in an amount estimated by the Secretary as being equal to the aggregate credits that would have been allowed to residents of that possession if a mirror code tax system had been in effect in that possession. Accordingly, the amount of each payment to a non-mirror Code possession will be an estimate of the aggregate amount of the credits that would be allowed to the possession's residents if the credit provided by the provision to U.S. residents were provided by the possession to its residents. This payment will not be made to any U.S. possession unless that possession has a plan that has been approved by the Secretary under which the possession will promptly distribute the payment to its residents.

General rules

No credit against U.S. income tax is permitted under the provision for any person to whom a credit is allowed against possession income taxes as a result of the provision (for example, under that possession's mirror income tax). Similarly, no credit against U.S. income tax is permitted for any person who is eligible for a payment under a non-mirror code possession's plan for distributing to its residents the payment described above from the U.S. Treasury.

For purposes of the payments to the possessions, the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands are considered possessions of the United States.

For purposes of the rule permitting the Treasury Secretary to disburse appropriated amounts for refunds due from certain credit provisions of the Internal Revenue Code of 1986, the payments required to be made to possessions under the provision are treated in the same manner as a refund due from the credit allowed under the provision.

Federal programs or Federally-assisted programs

Any credit or refund allowed or made to an individual under this provision (including to any resident of a U.S. possession) is not taken into account as income and shall not be taken into account as resources for the month of receipt and the following two months for purposes of determining eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

Income tax withholding

Taxpayers' reduced tax liability under the provision shall be expeditiously implemented through revised income tax withholding schedules produced by the Internal Revenue Service. These revised income tax withholding schedules should be designed to reduce taxpayers' income tax withheld for each remaining pay period in the remainder of 2009 by an amount equal to the amount that withholding would have been reduced had the provision been reflected in the income tax withholding schedules for the entire taxable year.

Effective date

The provision applies to taxable years beginning after December 31, 2008.

SENATE AMENDMENT

In general

The Senate is the same as the House bill, except that the credit is phased out at a rate of four percent (rather than two percent) of the eligible individual's modified adjusted gross income above $70,000 ($140,000 in the case of a joint return).

Also, the Senate amendment provides that the otherwise allowable credit allowed under the provision is reduced by the amount of any payment received by the taxpayer pursuant to the provisions of the bill providing economic recovery payments under the Veterans Administration, Railroad Retirement Board, and the Social Security Administration. The provision treats the failure to reduce the credit by the amount of these payments, and the omission of the correct TIN, as clerical errors. This allows the IRS to assess any tax resulting from such failure or omission without the requirement to send the taxpayer a notice of deficiency allowing the taxpayer the right to file a petition with the Tax Court.

Income tax withholding

The Senate amendment also provides for a more accelerated delivery of the credit in 2009 through revised income tax withholding schedules produced by the Department of the Treasury.

Under the Senate amendment, these revised income tax withholding schedules would be designed to reduce taxpayers' income tax withheld for the remainder of 2009 in such a manner that the full annual benefit of the provision is reflected in income tax withheld during the remainder of 2009.

CONFERENCE AGREEMENT

In general

The provision provides eligible individuals a refundable income tax credit for two years (taxable years beginning in 2009 and 2010).

The credit is the lesser of (1) 6.2 percent of an individual's earned income or (2) $400 ($800 in the case of a joint return). For these purposes, the earned income definition is the same as for the earned income tax credit with two modifications. First, earned income for these purposes does not include net earnings from self-employment which are not taken into account in computing taxable income. Second, earned income for these purposes includes combat pay excluded from gross income under section 112.

The credit is phased out at a rate of two percent of the eligible individual's modified adjusted gross income above $75,000 ($150,000 in the case of a joint return). For these purposes an eligible individual's modified adjusted gross income is the eligible individual's adjusted gross income increased by any amount excluded from gross income under sections 911, 931, or 933. An eligible individual means any individual other than: (1) a nonresident alien; (2) an individual with respect to whom another individual may claim a dependency deduction for a taxable year beginning in a calendar year in which the eligible individual's taxable year begins; and (3) an estate or trust.

Also, the conference agreement provides that the otherwise allowable making work pay credit allowed under the provision is reduced by the amount of any payment received by the taxpayer pursuant to the provisions of the bill providing economic recovery payments under the Veterans Administration, Railroad Retirement Board, and the

[2] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the ''Code'').

[3] Possessions with mirror code tax systems are the United States Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

[4] Possessions that do not have mirror code tax systems are Puerto Rico and American Samoa.

Social Security Administration and a temporary refundable tax credit for certain government retirees.[5] The conference agreement treats the failure to reduce the making work pay credit by the amount of such payments or credit, and the omission of the correct TIN, as clerical errors. This allows the IRS to assess any tax resulting from such failure or omission without the requirement to send the taxpayer a notice of deficiency allowing the taxpayer the right to file a petition with the Tax Court.

Each tax return on which this credit is claimed must include the social security number of the taxpayer (in the case of a joint return, the social security number of at least one spouse).

Treatment of the U.S. possessions

The conference agreement follows the House bill and the Senate amendment.

Federal programs or Federally-assisted programs

The conference agreement follows the House bill and the Senate amendment.

Income tax withholding

The conference agreement follows the Senate amendment.

Effective date

The provision applies to taxable years beginning after December 31, 2008.

2. Increase in the earned income tax credit (sec. 1101 of the House bill, sec. 1002 of the Senate amendment, sec. 1002 of the conference agreement, and sec. 32 of the Code)

PRESENT LAW

Overview

Low- and moderate-income workers may be eligible for the refundable earned income tax credit (''EITC''). Eligibility for the EITC is based on earned income, adjusted gross income, investment income, filing status, and immigration and work status in the United States. The amount of the EITC is based on the presence and number of qualifying children in the worker's family, as well as on adjusted gross income and earned income.

The EITC generally equals a specified percentage of earned income[6] up to a maximum dollar amount. The maximum amount applies over a certain income range and then diminishes to zero over a specified phaseout range. For taxpayers with earned income (or adjusted gross income (AGI), if greater) in excess of the beginning of the phaseout range, the maximum EITC amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed.

An individual is not eligible for the EITC if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds $3,100 (for 2009). This threshold is indexed for inflation. Disqualified income is the sum of: (1) interest (taxable and tax exempt); (2) dividends; (3) net rent and royalty income (if greater than zero); (4) capital gains net income; and (5) net passive income (if greater than zero) that is not self-employment income.

The EITC is a refundable credit, meaning that if the amount of the credit exceeds the taxpayer's Federal income tax liability, the excess is payable to the taxpayer as a direct transfer payment. Under an advance payment system, eligible taxpayers may elect to receive the credit in their paychecks, rather than waiting to claim a refund on their tax returns filed by April 15 of the following year.

Filing status

An unmarried individual may claim the EITC if he or she files as a single filer or as a head of household. Married individuals generally may not claim the EITC unless they file jointly. An exception to the joint return filing requirement applies to certain spouses who are separated. Under this exception, a married taxpayer who is separated from his or her spouse for the last six months of the taxable year shall not be considered as married (and, accordingly, may file a return as head of household and claim the EITC), provided that the taxpayer maintains a household that constitutes the principal place of abode for a dependent child (including a son, stepson, daughter, stepdaughter, adopted child, or a foster child) for over half the taxable year,[7] and pays over half the cost of maintaining the household in which he or she resides with the child during the year.

Presence of qualifying children and amount of the earned income credit

Three separate credit schedules apply: one schedule for taxpayers with no qualifying children, one schedule for taxpayers with no qualifying child, and one schedule for taxpayers with more than one qualifying child.[8]

Taxpayers with no qualifying children may claim a credit if they are over age 24 and below age 65. The credit is 7.65 percent of earnings up to $5,970, resulting in a maximum credit of $457 for 2009. The maximum is available for those with incomes between $5,970 and $7,470 ($10,590 if married filing jointly). The credit begins to phase down at a rate of 7.65 percent of earnings above $7,470 ($10,590 if married filing jointly) resulting in a $0 credit at $13,440 of earnings ($16,560 if married filing jointly).

Taxpayers with one qualifying child may claim a credit in 2009 of 34 percent of their earnings up to $8,950, resulting in a maximum credit of $3,043. The maximum credit is available for those with earnings between $8,950 and $16,420 ($19,540 if married filing jointly). The credit begins to phase down at a rate of 15.98 percent of earnings above $16,420 ($19,540 if married filing jointly). The credit is phased down to $0 at $35,463 of earnings ($38,583 if married filing jointly).

Taxpayers with more than one qualifying child may claim a credit in 2009 of 40 percent of earnings up to $12,570, resulting in a maximum credit of $5,028. The maximum credit is available for those with earnings between $12,570 and $16,420 ($19,540 if married filing jointly). The credit begins to phase down at a rate of 21.06 percent of earnings above $16,420 ($19,540 if married filing jointly). The credit is phased down to $0 at $40,295 of earnings ($43,415 if married filing jointly).

If more than one taxpayer lives with a qualifying child, only one of these taxpayers may claim the child for purposes of the EITC. If multiple eligible taxpayers actually claim the same qualifying child, then a tiebreaker rule determines which taxpayer is entitled to the EITC with respect to the qualifying child. Any eligible taxpayer with at least one qualifying child who does not claim the EITC with respect to qualifying children due to failure to meet certain identification requirements with respect to such children (i.e., providing the name, age and taxpayer identification number of each of such children) may not claim the EITC for taxpayers without qualifying children.

HOUSE BILL

Three or more qualifying children

The provision increases the EITC credit percentage for families with three or more qualifying children to 45 percent for 2009 and 2010. For example, in 2009 taxpayers with three or more qualifying children may claim a credit of 45 percent of earnings up to $12,570, resulting in a maximum credit of $5,656.50.

Provide additional marriage penalty relief through higher threshold phase-out amounts for married couples filing joint returns

The provision increases the threshold phase-out amounts for married couples filing joint returns to $5,000[9] above the threshold phase-out amounts for singles, surviving spouses, and heads of households for 2009 and 2010. For example, in 2009 the maximum credit of $3,043 for one qualifying child is available for those with earnings between $8,950 and $16,420 ($21,420 if married filing jointly). The credit begins to phase down at a rate of 15.98 percent of earnings above $16,420 ($21,420 if married filing jointly). The credit is phased down to $0 at $35,463 of earnings ($40,463 if married filing jointly).

Effective date

The provision is effective for taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Increase of refundable portion of the child credit (sec. 1102 of the House bill, sec. 1003 of the Senate amendment, sec. 1003 of the conference agreement and sec. 24 of the Code)

PRESENT LAW

An individual may claim a tax credit for each qualifying child under the age of 17. The amount of the credit per child is $1,000 through 2010, and $500 thereafter. A child who is not a citizen, national, or resident of the United States cannot be a qualifying child.

The credit is phased out for individuals with income over certain threshold amounts. Specifically, the otherwise allowable child tax credit is reduced by $50 for each $1,000 (or fraction thereof) of modified adjusted gross income over $75,000 for single individuals or heads of households, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate returns. For purposes of this limitation, modified adjusted gross income includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories.

The credit is allowable against the regular tax and the alternative minimum tax. To the extent the child credit exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit (the additional child

[5] The credit for certain government employees is available for 2009. The credit is $250 ($500 for a joint return where both spouses are eligible individuals). An eligible individual for these purposes is an individual: (1) who receives an amount as a pension or annuity for service performed in the employ of the United States or any State or any instrumentality thereof, which is not considered employment for purposes of Social Security taxes; and (2) who does not receive an economic recovery payment under the Veterans Administration, Railroad Retirement Board, or the Social Security Administration.

[6] Earned income is defined as (1) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income, plus (2) the amount of the individual's net self-employment earnings.

[7] A foster child must reside with the taxpayer for the entire taxable year.

[8] All income thresholds are indexed for inflation annually.

[9] The $5,000 is indexed for inflation in the case of taxable years beginning in 2010.

tax credit) equal to 15 percent of earned income in excess of a threshold dollar amount (the ''earned income'' formula). The threshold dollar amount is $12,550 (for 2009), and is indexed for inflation.

Families with three or more children may determine the additional child tax credit using the ''alternative formula,'' if this results in a larger credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income tax credit (''EITC'').

Earned income is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. Unlike the EITC, which also includes the preceding items in its definition of earned income, the additional child tax credit is based only on earned income to the extent it is included in computing taxable income. For example, some ministers' parsonage allowances are considered self-employment income and thus, are considered earned income for purposes of computing the EITC, but the allowances are excluded from gross income for individual income tax purposes and thus, are not considered earned income for purposes of the additional child tax credit.

Any credit or refund allowed or made to an individual under this provision (including to any resident of a U.S. possession) is not taken into account as income and shall not be taken into account as resources for the month of receipt and the following two months for purposes of determining eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

HOUSE BILL

The provision modifies the earned income formula for the determination of the refundable child credit to apply to 15 percent of earned income in excess of $0 for taxable years beginning in 2009 and 2010.

Effective date.—The provision is effective for taxable years beginning after December 31,

SENATE AMENDMENT

The Senate amendment is the same as the House bill except that the refundable child credit is calculated to apply to 15 percent of earned income in excess of $8,100 for taxable years beginning in 2009 and 2010.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment except that the refundable child credit is calculated to apply to 15 percent of earned income in excess of $3,000 for taxable years beginning in 2009 and 2010.

4. American Opportunity Tax credit (sec. 1201 of the House bill, sec. 1004 of the Senate amendment, sec. 1004 of the conference agreement, and sec. 25A of the Code)

PRESENT LAW

Individual taxpayers are allowed to claim a nonrefundable credit, the Hope credit, against Federal income taxes of up to $1,800 (for 2009) per eligible student per year for qualified tuition and related expenses paid the first two years of the student's post-secondary education in a degree or certificate program[10] The Hope credit rate is 100 percent on the first $1,200 of qualified tuition and related expenses, and 50 percent on the next $1,200 of qualified tuition and related expenses; these dollar amounts are indexed for inflation, with the amount rounded down to the next lowest multiple of $100. Thus, for example, a taxpayer who incurs $1,200 of qualified tuition and related expenses for an eligible student is eligible (subject to the adjusted gross income phaseout described below) for a $1,200 Hope credit. If a taxpayer incurs $2,400 of qualified tuition and related expenses for an eligible student, then he or she is eligible for a $1,800 Hope credit.

The Hope credit that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified adjusted gross income between $50,000 and $60,000 ($100,000 and $120,000 for married taxpayers filing a joint return) for 2009. The adjusted gross income phaseout ranges are indexed for inflation, with the amount rounded down to the next lowest multiple of $1,000.

The qualified tuition and related expenses must be incurred on behalf of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer. The Hope credit is available with respect to an individual student for two taxable years, provided that the student has not completed the first two years of post-secondary education before the beginning of the second taxable year.

The Hope credit is available in the taxable year the expenses are paid, subject to the requirement that the education is furnished to the student during that year or during an academic period beginning during the first three months of the next taxable year. Qualified tuition and related expenses paid with the proceeds of a loan generally are eligible for the Hope credit. The repayment of a loan itself is not a qualified tuition or related expense.

A taxpayer may claim the Hope credit with respect to an eligible student who is not the taxpayer or the taxpayer's spouse (e.g., in cases in which the student is the taxpayer's child) only if the taxpayer claims the student as a dependent for the taxable year for which the credit is claimed. If a student is claimed as a dependent, the student is not entitled to claim a Hope credit for that taxable year on the student's own tax return. If a parent (or other taxpayer) claims a student as a dependent, any qualified tuition and related expenses paid by the student are treated as paid by the parent (or other taxpayer) for purposes of determining the amount of qualified tuition and related expenses paid by such parent (or other taxpayer) under the provision. In addition, for each taxable year, a taxpayer may elect either the Hope credit, the Lifetime Learning credit, or an above-the-line deduction for qualified tuition and related expenses with respect to an eligible student.

The Hope credit is available for ''qualified tuition and related expenses,'' which include tuition and fees (excluding nonacademic fees) required to be paid to an eligible educational institution as a condition of enrollment or attendance of an eligible student at the institution. Charges and fees associated with meals, lodging, insurance, transportation, and similar personal, living, or family expenses are not eligible for the credit. The expenses of education involving sports, games, or hobbies are not qualified tuition and related expenses unless this education is part of the student's degree program.

Qualified tuition and related expenses generally include only out-of-pocket expenses. Qualified tuition and related expenses do not include expenses covered by employer-provided educational assistance and scholarships that are not required to be included in the gross income of either the student or the taxpayer claiming the credit. Thus, total qualified tuition and related expenses are reduced by any scholarship or fellowship grants excludable from gross income under section 117 and any other tax-free educational benefits received by the student (or the taxpayer claiming the credit) during the taxable year. The Hope credit is not allowed with respect to any education expense for which a deduction is claimed under section 162 or any other section of the Code.

An eligible student for purposes of the Hope credit is an individual who is enrolled in a degree, certificate, or other program (including a program of study abroad approved for credit by the institution at which such student is enrolled) leading to a recognized educational credential at an eligible educational institution. The student must pursue a course of study on at least a half-time basis. A student is considered to pursue a course of study on at least a half-time basis if the student carries at least one half the normal full-time work load for the course of study the student is pursuing for at least one academic period that begins during the taxable year. To be eligible for the Hope credit, a student must not have been convicted of a Federal or State felony consisting of the possession or distribution of a controlled substance.

Eligible educational institutions generally are accredited post-secondary educational institutions offering credit toward a bachelor's degree, an associate's degree, or another recognized post-secondary credential. Certain proprietary institutions and post-secondary vocational institutions also are eligible educational institutions. To qualify as an eligible educational institution, an institution must be eligible to participate in Department of Education student aid programs.

Effective for taxable years beginning after December 31, 2010, the changes to the Hope credit made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (''EGTRRA'') no longer apply. The principal EGTRRA change scheduled to expire is the change that permitted a taxpayer to claim a Hope credit in the same year that he or she claims an exclusion from a Coverdell education savings account. Thus, after 2010, a taxpayer cannot claim a Hope credit in the same year he or she claims an exclusion from a Coverdell education savings account.

HOUSE BILL

The provision modifies the Hope credit for taxable years beginning in 2009 or 2010. The modified credit is referred to as the American Opportunity Tax credit. The allowable modified credit is up to $2,500 per eligible student per year for qualified tuition and related expenses paid for each of the first four years of the student's post-secondary education in a degree or certificate program. The modified credit rate is 100 percent on the first $2,000 of qualified tuition and related expenses, and 25 percent on the next $2,000 of qualified tuition and related expenses. For purposes of the modified credit, the definition of qualified tuition and related expenses is expanded to include course materials.

Under the provision, the modified credit is available with respect to an individual student for four years, provided that the student has not completed the first four years of post-secondary education before the beginning of the fourth taxable year. Thus, the modified credit, in addition to other modifications, extends the application of the Hope credit to two more years of post-secondary education.

The modified credit that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified adjusted gross income between $80,000 and $90,000 ($160,000 and $180,000 for married taxpayers filing a joint return). The modified credit may be claimed

[10] Sec. 25A. The Hope credit generally may not be claimed against a taxpayer's alternative minimum tax liability. However, the credit may be claimed against a taxpayer's alternative minimum tax liability for taxable years beginning prior to January 1, 2009.

against a taxpayer's alternative minimum tax liability.

Forty percent of a taxpayer's otherwise allowable modified credit is refundable. However, no portion of the modified credit is refundable if the taxpayer claiming the credit is a child to whom section 1(g) applies for such taxable year (generally, any child under age 18 or any child under age 24 who is a student providing less than one-half of his or her own support, who has at least one living parent and does not file a joint return).

In addition, the provision requires the Secretary of the Treasury to conduct two studies and submit a report to Congress on the results of those studies within one year after the date of enactment. The first study shall examine how to coordinate the Hope and Lifetime Learning credits with the Pell grant program. The second study shall examine requiring students to perform community service as a condition of taking their tuition and related expenses into account for purposes of the Hope and Lifetime Learning credits.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment provides that only 30 percent of a taxpayer's otherwise allowable modified credit is refundable.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modifications. Under the conference agreement, bona fide residents of the U.S. possessions (American Samoa, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, Guam, Virgin Islands) are not permitted to claim the refundable portion of the American opportunity credit in the United States. Rather, a bona fide resident of a mirror code possession (Commonwealth of the Northern Mariana Islands, Guam, Virgin Islands) may claim the refundable portion of the credit in the possession in which the individual is a resident. Similarly, a bona fide resident of a non-mirror code possession (Commonwealth of Puerto Rico, American Samoa) may claim the refundable portion of the credit in the possession in which the individual is a resident, but only if that possession establishes a plan for permitting the claim under its internal law.

The conference agreement provides that the U.S. Treasury will make payments to the possessions in respect of credits allowable to their residents under their internal laws. Specifically, the U.S. Treasury will make payments for to each mirror code possession in an amount equal to the aggregate amount of the refundable portion of the credits allowable by reason of the provision to that possession's residents against its income tax. This amount will be determined by the Treasury Secretary based on information provided by the government of the respective possession. To each possession that does not have a mirror code tax system, the U.S. Treasury will make two payments (for 2009 and 2010, respectively) in an amount estimated by the Secretary as being equal to the aggregate amount of the refundable portion of the credits that would have been allowed to residents of that possession if a minor code tax system had been in effect in that possession. Accordingly, the amount of each payment to a non-mirror code possession will be an estimate of the aggregate amount of the refundable portion of the credits that would be allowed to the possession's residents if the credit provided by the provision to U.S. residents were provided by the possession to its residents. This payment will not be made to any U.S. possession unless that possession has a plan that has been approved by the Secretary under which the possession will promptly distribute the payment to its residents.

5. Temporarily allow computer technology and equipment as a qualified higher education expense for qualified tuition programs (sec. 1005 of the Senate amendment, sec. 1005 of the conference agreement, and sec. 529 of the Code)

PRESENT LAW

Section 529 provides specified income tax and transfer tax rules for the treatment of accounts and contracts established under qualified tuition programs.[11] VA qualified tuition program is a program established and maintained by a State or agency or instrumentality thereof, or by one or more eligible educational institutions, which satisfies certain requirements and under which a person may purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary (a ''prepaid tuition program''). In the case of a program established and maintained by a State or agency or instrumentality thereof, a qualified tuition program also includes a program under which a person may make contributions to an account that is established for the purpose of satisfying the qualified higher education expenses of the designated beneficiary of the account, provided it satisfies certain specified requirements (a ''savings account program''). Under both types of qualified tuition programs, a contributor establishes an account for the benefit of a particular designated beneficiary to provide for that beneficiary's higher education expenses.

For this purpose, qualified higher education expenses means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution, and expenses for special needs services in the case of a special needs beneficiary that are incurred in connection with such enrollment or attendance. Qualified higher education expenses generally also include room and board for students who are enrolled at least half-time.

Contributions to a qualified tuition program must be made in cash. Section 529 does not impose a specific dollar limit on the amount of contributions, account balances, or prepaid tuition benefits relating to a qualified tuition account; however, the program is required to have adequate safeguards to prevent contributions in excess of amounts necessary to provide for the beneficiary's qualified higher education expenses. Contributions generally are treated as a completed gift eligible for the gift tax annual exclusion. Contributions are not tax deductible for Federal income tax purposes, although they may be deductible for State income tax purposes. Amounts in the account accumulate on a tax-free basis (i.e., income on accounts in the plan is not subject to current income tax).

Distributions from a qualified tuition program are excludable from the distributee's gross income to the extent that the total distribution does not exceed the qualified higher education expenses incurred for the beneficiary. If a distribution from a qualified tuition program exceeds the qualified higher education expenses incurred for the beneficiary, the portion of the excess that is treated as earnings generally is subject to income tax and an additional 10-percent tax. Amounts in a qualified tuition program may be rolled over to another qualified tuition program for the same beneficiary or for a member of the family of that beneficiary without income tax consequences.

In general, prepaid tuition contracts and tuition savings accounts established under a qualified tuition program involve prepayments or contributions made by one or more individuals for the benefit of a designated beneficiary, with decisions with respect to the contract or account to be made by an individual who is not the designated beneficiary. Qualified tuition accounts or contracts generally require the designation of a person (generally referred to as an ''account owner'') whom the program administrator (oftentimes a third party administrator retained by the State or by the educational institution that established the program) may look to for decisions, recordkeeping, and reporting with respect to the account established for a designated beneficiary. The person or persons who make the contributions to the account need not be the same person who is regarded as the account owner for purposes of administering the account. Under many qualified tuition programs, the account owner generally has control over the account or contract, including the ability to change designated beneficiaries and to withdraw funds at any time and for any purpose. Thus, in practice, qualified tuition accounts or contracts generally involve a contributor, a designated beneficiary, an account owner (who oftentimes is not the contributor or the designated beneficiary), and an administrator of the account or contract.[12]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision expands the definition of qualified higher education expenses for expenses paid or incurred in 2009 and 2010 to include expenses for certain computer technology and equipment to be used by the designated beneficiary while enrolled at an eligible educational institution.

Effective date.—The provision is effective for expenses paid or incurred after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Modifications to homebuyer credit (sec. 1301 of the House bill, sec. 1006 of the Senate amendment, sec. 1006 of the conference agreement, and sec. 36 of the Code)

PRESENT LAW

A taxpayer who is a first-time homebuyer is allowed a refundable tax credit equal to the lesser of $7,500 ($3,750 for a married individual filing separately) or 10 percent of the purchase price of a principal residence. The credit is allowed for the tax year in which the taxpayer purchases the home unless the taxpayer makes an election as described below. The credit is allowed for qualifying home purchases on or after April 9, 2008 and before July 1, 2009 (without regard to whether there was a binding contract to purchase prior to April 9, 2008).

The credit phases out for individual taxpayers with modified adjusted gross income between $75,000 and $95,000 ($150,000 and $170,000 for joint filers) for the year of purchase.

A taxpayer is considered a first-time homebuyer if such individual had no ownership interest in a principal residence in the United

[11] For purposes of this description, the term ''account'' is used interchangeably to refer to a prepaid tuition benefit contract or a tuition savings account established pursuant to a qualified tuition program.

[12] Section 529 refers to contributors and designated beneficiaries, but does not define or otherwise refer to the term account owner, which is a commonly used term among qualified tuition programs.

States during the three-year period prior to the purchase of the home to which the credit applies.

No credit is allowed if the D.C. homebuyer credit is allowable for the taxable year the residence is purchased or a prior taxable year. A taxpayer is not permitted to claim the credit if the taxpayer's financing is from tax-exempt mortgage revenue bonds, if the taxpayer is a nonresident alien, or if the taxpayer disposes of the residence (or it ceases to be a principal residence) before the close of a taxable year for which a credit otherwise would be allowable.

The credit is recaptured ratably over fifteen years with no interest charge beginning in the second taxable year after the taxable year in which the home is purchased. For example, if the taxpayer purchases a home in 2008, the credit is allowed on the 2008 tax return, and repayments commence with the 2010 tax return. If the taxpayer sells the home (or the home ceases to be used as the principal residence of the taxpayer or the taxpayer's spouse) prior to complete repayment of the credit, any remaining credit repayment amount is due on the tax return for the year in which the home is sold (or ceases to be used as the principal residence). However, the credit repayment amount may not exceed the amount of gain from the sale of the residence to an unrelated person. For this purpose, gain is determined by reducing the basis of the residence by the amount of the credit to the extent not previously recaptured. No amount is recaptured after the death of a taxpayer. In the case of an involuntary conversion of the home, recapture is not accelerated if a new principal residence is acquired within a two year period. In the case of a transfer of the residence to a spouse or to a former spouse incident to divorce, the transferee spouse (and not the transferor spouse) will be responsible for any future recapture.

An election is provided to treat a home purchased in the eligible period in 2009 as if purchased on December 31, 2008 for purposes of claiming the credit on the 2008 tax return and for establishing the beginning of the recapture period. Taxpayers may amend their returns for this purpose.

HOUSE BILL

The provision waives the recapture of the credit for qualifying home purchases after December 31, 2008 and before July 1, 2009. This waiver of recapture applies without regard to whether the taxpayer elects to treat the purchase in 2009 as occurring on December 31, 2008. If the taxpayer disposes of the home or the home otherwise ceases to be the principal residence of the taxpayer within 36 months from the date of purchase, the present law rules for recapture of the credit will still apply.

Effective date.—The provision applies to residences purchased after December 31, 2008.

SENATE AMENDMENT

The Senate amendment repeals the existing section 36 for purchases on or after the date of enactment of the American Recovery and Reinvestment Act of 2009.

A taxpayer is allowed a new nonrefundable tax credit equal to the lesser of $15,000 ($7,500 for a married individual filing separately) or 10 percent of the purchase price of a principal residence. The credit is allowed for the tax year in which the taxpayer purchases the home unless the taxpayer makes an election as described below. The credit is allowed for qualifying home purchases after the date of enactment of the American Recovery and Reinvestment Act and on or before the date that is one year after such date of enactment.

The credit is limited to the excess of regular tax liability plus alternative minimum tax liability over the sum of other nonrefundable personal credits.

No credit is allowed for any purchase for which the section 36 first-time homebuyer credit or the D.C. homebuyer credit is allowable. If a credit is allowed under this provision in the case of any individual (and such individual's spouse, if married) with respect to the purchase of any principal residence, no credit is allowed with respect to the purchase of any other principal residence by such individual or a spouse of such individual.

If the taxpayer disposes of the residence (or it ceases to be a principal residence) at any time within 24 months after the date on which the taxpayer purchased the residence, then the credit shall be subject to recapture for the taxable year in which such disposition occurred (or in which the taxpayer failed to occupy the residence as a principal residence). No amount is recaptured after the death of a taxpayer or in the case of a member of the Armed Forces of the United States on active duty who fails to meet the residency requirement pursuant to a military order and incident to a permanent change of station. In the case of an involuntary conversion of the home, recapture is not accelerated if a new principal residence is acquired within a two year period. In the case of a transfer of the residence to a spouse or to a former spouse incident to divorce, the transferee spouse (and not the transferor spouse) will be responsible for any future recapture.

A further election is provided to treat a home purchased in the eligible period as if purchased on December 31, 2008 for purposes of claiming the credit on the 2008 tax return. Taxpayers may amend their returns for this purpose.

Effective date.—The provision applies to purchases after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement extends the existing homebuyer credit for qualifying home purchases before December 1, 2009. In addition, it increases the maximum credit amount to $8,000 ($4,000 for a married individual filing separately) and waives the recapture of the credit for qualifying home purchases after December 31, 2008 and before December 1, 2009. This waiver of recapture applies without regard to whether the taxpayer elects to treat the purchase in 2009 as occurring on December 31, 2008. If the taxpayer disposes of the home or the home otherwise ceases to be the principal residence of the taxpayer within 36 months from the date of purchase, the present law rules for recapture of the credit will apply.

The conference agreement modifies the coordination with the first-time homebuyer credit for residents of the District of Columbia under section 1400C. No credit under section 1400C shall be allowed to any taxpayer with respect to the purchase of a residence during 2009 if a credit under section 36 is allowable to such taxpayer (or the taxpayer's spouse) with respect to such purchase. Taxpayers thus qualify for the more generous national first-time homebuyer credit rather than the D.C. homebuyer credit for qualifying purchases in 2009. No credit under section 36 is allowed for a taxpayer who claimed the D.C. homebuyer credit in any prior taxable year.

The conference agreement removes the prohibition on claiming the credit if the residence is financed by the proceeds of a mortgage revenue bond, a qualified mortgage issue the interest on which is exempt from tax under section 103.

Effective date.—The provision applies to residences purchased after December 31, 2008.

7. Election to substitute grants to states for low-income housing projects in lieu of low-income housing credit allocation for 2009 (secs. 1302 and 1711 of the House bill, secs. 1404 and 1602 of the conference agreement, and sec. 42 of the Code)

PRESENT LAW

In general

The low-income housing credit may be claimed over a 10–year period by owners of certain residential rental property for the cost of rental housing occupied by tenants having incomes below specified levels.[13] The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

Volume limits

A low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the State or local housing credit agency. Generally, the aggregate credit authority provided annually to each State for calendar year 2009 is $2.30 per resident, with a minimum annual cap of $2,665,000 for certain small population States.[14] These amounts are indexed for inflation. Projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit do not require an allocation of the low-income housing credit.

Basic rule for Federal grants

The basis of a qualified building must be reduced by the amount of any federal grant with respect to such building.

HOUSE BILL

Low-income housing grant election amount

The Secretary of the Treasury shall make a grant to the State housing credit agency of each State in an amount equal to the low-income housing grant election amount.

The low-income housing grant election amount for a State is an amount elected by the State subject to certain limits. The maximum low-income housing grant election amount for a State may not exceed 85 percent of the product of ten and the sum of the State's: (1) unused housing credit ceiling for 2008; (2) any returns to the State during 2009 of credit allocations previously made by the State; (3) 40 percent of the State's 2009 credit allocation; and (4) 40 percent of the State's share of the national pool allocated in 2009, if any.

Grants under this provision are not taxable income to recipients.

Subawards to low-income housing credit buildings

A State receiving a grant under this provision is to use these monies to make subawards to finance the construction, or acquisition and rehabilitation of qualified low-income buildings as defined under the low-income housing credit. A subaward may be made to finance a qualified low-income building regardless of whether the building has an allocation of low-income housing credit. However, in the case of qualified low-income buildings without allocations of the low-income housing credit, the State housing credit agency must make a determination that the subaward with respect to such building will increase the total funds available to the State to build and rehabilitate affordable housing. In conjunction with this determination the State housing credit agency must establish a process in which applicants for the subawards must demonstrate

[13] Sec. 42.

[14] Rev. Proc. 2008–66.

good faith efforts to obtain investment commitments before the agency makes such subawards.

Any building receiving grant money from a subaward is required to satisfy the low-income housing credit rules. The State housing credit agency shall perform asset management functions to ensure compliance with the low-income housing credit rules and the long-term viability of buildings financed with these subawards.[15] Failure to satisfy the low-income housing credit rules will result in recapture enforced by means of liens or other methods that the Secretary of the Treasury (or delegate) deems appropriate. Any such recapture will be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury.

Any grant funds not used to make subawards before January 1, 2011 and any grant monies from subawards returned on or after January 1, 2011 must be returned to the Secretary of the Treasury.

Basic rule for Federal grants

The grants received under this provision do not reduce tax basis of a qualified low-income building.

Reduction in low-income housing credit volume limit for 2009

The otherwise applicable low-income housing credit volume limit for any State for 2009 is reduced by the amount taken into account in determining the low-income housing grant election amount.

Appropriations

The provision appropriates to the Secretary of the Treasury such sums as may be necessary to carry out this provision.

Effective date

The provision is effective on the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

8. Election to accelerate the low-income housing credit allocation (sec. 1903 of the Senate amendment)

PRESENT LAW

In general

The low-income housing credit may be claimed over a 10-year period by owners of certain residential rental property for the cost of rental housing occupied by tenants having incomes below specified levels.[16] The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

Volume limits

A low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the State or local housing credit agency. Generally, the aggregate credit authority provided annually to each State for calendar year 2009 is $2.30 per resident, with a minimum annual cap of $2,665,000 for certain small population States.[17] These amounts are indexed for inflation. Projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit do not require an allocation of the low-income housing credit.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision allows a taxpayer election to double the amount of the otherwise allowable low-income housing tax credit with respect to a project for each of the taxpayer's first three taxable years beginning after December 31, 2008. The otherwise allowable low-income housing tax credit over the remaining credit period for the project with respect to a taxpayer making the election will be reduced on a pro rata basis by an amount equal to the acceleration in the first three years.

The election is only available for non federally subsidized low-income housing projects placed in service after December 31, 2008 which are pursuant to a low-income housing credit allocation from a State housing credit ceiling before 2011 (e.g. an allocation of 2011 credit ceiling makes the project ineligible for the election). Further, the election is limited to low-income housing tax credit initial investments made pursuant to a binding agreement by the taxpayer after December 31, 2008 and before January 1, 2011. For example, a taxpayer could not make this election with respect to initial investments made pursuant to a binding agreement in existence on January 1, 2008 even though the building is not placed-in-service until after December 31, 2008.

The election shall be made in a time and manner prescribed by the Secretary of the Treasury (or his delegate). The election is irrevocable. In the case of a partnership the election can only be made at the partnership level, not by individual partners.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

9. Exclusion from gross income for unemployment compensation benefits (sec. 1007 of the Senate amendment, sec. 1007 of the conference agreement, and sec. 85 of the Code)

PRESENT LAW

An individual must include in gross income any unemployment compensation benefits received under the laws of the United States or any State.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that up to $2,400 of unemployment compensation benefits received in 2009 are excluded from gross income by the recipient.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

10. Deduction for interest on indebtedness for the purchase of qualified motor vehicles (sec. 1008 of the Senate amendment)

PRESENT LAW

In the case of a taxpayer other than a corporation, no deduction is allowed for personal interest paid or accrued during the taxable year. Personal interest is all interest other than 1) interest paid or accrued on indebtedness properly allocable to a trade or business; 2) investment interest; 3) interest which is taken into account in computing income or loss from a passive activity of the taxpayer; 4) qualified home mortgage interest; 5) certain estate tax related interest; and 6) certain interest on educational loans.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides an above-the-line deduction for qualified motor vehicle interest. Qualified motor vehicle interest means any interest paid or accrued during the taxable year on any indebtedness incurred after November 12, 2008 and before January 1, 2010 to acquire a qualified motor vehicle and secured by such vehicle. It also includes interest on any indebtedness secured by such qualified motor vehicle resulting from the refinancing of otherwise qualified motor vehicle interest. The amount of qualified indebtedness is limited to $49,500 ($24,750 in the case of a married individual filing separately). The deduction is phased out for taxpayers with modified adjusted gross income between $125,000 and $135,000 ($250,000 and $260,000 in the case of a joint return).

If the indebtedness includes the amounts of any State or local sales or excise taxes paid or accrued by the taxpayer in connection with the acquisition of a qualified motor vehicle for which a deduction is allowed under section 164(a)(6) (relating to the deduction of State and local sales or excise taxes on qualified motor vehicles), the aggregate amount of such indebtedness taken into account shall be reduced, but not below zero, by the amount of any such taxes for which such deduction is allowed.

A qualified motor vehicle means a passenger automobile or light truck acquired for use by the taxpayer and not for resale after November 12, 2008 and before January 1, 2010, the original use of which commences with the taxpayer and which has a gross vehicle weight rating of not more than 8,500 pounds.

Any person who is engaged in a trade or business and receives from any individual $600 or more of qualified motor vehicle interest for any calendar year is required to report certain information as the Secretary may prescribe and furnish information to such individual on or before January 31 of the year following the calendar year for which the interest is received.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

11. Deduction for State sales tax and excise tax on the purchase of qualified motor vehicles (sec. 1009 of the Senate amendment, sec. 1008 of the conference agreement, and secs. 63 and 164 of the Code)

PRESENT LAW

In general, a deduction from gross income is allowed for certain taxes for the taxable year within which the taxes are paid or accrued. These include State and local, and foreign, real property taxes; State and local personal property taxes; State, local, and foreign income, war profits, and excess profit taxes; generation skipping transfer taxes; environmental taxes imposed by section 59A; and taxes paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212 (relating to the expenses for production of income). At the election of the taxpayer for the taxable year, a taxpayer may deduct State and local sales taxes in lieu of State and local income taxes. No deduction is allowed for any general sales tax imposed with respect to an item at a rate other than the general rate of tax, except in the case of a lower rate of tax

[15] The State housing credit agency may collect reasonable fees from subaward recipients to cover the expenses of the agency's asset management duties. Alternatively, the State housing credit agency may retain a thirdparty to perform these asset management duties.

[16] Sec. 42.

[17] Rev. Proc. 2008–66.

applicable to items of food, clothing, medical supplies, and motor vehicles. In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides an above-the-line deduction for qualified motor vehicle taxes. Qualified motor vehicle taxes include any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle. A qualified motor vehicle means a passenger automobile or light truck acquired for use by the taxpayer and not for resale after November 12, 2008 and before January 1, 2010, the original use of which commences with the taxpayer and which has a gross vehicle weight rating of not more than 8,500 pounds.

The deduction is limited to sales tax of up to $49,500.

The deduction is phased out for taxpayers with modified adjusted gross income between $125,000 and $135,000 ($250,000 and $260,000 in the case of a joint return).

Notwithstanding other provisions of present law, qualified motor vehicle taxes are not treated as part of the cost of acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.

A taxpayer who makes an election to deduct State and local sales taxes for the taxable year shall not be allowed the above-the-line deduction for qualified motor vehicle taxes.

If the indebtedness described in section 163(h)(5)(A) includes the amounts of any State or local sales or excise taxes paid or accrued by the taxpayer in connection with the acquisition of a qualified motor vehicle, the aggregate amount of such indebtedness taken into account shall be reduced, but not below zero, by the amount of any such taxes for which a deduction is allowed.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment. The conference agreement provides a deduction for qualified motor vehicle taxes. It expands the definition of taxes allowed as a deduction to include qualified motor vehicle taxes paid or accrued within the taxable year. A taxpayer who itemizes and makes an election to deduct State and local sales taxes for qualified motor vehicles for the taxable year shall not be allowed the increased standard deduction for qualified motor vehicle taxes.

Qualified motor vehicle taxes include any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle. A qualified motor vehicle means a passenger automobile, light truck, or motorcycle which has a gross vehicle weight rating of not more than 8,500 pounds, or a motor home acquired for use by the taxpayer after the date of enactment and before January 1, 2010, the original use of which commences with the taxpayer.

The deduction is limited to the tax on up to $49,500 of the purchase price of a qualified motor vehicle. The deduction is phased out for taxpayers with modified adjusted gross income between $125,000 and $135,000 ($250,000 and $260,000 in the case of a joint return).

Effective date.—The provision is effective for purchases on or after the date of enactment and before January 1, 2010.

12. Extend alternative minimum tax relief for individuals (secs. 1011 and 1012 of the Senate amendment, secs. 1011 and 1012 of the conference agreement, and secs. 26 and 55 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax (''AMT'') on individuals. The AMT is the amount by which the tentative minimum tax exceeds the regular income tax. An individual's tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income (''AMTI'') as exceeds the exemption amount. The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments.

The exemption amounts are: (1) $69,950 for taxable years beginning in 2008 and $45,000 in taxable years beginning after 2008 in the case of married individuals filing a joint return and surviving spouses; (2) $46,200 for taxable years beginning in 2008 and $33,750 in taxable years beginning after 2008 in the case of other unmarried individuals; (3) $34,975 for taxable years beginning in 2008 and $22,500 in taxable years beginning after 2008 in the case of married individuals filing separate returns; and (4) $22,500 in the case of an estate or trust. The exemption amount is phased out by an amount equal to 25 percent of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses, (2) $112,500 in the case of other unmarried individuals, and (3) $75,000 in the case of married individuals filing separate returns or an estate or a trust. These amounts are not indexed for inflation.

Present law provides for certain nonrefundable personal tax credits (i.e., the dependent care credit, the credit for the elderly and disabled, the adoption credit, the child credit, the credit for interest on certain home mortgages, the Hope Scholarship and Lifetime Learning credits, the credit for savers, the credit for certain nonbusiness energy property, the credit for residential energy efficient property, the credit for plug-in electric drive motor vehicles; and the D.C. first-time homebuyer credit).

For taxable years beginning before 2009, the nonrefundable personal credits are allowed to the extent of the full amount of the individual's regular tax and alternative minimum tax.

For taxable years beginning after 2008, the nonrefundable personal credits (other than the adoption credit, the child credit, the credit for savers, the credit for residential energy efficient property, and the credit for plug-in electric drive motor vehicles) are allowed only to the extent that the individual's regular income tax liability exceeds the individual's tentative minimum tax, determined without regard to the minimum tax foreign tax credit. The adoption credit, the child credit, the credit for savers, the credit for residential energy efficient property, and the credit for plug-in electric drive motor vehicles are allowed to the full extent of the individual's regular tax and alternative minimum tax.[18]

HOUSE BILL

No provision.

[18] The rule applicable to the adoption credit and child credit is subject to the EGTRRA sunset.

SENATE AMENDMENT

The Senate amendment provides that the individual AMT exemption amount for taxable years beginning in 2009 is $70,950, in the case of married individuals filing a joint return and surviving spouses; (2) $46,700 in the case of other unmarried individuals; and (3) $35,475 in the case of married individuals filing separate returns.

For taxable years beginning in 2009, the provision allows an individual to offset the entire regular tax liability and alternative minimum tax liability by the nonrefundable personal credits.

Effective date.—The provision is effective for taxable years beginning in 2009.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

B. TAX INCENTIVES FOR BUSINESS

1. Special allowance for certain property acquired during 2009 and extension of election to accelerate AMT and research credits in lieu of bonus depreciation (sec. 1401 of the House bill, sec. 1201 of the Senate amendment, sec. 1201 of the conference agreement, and sec. 168(k) of the Code)

PRESENT LAW

An additional first-year depreciation deduction is allowed equal to 50 percent of the adjusted basis of qualified property placed in service during 2008 (and 2009 for certain longer-lived and transportation property).[19] The additional first-year depreciation deduction is allowed for both regular tax and alteative minimum tax purposes for the taxable year in which the property is placed in service.[20] The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, there are no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The taxpayer may elect out of additional first-year depreciation for any class of property for any taxable year.

The interaction of the additional first-year depreciation allowance with the otherwise applicable depreciation allowance may be illustrated as follows. Assume that in 2008, a taxpayer purchases new depreciable property and places it in service.[21] The property's cost is $1,000, and it is five-year property subject to the half-year convention. The amount of additional first-year depreciation allowed is $500. The remaining $500 of the cost of the property is deductible under the rules applicable to 5-year property. Thus, 20 percent, or $100, is also allowed as a depreciation deduction in 2008. The total depreciation deduction with respect to the property for 2008 is $600. The remaining $400 cost of the property is recovered under otherwise applicable rules for computing depreciation.

In order for property to qualify for the additional first-year depreciation deduction it must meet all of the following requirements. First, the property must be (1) property to which MACRS applies with an applicable recovery period of 20 years or less, (2) water

[19] Sec. 168(k). The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or instead is subject to capitalization under section 263 or section 263A.

[20] However, the additional first-year depreciation deduction is not allowed for purposes of computing earnings and profits.

[21] Assume that the cost of the property is not eligible for expensing under section 179.

utility property (as defined in section 168(e)(5)), (3) computer software other than computer software covered by section 197, or (4) qualified leasehold improvement property (as defined in section 168(k)(3)).[22]

Second, the original use[23] of the property must commence with the taxpayer after December 31, 2007.[24] Third, the taxpayer must purchase the property within the applicable time period. Finally, the property must be placed in service after December 31, 2007, and before January 1, 2009. An extension of the placed in service date of one year (i.e., to January 1, 2010) is provided for certain property with a recovery period of ten years or longer and certain transportation property.[25] Transportation property is defined as tangible personal property used in the trade or business of transporting persons or property.

The applicable time period for acquired property is (1) after December 31, 2007, and before January 1, 2009, but only if no binding written contract for the acquisition is in effect before January 1, 2008, or (2) pursuant to a binding written contract which was entered into after December 31, 2007, and before January 1, 2009.[26] With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after December 31, 2007, and before January 1, 2009. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer. For property eligible for the extended placed in service date, a special rule limits the amount of costs eligible for the additional first-year depreciation. With respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2009 (''progress expenditures'') is eligible for the additional first-year depreciation.[27]

Property does not qualify for the additional first-year depreciation deduction when the user of such property (or a related party) would not have been eligible for the additional first-year depreciation deduction if the user (or a related party) were treated as the owner. For example, if a taxpayer sells to a related party property that was under construction prior to January 1, 2008, the property does not qualify for the additional first-year depreciation deduction. Similarly, if a taxpayer sells to a related party property that was subject to a binding written contract prior to January 1, 2008, the property does not qualify for the additional first-year depreciation deduction. As a further example, if a taxpayer (the lessee) sells property in a sale-leaseback arrangement, and the property otherwise would not have qualified for the additional first-year depreciation deduction if it were owned by the taxpayer-lessee, then the lessor is not entitled to the additional first-year depreciation deduction.

The limitation on the amount of depreciation deductions allowed with respect to certain passenger automobiles (sec. 280F) is increased in the first year by $8,000 for automobiles that qualify (and do not elect out of the increased first year deduction). The $8,000 increase is not indexed for inflation.

Corporations otherwise eligible for additional first year depreciation under section 168(k) may elect to claim additional research or minimum tax credits in lieu of claiming depreciation under section 168(k) for ''eligible qualified property'' placed in service after March 31, 2008 and before December 31, 2008.[28] A corporation making the election forgoes the depreciation deductions allowable under section 168(k) and instead increases the limitation under section 38(c) on the use of research credits or section 53(c) on the use of minimum tax credits.[29] The increases in the allowable credits are treated as refundable for purposes of this provision. The depreciation for qualified property is calculated for both regular tax and AMT purposes using the straight-line method in place of the method that would otherwise be used absent the election under this provision.

The research credit or minimum tax credit limitation is increased by the bonus depreciation amount, which is equal to 20 percent of bonus depreciation[30] for certain eligible qualified property that could be claimed absent an election under this provision. Generally, eligible qualified property included in the calculation is bonus depreciation property that meets the following requirements: (1) the original use of the property must commence with the taxpayer after March 31, 2008; (2) the taxpayer must purchase the property either (a) after March 31, 2008, and before January 1, 2009, but only if no binding written contract for the acquisition is in effect before April 1, 2008,[31] or (b) pursuant to binding written contract which was entered into after March 31, 2008, and before January 1, 2009;[32] and (3) the property must be placed in service after March 31, 2008, and before January 1, 2009 (January 1, 2010 for certain longer-lived and transportation property).

The bonus depreciation amount is limited to the lesser of: (1) $30 million, or (2) six percent of the sum of research credit carryforwards from taxable years beginning before January 1, 2006 and minimum tax credits allocable to the adjusted minimum tax imposed for taxable years beginning before January 1, 2006. All corporations treated as a single employer under section 52(a) are treated as one taxpayer for purposes of the limitation, as well as for electing the application of this provision.

HOUSE BILL

The provision extends the additional first-year depreciation deduction for one year generally through 2009 (through 2010 for certain longer-lived and transportation property).[33]

Effective date.—The provision is effective for property placed in service after December 31, 2008.

SENATE AMENDMENT

The provision extends the additional first-year depreciation deduction for one year, generally through 2009 (through 2010 for certain longer-lived and transportation property).

The provision generally permits corporations to increase the research credit or minimum tax credit limitation by the bonus depreciation amount with respect to certain property placed in service in 2009 (2010 in the case of certain longer-lived and transportation property). The provision applies with respect to extension property, which is defined as property that is eligible qualified property solely because it meets the requirements under the extension of the special allowance for certain property acquired during 2009.

Under the provision, a taxpayer that has made an election to increase the research credit or minimum tax credit limitation for eligible qualified property for its first taxable year ending after March 31, 2008, may choose not to make this election for extension property. Further, the provision allows a taxpayer that has not made an election for eligible qualified property for its first taxable year ending after March 31, 2008, to make the election for extension property for its first taxable year ending after December 31, 2008, and for each subsequent year. In the case of a taxpayer electing to increase the research or minimum tax credit for both eligible qualified property and extension property, a separate bonus depreciation amount, maximum amount, and maximum increase amount is computed and applied to each group of property.[34]

Effective date.—The extension of the additional first-year depreciation deduction is generally effective for property placed in service after December 31, 2008.

The extension of the election to accelerate AMT and research credits in lieu of bonus depreciation is effective for taxable years ending after December 31, 2008.

[22] A special rule precludes the additional first-year depreciation deduction for any property that is required to be depreciated under the alternative depreciation system of MACRS.

[23] The term ''original use'' means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

If in the normal course of its business a taxpayer sells fractional interests in property to unrelated third parties, then the original use of such property begins with the first user of each fractional interest (i.e., each fractional owner is considered the original user of its proportionate share of the property).

[24] A special rule applies in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property would be treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback.

If property is originally placed in service by a lessor (including by operation of section 168(k)(2)(D)(i)), such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

[25] In order for property to qualify for the extended placed in service date, the property is required to have an estimated production period exceeding one year and a cost exceeding $1 million.

[26] Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to January 1, 2008.

[27] For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to sec. 46(d)(3) as in effect prior to the Tax Reform Act of 1986 shall apply.

[28] Sec. 168(k)(4). In the case of an electing corporation that is a partner in a partnership, the corporate partner's distributive share of partnership items is determined as if section 168(k) does not apply to any eligible qualified property and the straight line method is used to calculate depreciation of such property.

[29] Special rules apply to an applicable partnership.

[30] For this purpose, bonus depreciation is the difference between (i) the aggregate amount of depreciation for all eligible qualified property determined if section 168(k)(1) applied using the most accelerated depreciation method (determined without regard to this provision), and shortest life allowable for each property, and (ii) the amount of depreciation that would be determined if section 168(k)(1) did pot ply using the same method and life for each property.

[31] In the case of passenger aircraft, the written binding contract limitation does not apply.

[32] Special rules apply to property manufactured, constructed, or produced by the taxpayer for use by the taxpayer.

[33] The provision does not modify the property eligible for the election to accelerate AMT and research credits in lieu of bonus depreciation under section 168(k)(4). However, the provision includes a technical amendment to section 168(k)(4)(D) providing that no written binding contract for the acquisition of eligible qualified property may be in effect before April 1, 2008 (effective for taxable years ending after March 31, 2008).

[34] In computing the maximum amount, the maximum increase amount for extension property is reduced by bonus depreciation amounts for preceding taxable years only with respect to extension property.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Temporary increase in limitations on expensing of certain depreciable business assets (sec. 1402 of the House bill, sec. 1202 of the Senate amendment, sec. 1202 of the conference agreement, and sec. 179 of the Code)

PRESENT LAW

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or ''expense'') such costs under section 179. Present law provides that the maximum amount a taxpayer may expense for taxable years beginnin in 2008 is $250,000 of the cost of qualifying property placed in service for the taxable year.[35] For taxable years beginning in 2009 and 2010, the limitation is $125,000. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2011 is treated as qualifying property. For taxable years beginning in 2008, the $250,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $800,000. For taxable years beginning in 2009 and 2010, the $125,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $500,000. The $125,000 and $500,000 amounts are indexed for inflation in taxable years beginning in 2009 and 2010.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179. An expensing election is made under rules prescribed by the Secretary.[36]

For taxable years beginning in 2011 and thereafter (or before 2003), the following rules apply. A taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. The $25,000 and $200,000 amounts are not indexed for inflation. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business (not including off-the-shelf computer software). An expensing election may be revoked only with consent of the Commissioner.[37]

HOUSE BILL

The provision extends the $250,000 and $800,000 amounts to taxable years beginning in 2009.

Effective date.—The provision is effective for taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Five-year carryback of operating losses (secs. 1411 and 1412 of the House bill, secs. 1211 and 1212 of the Senate amendment, sec. 1211 of the conference agreement, and sec. 172 of the Code)

PRESENT LAW

Under present law, a net operating loss (''NOL'') generally means the amount by which a taxpayer's business deductions exceed its gross income. In general, an NOL may be carried back two years and carried over 20 years to offset taxable income in such years.[38] NOLs offset taxable income in the order of the taxable years to which the NOL may be carried.[39]

The alternative minimum tax rules provide that a taxpayer's NOL deduction cannot reduce the taxpayer's alternative minimum taxable income (''AMTI'') by more than 90 percent of the AMTI.

Different rules apply with respect to NOLs arising in certain circumstances. A three-year carryback applies with respect to NOLs (1) arising from casualty or theft losses of individuals, or (2) attributable to Presidentially declared disasters for taxpayers engaged in a farming business or a small business. A five-year carryback applies to NOLs (1) arising from a farming loss (regardless of whether the loss was incurred in a Presidentially declared disaster area), (2) certain amounts related to Hurricane Katrina, Gulf Opportunity Zone, and Midwestern Disaster Area, or (3) qualified disaster losses.[40] Special rules also apply to real estate investment trusts (no carryback), specified liability losses (10–year carryback), and excess interest losses (no carryback to any year preceding a corporate equity reduction transaction). Additionally, a special rule applies to certain electric utility companies.

In the case of a life insurance company, present law allows a deduction for the operations loss carryovers and carrybacks to the taxable year, in lieu of the deduction for net operation losses allowed to other corporations.[41] A life insurance company is permitted to treat a loss from operations (as defined under section 810(c)) for any taxable year as an operations loss carryback to each of the three taxable years preceding the loss year and an operations loss carryover to each of the 15 taxable years following the loss year.[42] Special rules apply to new life insurance companies.

HOUSE BILL

The House bill provides an election[43] to increase the present-law carryback period for an applicable 2008 or 2009 NOL from two years to any whole number of years elected by the taxpayer which is more than two and less than six. An applicable NOL is the taxpayer's NOL for any taxable year ending in 2008 or 2009, or if elected by the taxpayer, the NOL for any taxable year beginning in 2008 or 2009. If an election is made to increase the carryback period, the applicable NOL is permanently reduced by 10 percent.

These provisions may be illustrated by the following example. Taxpayer incurs a $100 NOL for its taxable year ended January 31, 2008 and elects to carryback the NOL five years to its taxable year ended January 31, 2003. Under the provision, Taxpayer must first permanently reduce the NOL by 10 percent, or $10, and then may carryback the $90 NOL to its taxable year ended January 31, 2003.

The provision also suspends the 90–percent limitation on the use of any alternative tax NOL deduction attributable to carrybacks of losses from taxable years ending during 2008 or 2009, and carryovers of losses to such taxable years (this rule applies to taxable years beginning in 2008 or 2009 if an election is in place to use such years as applicable NOLs).

For life insurance companies, the provision provides an election to increase the present-law carryback period for an applicable loss from operations from three years to four or five years. An applicable loss from operations is the taxpayer's loss from operations for any taxable year ending in 2008 or 2009, or if elected by the taxpayer, the loss from operations for any taxable year beginning in 2008 or 2009. If an election is made to increase the carryback period, the applicable loss from operations is permanently reduced by 10 percent.

The provision does not apply to: (1) any taxpayer if (a) the Federal Government acquires, at any time,[44] an equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008, or (b) the Federal Government acquires, at any time, any warrant (or other right) to acquire any equity interest with respect to the taxpayer pursuant to such Act; (2) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (3) any taxpayer that in 2008 or 2009[45] is a member of the same affiliated group (as defined in section 1504 without regard to subsection (b) thereof) as a taxpayer to which the provision does not otherwise apply.

Effective date.—The provision is generally effective for net operating losses arising in taxable years ending after December 31, 2007. The modification to the alternative tax NOL deduction applies to taxable years ending after 1997.[46] The modification with respect to operating loss deductions of life insurance companies applies to losses from operations arising in taxable years ending after December 31, 2007.

For an NOL or loss from operations for a taxable year ending before the enactment of the provision, the provision includes the following transition rules: (1) any election to

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[35] Additional section 179 incentives are provided with respect to qualified property meeting applicable requirements that is used by a business in an empowerment zone (sec. 1397A) or a renewal community (sec. 1400J), qualified section 179 Gulf Opportunity Zone property (sec. 1400N(e)), qualified Recovery Assistance property placed in service in the Kansas disaster area (Pub. L. No. 110–234, sec. 15345 (2008)), and qualified disaster assistance property (sec. 179(e)).

[36] Sec. 179(c)(1). Under Treas. Reg. sec. 1.179–5, applicable to property placed in service in taxable years beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke an election under section 179 without the consent of the Commissioner on an amended Federal tax return for that taxable year. This amended return must be filed within the time prescribed by law for filing an amended return for the taxable year. T.D. 9209, July 12, 2005.

[37] Sec. 179(c)(2).

[38] Sec. 172(b)(1)(A).

[39] Sec. 172(b)(2).

[40] Sec. 172(b)(1)(J).

[41] Secs. 810, 805(a)(5).

[42] Sec. 810(b)(1).

[43] For all elections under this provision, the common parent of a group of corporations filing a consolidated return makes the election, which is binding on all such corporations.

[44] For example, if the Federal government acquires an equity interest in the taxpayer during 2010, or in later years, the taxpayer is not entitled to the extended carryback rules under this provision. If the carryback has previously been claimed, amended filings may be necessary to reflect this disallowance.

[45] For example, a taxpayer with an NOL in 2008 that in 2010 joins an affiliated group with a member in which the Federal Government has an equity interest pursuant to the Emergency Economic Stabilization Act of 2008 may not utilize the extended carryback rules under this provision with regard to the 2008 NOL. The taxpayer is required to amend prior filings to reflect the permitted carryback period.

[46] NOL deductions from as early as taxable years ending after 1997 may be carried forward to 2008 and utilize the provision suspending the 90 percent limitation on alternative tax NOL deductions.

waive the carryback period under either sections 172(b)(3) or 810(b)(3) with respect to such loss may be revoked before the applicable date; (2) any election to increase the carryback period under this provision is treated as timely made if made before the applicable date; and (3) any application for a tentative carryback adjustment under section 6411(a) with respect to such loss is treated as timely filed if filed before the applicable date. For purposes of the transition rules, the applicable date is the date which is 60 days after the date of the enactment of the provision.

SENATE AMENDMENT

The Senate amendment is generally the same as the House bill, except that the Senate amendment does not include the permanent reduction of the NOL for taxpayers electing to increase the carryback period.

Effective date.—The effective date follows the House bill.

CONFERENCE AGREEMENT

The conference agreement provides an eligible small business with an election to increase the present-law carryback period for an applicable 2008 NOL from two years to any whole number of years elected by the taxpayer that is more than two and less than six.[47] An eligible small business is a taxpayer meeting a $15,000,000 gross receipts test.[48] An applicable NOL is the taxpayer's NOL for any taxable year ending in 2008, or if elected by the taxpayer, the NOL for any taxable year beginning in 2008. However, any election under this provision may be made only with respect to one taxable year.

Effective date.—The conference agreement provision is effective for net operating losses arising in taxable yea ending after December 31, 2007.

For an NOL for a taxable year ending before the enactment of the provision, the provision includes the following transition rules: (1) any election to waive the carryback period under either section 172(b)(3) with respect to such loss may be revoked before the applicable date; (2) any election to increase the carryback period under this provision is treated as timely made if made before the applicable date; and (3) any application for a tentative carryback adjustment under section 6411(a) with respect to such loss is treated as timely filed if filed before the applicable date. For purposes of the transition rules, the applicable date is the date which is 60 days after the date of the enactment of the provision.

4. Estimated tax payments (sec. 1212 of the conference agreement and sec. 6654 of the Code)

PRESENT LAW

Under present law, the income tax system is designed to ensure that taxpayers pay taxes throughout the year based on their income and deductions. To the extent that tax is not collected through withholding, taxpayers are required to make quarterly estimated payments of tax, the amount of which is determined by reference to the required annual payment. The required annual payment is the lesser of 90 percent of the tax shown on the return or 100 percent of the tax shown on the return for the prior taxable year (110 percent if the adjusted gross income for the preceding year exceeded $150,000). An underpayment results if the required payment exceeds the amount (if any) of the installment paid on or before the due date of the installment. The period of the underpayment runs from the due date of the installment to the earlier of (1) the 15th day of the fourth month following the close of the taxable year or (2) the date on which each portion of the underpayment is made. If a taxpayer fails to pay the required estimated tax payments under the rules, a penalty is imposed in an amount determined by applying the underpayment interest rate to the amount of the underpayment for the period of the underpayment. The penalty for failure to pay estimated tax is the equivalent of interest, which is based on the time value of money.

Taxpayers are not liable for a penalty for the failure to pay estimated tax in certain circumstances. The statute provides exceptions for U.S. persons who did not have a tax liability the preceding year, if the tax shown on the return for the taxable year (or, if no return is filed, the tax), reduced by withholding, is less than $1,000, or the taxpayer is a recently retired or disabled person who satisfies the reasonable cause exception.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that the required annual estimated tax payments of a qualified individual for taxable years beginning in 2009 is not greater than 90 percent of the tax liability shown on the tax return for the preceding taxable year. A qualified individual means any individual if the adjusted gross income shown on the tax return for the preceding taxable year is less than $500,000 ($250,000 if married filing separately) and the individual certifies that at least 50 percent of the gross income shown on the return for the preceding taxable year was income from a small trade or business. For purposes of this provision, a small trade or business means any trade or business that employed no more than 500 persons, on average, during the calendar year ending in or with the preceding taxable year.

Effective date.—The proposal is effective on the date of enactment.

5. Modification of work opportunity tax credit (sec. 1421 of the House bill, sec. 1221 of the Senate amendment, sec. 1221 of the conference agreement, and sec. 51 of the Code)

PRESENT LAW

In general

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of nine targeted groups. The amount of the credit available to an employer is determined by the amount of qualified wages paid by the employer. Generally, qualified wages consist of wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer (two years in the case of an individual in the long-term family assistance recipient category).

Targeted groups eligible for the credit

Generally an employer is eligible for the credit only for qualified wages paid to members of a targeted group.

(1) Families receiving TANF

An eligible recipient is an individual certified by a designated local employment agency (e.g., a State employment agency) as being a member of a family eligible to receive benefits under the Temporary Assistance for Needy Families Program (''TANF'') for a period of at least nine months part of which is during the 18–month period ending on the hiring date. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for the TANF.

(2) Qualified veteran

There are two subcategories of qualified veterans related to eligibility for Food stamps and compensation for a service-connected disability.

Food stamps

A qualified veteran is a veteran who is certified by the designated local agency as a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977.

Entitled to compensation for a service-connection disability

A qualified veteran also includes an individual who is certified as entitled to compensation for a service-connected disability and: (1) having a hiring date which is not more than one year after having been discharged or released from active duty in the Armed Forces of the United States; or (2) having been unemployed for six months or more (whether or not consecutive) during the one-year period ending on the date of hiring.

Definitions

For these purposes, being entitled to compensation for a service-connected disability is defined with reference to section 101 of Title 38, U.S. Code, which means having a disability rating of 10 percent or higher for service connected injuries.

For these purposes, a veteran is an individual who has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability. However, any individual who has served for a period of more than 90 days during which the individual was on active duty (other than for training) is not a qualified veteran if any of this active duty occurred during the 60–day period ending on the date the individual was hired by the employer. This latter rule is intended to prevent employers who hire current members of the armed services (or those departed from service within the last 60 days) from receiving the credit.

(3) Qualified ex-felon

A qualified ex-felon is an individual certified as: (1) having been convicted of a felony under any State or Federal law; and (2) having a hiring date within one year of release from prison or the date of conviction.

(4) Designated community residents

A designated community resident is an individual certified as being at least age 18 but not yet age 40 on the hiring date and as having a principal place of abode within an empowerment zone, enterprise community, renewal community or a rural renewal community. For these purposes, a rural renewal county is a county outside a metropolitan statistical area (as defined by the Office of Management and Budget) which had a net population loss during the five-year periods 1990–1994 and 1995–1999. Qualified wages do not include wages paid or incurred for services performed after the individual moves outside an empowerment zone, enterprise community, renewal community or a rural renewal community.

(5) Vocational rehabilitation referral

A vocational rehabilitation referral is an individual who is certified by a designated local agency as an individual who has a

[47] For all elections under this provision, the common parent of a group of corporations filing a consolidated return makes the election, which is binding on all such corporations.

[48] For this purpose, the gross receipt test of sec. 448(c) is applied by substituting $15,000,000 for, $5,000,000 each place it appears.

physical or mental disability that constitutes a substantial handicap to employment and who has been referred to the employer while receiving, or after completing: (a) vocational rehabilitation services under an individualized, written plan for employment under a State plan approved under the Rehabilitation Act of 1973; (b) under a rehabilitation plan for veterans carried out under Chapter 31 of Title 38, U.S. Code; or (c) an individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act. Certification will be provided by the designated local employment agency upon assurances from the vocational rehabilitation agency that the employee has met the above conditions.

(6) Qualified summer youth employee

A qualified summer youth employee is an individual: (a) who performs services during any 90–day period between May 1 and September 15; (b) who is certified by the designated local agency as being 16 or 17 years of age on the hiring date; (c) who has not been an employee of that employer before; and (d) who is certified by the designated local agency as having a principal place of abode within an empowerment zone, enterprise community, or renewal community (as defined under Subchapter U of Subtitle A, Chapter 1 of the Internal Revenue Code). As with designated community residents, no credit is available on wages paid or incurred for service performed after the qualified summer youth moves outside of an empowerment zone, enterprise community, or renewal community. If, after the end of the 90–day period, the employer continues to employ a youth who was certified during the 90–day period as a member of another targeted group, the limit on qualified first year wages will take into account wages paid to the youth while a qualified summer youth employee.

(7) Qualified food stamp recipient

A qualified food stamp recipient is an individual at least age 18 but not yet age 40 certified by a designated local employment agency as being a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for a period of at least six months ending on the hiring date. In the case of families that cease to be eligible for food stamps under section 6(o) of the Food Stamp Act of 1977, the six-month requirement is replaced with a requirement that the family has been receiving food stamps for at least three of the five months ending on the date of hire. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for a food stamp program under the Food Stamp Act of 1977.

(8) Qualified SSI recipient

A qualified SSI recipient is an individual designated by a local agency as receiving supplemental security income (''SSI'') benefits under Title XVI of the Social Security Act for any month ending within the 60–day period ending on the hiring date.

(9) Long-term family assistance recipients

A qualified long-term family assistance recipient is an individual certified by a designated local agency as being: (a) a member of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (b) a member of a family that has received such family assistance for a total of at least 18 months (whether or not consecutive) after August 5, 1997 (the date of enactment of the welfare-to-work tax credit[49] if the individual is hired within two years after the date that the 18–month total is reached; or (c) a member of a family who is no longer eligible for family assistance because of either Federal or State time limits, if the individual is hired within two years after the Federal or State time limits made the family ineligible for family assistance.

Qualified wages

Generally, qualified wages are defined as cash wages paid by the employer to a member of a targeted group. The employer's deduction for wages is reduced by the amount of the credit.

For purposes of the credit, generally, wages are defined by reference to the FUTA definition of wages contained in sec. 3306(b) (without regard to the dollar limitation therein contained). Special rules apply in the case of certain agricultural labor and certain railroad labor.

Calculation of the credit

The credit available to an employer for qualified wages paid to members of all targeted groups except for long-term family assistance recipients equals 40 percent (25 percent for employment of 400 hours or less) of qualified first-year wages. Generally, qualified first-year wages are qualified wages (not in excess of $6,000) attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is $2,400 (40 percent, of the first $6,000 of qualified first-year wages). With respect to qualified summer youth employees, the maximum credit is $1,200 (40 percent of the first $3,000 of qualified first-year wages). Except for long-term family assistance recipients, no credit is allowed for second-year wages.

In the case of long-term family assistance recipients, the credit equals 40 percent (25 percent for employment of 400 hours or less) of $10,000 for qualified first-year wages and 50 percent of the first $10,000 of qualified second-year wages. Generally, qualified second-year wages are qualified wages (not in excess of $10,000) attributable to service rendered by a member of the long-term family assistance category during the one-year period beginning on the day after the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is $9,000 (40 percent of the first $10,000 of qualified first-year wages plus 50 percent of the first $10,000 of qualified second-year wages).

In the case of a qualified veteran who is entitled to compensation for a service connected disability, the credit equals 40 percent of $12,000 of qualified first-year wages. This expanded definition of qualified first-year wages does not apply to the veterans qualified with reference to a food stamp program, as defined under present law.

Certification rules

An individual is not treated as a member of a targeted group unless: (1) on or before the day on which an individual begins work for an employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group; or (2) on or before the day an individual is offered employment with the employer, a prescreening notice is completed by the employer with respect to such individual, and not later than the 28th day after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for certification. For these purposes, a pre-screening notice is a document (in such form as the Secretary may prescribe) which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

Minimum employment period

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

Other rules

The work opportunity tax credit is not allowed for wages paid to a relative or dependent of the taxpayer. No credit is allowed for wages paid to an individual who is a more than fifty percent owner of the entity. Similarly, wages paid to replacement workers during a strike or lockout are not eligible for the work opportunity tax credit. Wages paid to any employee during any period for which the employer received on-the-job training program payments with respect to that employee are not eligible for the work opportunity tax credit. The work opportunity tax credit generally is not allowed for wages paid to individuals who had previously been employed by the employer. In addition, many other technical rules apply.

Expiration

The work opportunity tax credit is not available for individuals who begin work for an employer after August 31, 2011.

HOUSE BILL

In general

The provision creates a new targeted group for the work opportunity tax credit. That new category is unemployed veterans and disconnected youth who begin work for the employer in 2009 or 2010.

An unemployed veteran is defined as an individual certified by the designated local agency as someone who: (1) has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability; (2) has been discharged or released from active duty in the Armed Forces during 2008, 2009, or 2010; and (3) has received unemployment compensation under State or Federal law for not less than four weeks during the one-year period ending on the hiring date.

A disconnected youth is defined as an individual certified by the designated local agency as someone: (1) at least age 16 but not yet age 25 on the hiring date; (2) not regularly attending any secondary, technical, or post-secondary school during the six-month period preceding the hiring date; (3) not regularly employed during the six-month period preceding the hiring date; and (4) not readily employable by reason of lacking a sufficient number of skills.

Effective date

The provisions are effective for individuals who begin work for an employer after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill except that the otherwise applicable definition of unemployed veterans is expanded to include individuals who were discharged or released from active duty in the Armed Forces during the period beginning on September 1, 2001 and ending on December 31, 2010.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment with one modification. Under this modification an unemployed veteran for purposes of this new targeted group is defined below:

[49] The welfare-to-work tax credit was consolidated into the work .opportunity tax credit in the Tax Relief and Health Care Act of 2006, for qualified individuals who begin to work for an employer after December 31, 2006.

An unemployed veteran is defined as an individual certified by the designated local agency as someone who: (1) has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability; (2) has been discharged or released from active duty in the Armed Forces during the five-year period ending on the hiring date; and (3) has received unemployment compensation under State or Federal law for not less than four weeks during the one-year period ending on the hiring date.

For purposes of the disconnected youths, it is intended that a low-level of formal education may satisfy the requirement that an individual is not readily employable by reason of lacking a sufficient number of skills. Further, it is intended that the Internal Revenue Service, when providing general guidance regarding the various new criteria, shall take into account the administrability of the program by the State agencies.

6. Clarification of regulations related to limitations on certain built-in losses following an ownership change (sec. 1431 of the House bill, sec. 1281 of the Senate amendment, sec. 1261 of the conference agreement, and sec. 382 of the Code)

PRESENT LAW

Section 382 limits the extent to which a ''loss corporation'' that experiences an ''ownership change'' may offset taxable income in any post-change taxable year by pre-change net operating losses, certain built-in losses, and deductions attributable to the pre-change period.[50] In general, the amount of income in any post-change year that may be offset by such net operating losses, built-in losses and deductions is limited to an amount (referred to as the ''section 382 limitation'') determined by multiplying the value of the loss corporation immediately before the ownership change by the long-term tax-exempt interest.[51]

A ''loss corporation'' is defined as a corporation entitled to use a net operating loss carryover or having a net operating loss carryover for the taxable year in which the ownership change occurs. Except to the extent provided in regulations, such term includes any corporation with a ''net unrealized built-in loss'' (or NUBIL)[52] defined as the amount by which the fair market value of the assets of the corporation immediately before an ownership change is less than the aggregate adjusted basis of such assets at such time. However, if the amount of the NUBIL does not exceed the lesser of (i) 15 percent of the fair market value of the corporation's assets or (ii) $10,000,000, then the amount of the NUBIL is treated as zero.[53]

An ownership change is defined generally as an increase by more than 50-percentage points in the percentage of stock of a loss corporation that is owned yAny one or more five-percent (or greater) shareholders (as defined) within a three-year period.[54] Treasury regulations provide generally that this measurement is to be made as of any ''testing date,'' which is any date on which the ownership of one or more persons who were or who become five-percent shareholders increase.[55]

Section 382(h) governs the treatment of certain built-in losses and built-in gains recognized with respect to assets held by the loss corporation at the time of the ownership change. In the case of a loss corporation that has a NUBIL (measured immediately before an ownership change), section 382(h)(1) provides that any ''recognized built-in loss'' (or RBIL) for any taxable year during a ''recognition period'' (consisting of the five years beginning on the ownership change date) is subject to the section 382 limitation in the same manner as if it were a pre-change net operating loss.[56] An RBIL is defined for this purpose as any loss recognized during the recognition period on the disposition of any asset held by the loss corporation immediately before the ownership change date, to the extent that such loss is attributable to an excess of the adjusted basis of the asset on the change date over its fair market value on that date.[57] An RBIL also includes any amount allowable as depreciation, amortization or depletion during the recognition period, to the extent that such amount is attributable to excess of the adjusted basis of the asset over its fair market value on the ownership change day.[58] In addition, any amount that is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the ownership change date is treated as an RBIL for the taxable year in which it is allowable as a deduction.[59]

As indicated above, section 382(h)(1) provides in the case of a loss corporation that has a NUBIG that the section 382 limitation may be increased for any taxable year during the recognition period by the amount of recognized built-in gains (or RBIGs) for such taxable year.[60] An RBIG is defined for this purpose as any gain recognized during the recognition period on the disposition of any asset held by the loss corporation immediately before the ownership change date, to the extent that such gain is attributable to an excess of the fair market value of the asset on the change date over its adjusted basis on that date.[61] In addition, any item of income that is properly taken into account during the recognition period but which is attributable to periods before the ownership change date is treated as an RBIG for the taxable year in which it is properly taken into account.[62]

Internal Revenue Service Notice 2003–65[63] provides two alternative safe harbor approaches for the identification of built-in items for purposes of section 382(h): the ''1374 approach'' and the ''338. approach''

Under the 1374 approach,[64] NUBIG or NUBIL is the net amount of gain or loss that would be recognized in a hypothetical sale of the assets of the loss corporation immediately before the ownership change.[65] The

[50] Sec. 383 imposes similar limitations, under regulations, on the use of carryforwards of general business credits, alternative minimum tax credits, foreign tax credits, and net capital loss carryforwards. Sec. 383 generally refers to sec. 382 for the meanings of its terms, but requires appropriate adjustments to take account of its application to credits and net capital losses.

[51] If the loss corporation had a ''net unrealized built-in gain'' (or NUBIG) at the time of the ownership change, then the sec. 382 limitation for any taxable year may be increased by the amount of the ''recognized built-in gains'' (discussed further below) for that year. A NUBIG is defined as the amount by which the fair market value of the assets of the corporation immediately before an ownership change exceeds the aggregate adjusted basis of such assets at such time. However, if the amount of the NUBIG does not exceed the lesser of (i) 15 percent of the fair market value of the corporation's assets or (ii) $10,000,000, then the amount of the NUBIG is treated as zero. Sec. 382(h)(1).

[52] Sec. 382(k)(1).

[53] Sec. 382(h)(3).

[54] Determinations of the percentage of stock of any corporation held by any person are made on the basis of value. Sec. 382(k)(6)(C).

[55] See Treas. Reg. sec. 1.382–2(a)(4) (providing that ''a loss corporation is required to determine whether an ownership change has occurred immediately after any owner shift, or issuance or transfer (including an issuance or transfer described in Treas. Reg. sec. 1.382–4(d)(8)(i) or (ii)) of an option with respect to stock of the loss corporation that is treated as exercised under Treas. Reg. sec. 1.382–4(d)(2)'' and defining a ''testing date'' as ''each date on which a loss corporation is required to make a determination of whether an ownership change has occurred'') and Temp. Treas. Reg. sec. 1.382–2T(e)(1) (defining an ''owner shift'' as ''any change in the ownership of the stock of a loss corporation that affects the percentage of such stock owned by any 5-percent shareholder''). Treasury regulations under section 382 provide that, in computing stock ownership on specified testing dates, certain unexercised options must be treated as exercised if certain ownership, control, or income tests are met. These tests are met only if ''a principal purpose of the issuance, transfer, or structuring of the option (alone or in combination with other arrangements) is to avoid or ameliorate the impact of an ownership change of the loss corporation.'' Treas. Reg. sec. 1.382–4(d). Compare prior temporary regulations, Temp. Reg. sec. 1.382–2T(h)(4) (''Solely for the purpose of determining whether there is an ownership change on any testing date, stock of the loss corporation that is subject to an option shall be treated as acquired on any such date, pursuant to an exercise of the option by its owner on that date, if such deemed exercise would result in an ownership change.''). Internal Revenue Service Notice 2008–76, I.R.B. 2008–39 (September 29, 2008), released September 7, 2008, provides that the Treasury Department intends to issue regulations modifying the term ''testing date'' under sec. 382 to exclude any date on or after which the United States acquires stock or options to acquire stock in certain corporations with respect to which there is a ''Housing Act Acquisition'' pursuant to the Housing and Economic Recovery Act of 2008 (P.L. 110–289). The Notice states that the regulations will apply on and after September 7, 2008, unless and until there is additional guidance. Internal Revenue Service Notice 2008–84, I.R.B. 2008–41 (October 14, 2008), provides that the Treasury Department intends to issue regulations modifying the term ''testing date'' under sec. 382 to exclude any date as of the close of which the United States owns, directly or indirectly, a more than 50 percent interest in a loss corporation, which regulations will apply unless and until there is additional guidance. Internal Revenue Service Notice 2008–100, 2008–14 I.R.B. 1081 (released October 15, 2008) provides that the Treasury Department intends to issue regulations providing, among other things, that certain instruments acquired by the Treasury Department under the Capital Purchase Program (CPP) pursuant to the Emergency Economic Stabilization Act of 2008 (P.L. 100–343) (''EESA'') shall not be treated as stock for certain purposes. The Notice also provides that certain capital contributions made by Treasury pursuant to the CPP shall not be considered to have been made as part of a plan the principal purpose of which was to avoid or increase any sec. 382 limitation (for purposes of section 382(1)(1)). The Notice states that taxpayers may rely on the rules described unless and until there is further guidance; and that any contrary guidance will not apply to instruments (i) held by Treasury that were acquired pursuant to the CCP prior to publication of that guidance, or (ii) issued to Treasury pursuant to the CCP under written binding contracts entered into prior to the publication of that guidance. Internal Revenue Service Notice 2009–14, 2009–7 I.R.B. 1 (January 30, 2009) amplifies and supersedes Notice 2008–100, and provides additional guidance regarding the application of sec. 382 and other provisions of law to corporations whose instruments are acquired by the Treasury Department under certain programs pursuant to EESA.

[56] Sec. 382(h)(2). The total amount of the loss corporation's RBILs that are subject to the section 382 limitation cannot exceed the amount of the corporation's NUBIL.

[57] Sec. 382(h)(2)(B).

[58] Id.

[59] Sec. 382(h)(6)(B).

[60] The total amount of such increases cannot exceed the amount of the corporation's NUBIG.

[61] Sec. 382(h)(2)(A).

[62] Sec. 382(h)(6)(A).

[63] 2003–2 C.B. 747.

[64] The 1374 approach generally incorporates rules similar to those of section 1374(d) and the Treasury regulations thereunder in calculating NUBIG and NUBIL and identifying RBIG and RBIL.

[65] More specifically, NUBIG or NUBIL is calculated by determining the amount that would be realized if immediately before the ownership change the loss corporation had sold all of its assets, including goodwill, at fair market value to a third party that assumed all of its liabilities, decreased by the sum of any deductible liabilities of the loss corporation that would be included in the amount realized on the hypothetical sale and the loss corporation's aggregate adjusted basis in all of its assets, increased or decreased by the corporation's section 481 adjustments that would be taken into account on a hypothetical sale, and increased by any RBIL that would

amount of gain or loss recognized during the recognition period on the sale or exchange of an asset held at the time of the ownership change is RBIG or RBIL, respectively, to the extent it is attributable to a difference between the adjusted basis and the fair market value of the asset on the change date, as described above. However, the 1374 approach generally relies on the accrual method of accounting to identify items of income or deduction as RBIG or RBIL, respectively. Generally, items of income or deduction properly included in income or allowed as a deduction during the recognition period are considered attributable to period before the change date (and thus are treated as RBIG or RBIL, respectively), if a taxpayer using an accrual method of accounting would have included the item in income or been allowed a deduction for the item before the change date. However, the 1374 approach includes a number of exceptions to this general rule, including a special rule dealing with bad debt deductions under section 166. Under this special rule, any deduction item properly taken into account during the first 12 months of the recognition period as a bad debt deduction under section 166 is treated as RBIL if the item arises from a debt owed to the loss corporation at the beginning of the recognition period (and deductions for such items properly taken into account after the first 12 months of the recognition period are not RBILs).[66]

The 338 approach identifies items of RBIG and RBIL generally by comparing the loss corporation's actual items of income, gain, deduction and loss with those that would have resulted if a section 338 election had been made with respect to a hypothetical purchase of all of the outstanding stock of the loss corporation on the change date. Under the 338 approach, NUBIG or NUBIL is calculated in the same manner as it is under the 1374 approach.[67] The 338 approach identifies RBIG or RBIL by comparing the loss corporation's actual items of income, gain, deduction and loss with the items of income, gain, deduction and loss that would result if a section 338 election had been made for the hypothetical purchase. The loss corporation is treated for this purpose as using those accounting methods that the loss corporation actually uses. The 338 approach does not include any special rule with regard to bad debt deductions under section 166.

Section 166 generally allows a deduction in respect of any debt that becomes worthless, in whole or in part, during the taxable year.[68] The determination of whether a debt is worthless, in whole or in part, is a question of fact. However, in the case of a bank or other corporation that is subject to supervision by Federal authorities, or by State authorities maintaining substantially equivalent standards, the Treasury regulations under section 166 provide a presumption of worthlessness to the extent that a debt is charged off during the taxable year pursuant to a specific order of such an authority or in accordance with established policies of such an authority (and in the latter case, the authority confirms in writing upon the first subsequent audit of the bank or other corporation that the charge-off would have been required if the audit had been made at the time of the charge-off). The presumption does not apply if the taxpayer does not claim the amount so charged off as a deduction for the taxable year in which the charge-off takes place. In that case, the charge-off is treated as having been involuntary; however, in order to claim the section 166 deduction in a later taxable year, the taxpayer must produce sufficient evidence to show that the debt became partially worthless in the later year or became recoverable only in part subsequent to the taxable year of the charge-off, as the case may be, and to the extent that the deduction claimed in the later year for a partially worthless debt was not involuntarily charged off in prior taxable years, it was charged off in the later taxable year.[69]

The Treasury regulations also permit a bank (generally as defined for purposes of section 581, with certain modifications) that is subject to supervision by Federal authorities, or State authorities maintaining substantially equivalent standards, to make a ''conformity election'' under which debts charged off for regulatory purposes during a taxable year are conclusively presumed to be worthless for tax purposes to the same extent, provided that the charge-off results from a specific order of the regulatory authority or corresponds to the institution's classification of the debt as a ''loss asset'' pursuant to loan loss classification standards that are consistent with those of certain specified bank regulatory, authorities. The conformity election is treated as the adoption of a method of accounting.[70]

Internal Revenue Service Notice 2008–83,[71] released on October 1, 2008, provides that ''[f]or purposes of section 382(h), any deduction properly allowed after an ownership change (as defined in section 382(g)) to a bank with respect to losses on loans or bad debts (including any deduction for a reasonable addition to a reserve for bad debts) shall ne treated as a built-in loss or a deduction that is attributable to periods before the change date.''[72] The Notice further states that the Internal Revenue Service and the Treasury Department are studying the proper treatment under section 382(h) of certain items of deduction or loss allowed after an ownership change to a corporation that is a bank (as defined in section 581) both immediately before and after the change date, and that any such corporation may rely on the treatment set forth in Notice 2008–83 unless and until there is additional guidance.

HOUSE BILL

The provision states that Congress finds as follows: (1) The delegation of authority to the Secretary of the Treasury, or his delegate, under section 382(m) does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers; (2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m); (3) the legal authority to prescribe Notice 2008–83 is doubtful; (4) however, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury, legislation is necessary to clarify the force and effect of Notice 200883 and restore the proper application under the Internal Revenue Code of the limitation on built-in losses following an ownership change of a bank.

Under the provision, Treasury Notice 2008–83 shall be deemed to have the force and effect of law with respect to any ownership change (as defined in section 382(g)) occurring on or before January 16, 2009, and with respect to any ownership change (as so defined) which occurs after January 16, 2009, if such change (1) is pursuant to a written binding contract entered in to on or before such date or (2) is pursuant to a written agreement entered into on or before such date and such agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change, but shall otherwise have no force or effect with respect to any ownership change after such date.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

7. Treatment of certain ownership changes for purposes of limitations on net operating loss carryforwards and certain built-in losses (sec. 1262 of the conference agreement and sec. 382 of the Code)

PRESENT LAW

Section 382 limits the extent to which a ''loss corporation'' that experiences an ''ownership change'' may offset taxable income in any post-change taxable year by pre-change net orating losses, certain built-in losses, and deductions attributable to the pre-change period.[73] In general, the amount of income in any post-change year that may be offset by such net operating losses, built-in losses and deductions is limited to an amount (referred to as the ''section 382 limitation'') determined by multiplying the value of the loss corporation immediately before the ownership change by the long-term tax-exempt interest rate.[74]

A ''loss corporation'' is defined as a corporation entitled to use a net operating loss carryover or having a net operating loss carryover for the taxable year in which the ownership change occurs. Except to the extent provided in regulations, such term includes any corporation with a ''net unrealized built-in loss'' (or NUBIL),[75] defined as the amount by which the fair market value of the assets of the corporation immediately before an ownership change is less than the aggregate adjusted basis of such assets at such time. However, if the amount of the NUBIL does not exceed the lesser of (i) 15 percent of the fair market value of the corporation's assets or (ii) $10,000,000, then the amount of the NUBIL is treated as zero.[76]

not be allowed as a deduction under section 382, 383 or 384 on the hypothetical sale.

[66] Notice 2003–65, section III.B.2.b.

[67] Accordingly, unlike the case in which a section 338 election is actually made, contingent consideration (including a contingent liability) is taken into account in the initial calculation of NUBIG or NUBIL, and no further adjustments are made to reflect subsequent changes in deemed consideration.

[68] Section 166 does not apply, however, to a debt which is evidenced by a security, defined for this purpose (by cross-reference to section 165(g)(2)(C)) as a bond, debenture, note or certificate or other evidence of indebtedness issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form. Sec. 166(e).

[69] See Treas. Reg. sec. 1.166–2(d)(1) and (2).

[70] See Treas. Reg. sec. 1.166–2(d)(3); cf. Priv. Let. Rul. 9248048 (July 7, 1992); Tech. Ad. Mem. 9122001 (Feb. 8, 1991).

[71] 2008–42 I.R.B. 2008–42 (Oct. 20, 2008).

[72] Notice 2008–83, section 2.

[73] Section 383 imposes similar limitations, under regulations, on the use of carryforwards of general business credits, alternative minimum tax credits, foreign tax credits, and net capital loss carryforwards. Section 383 generally refers to section 382 for the meanings of its terms, but requires appropriate adjustments to take account of its application to credits and net capital losses.

[74] If the loss corporation had a ''net unrealized built in gain'' (or NUBIG) at the time of the ownership change, then the section 382 limitation for any taxable year may be increased by the amount of the ''recognized built-in gains'' (discussed further below) for that year. A NUBIG is defined as the amount by which the fair market value of the assets of the corporation immediately before an ownership change exceeds the aggregate adjusted basis of such assets at such time. However, if the amount of the NUBIG does not exceed the lesser of (i) 15 percent of the fair market value of the corporation's assets or (ii) $10,000,000, then the amount of the NUBIG is treated as zero. Sec. 382(h)(1).

[75] Sec. 382(k)(1).

[76] Sec. 382(h)(3).

An ownership change is defined generally as an increase by more than 50-percentage points in the percentage of stock of a loss corporation that is owned by any one or more five-percent (or greater) shareholders (as defined) within a three year period.[77] Treasury regulations provide generally that this measurement is to be made as of any ''testing date,'' which is any date on which the ownership of one or more persons who were or who become five-percent shareholders increases.[78]

[77] Determinations of the percentage of stock of any corporation held by any person are made on the basis of value. Sec. 382(k)(6)(C).

[78] See Treas. Reg. sec. 1.382–2(a)(4) (providing that ''a loss corporation is required to determine whether an ownership change has occurred immediately after any owner shift, or issuance or transfer (including an issuance or transfer described in Treas. Reg. sec. 1.382–4(d)(8)(i) or (ii)) of an option with respect to stock of the loss corporation that is treated as exercised under Treas. Reg. sec. 1.382–4(d)(2)'' and defining a ''testing date'' as ''each date on which a loss corporation is required to make a determination of whether an ownership change has occurred'') and Temp. Treas. Reg. sec. I .382–2T(e)(1) (defining an ''owner shift'' as ''any change in the ownership of the stock of a loss corporation that affects percentage of such stock owned by any 5–percent shareholder''). Treasury regulations under section 382 provide that, in computing stock ownership on specified testing dates, certain unexercised options must be treated as exercised if certain ownership, control, or income tests are met. These tests are met only if ''a principal purpose of the issuance, transfer, or structuring of the option (alone or in combination with other arrangements) is to avoid or ameliorate the impact of an ownership change of the loss corporation.'' Treas. Reg. sec. 1.382–4(d). Compare prior temporary regulations, Temp. Reg. sec. 1.382–2T(h)(4) (''Solely for the purpose of determining whether there is an ownership change on any testing date, stock of the loss corporation that is subject to an option shall be treated as acquired on any such date, pursuant to an exercise of the option by its owner on that date, if such deemed exercise would result in an ownership change.''). Internal Revenue Service Notice 2008–76, I.R.B. 2008–39 (September 29, 2008), released September 7, 2008, provides that the Treasury Department intends to issue regulations modifying the term ''testing date'' under section 382 to exclude any date on or after which the United States acquires stock or options to acquire stock in certain corporations with respect to which there is a ''Housing Act Acquisition'' pursuant to the Housing and Economic Recovery Act of 2008 (P.L. 110–289). The Notice states that the regulations will apply on and after September 7, 2008, unless and until there is additional guidance. Internal Revenue Service Notice 2008–84, I.R.B. 2008–41 (October 14, 2008), provides that the Treasury Department intends to issue regulations modifying the term ''testing date'' under section 382 to exclude any date as of the close of which the United States owns, directly or indirectly, a more than 50 percent interest in a loss corporation, which regulations will apply unless and until there is additional guidance. Internal Revenue Service Notice 2008–100, 2008–14 I.R.B. 1081 (released October 15, 2008) provides that the Treasury Department intends to issue regulations providing, among other things, that certain instruments acquired by the Treasury Department under the Capital Purchase Program (CPP) pursuant to the Emergency Economic Stabilization Act of 2008 (P.L. 100–343)(''EESA'')shall not be treated as stock for certain purposes. The Notice also provides that certain capital contributions made by Treasury pursuant to the CPP shall not be considered to have been made as part of a plan the principal purpose of which was to avoid or increase any section 382 limitation (for purposes of section 382(1)(1)). The Notice states that taxpayers may rely on the rules described unless and until there is further guidance; and that any contrary guidance will not apply to instruments (i) held by Treasury that were acquired pursuant to the CCP prior to publication of that guidance, or (ii) issued to Treasury pursuant to the CCP under written binding contracts entered into prior to the publication of that guidance. Internal Revenue Service Notice 2009–14, 2009–7 I.R.B. 1 (January 30, 2009) amplifies and supersedes Notice 2008–100, and provides additional guidance regarding the application of section 382 and other provisions of law to corporations whose instruments are acquired by the Treasury Department under certain programs pursuant to EESA.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement amends section 382 of the Code to provide an exception from the application of the section 382 limitation. Under the provision, the section 382 limitation that would otherwise arise as a result of an ownership change shall not apply in the case of an ownership change that occurs pursuant to a restructuring plan of a taxpayer which is required under a loan agreement or commitment for a line of credit entered into with the Department of the Treasury under the Emergency Economic Stabilization Act of 2008, and is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer and its subsidiaries.[79]

However, an ownership change that would otherwise be excepted from the section 382 limitation under the provision will instead remain subject to the section 382 limitation if, immediately after such ownership change, any person (other than a voluntary employees' beneficiary association within the meaning of section 501(c)(9)) owns stock of the new loss corporation possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote or of the total value of the stock of such corporation. For purposes of this rule, persons who bear a relationship to one another described in section 267(b) or 707(b)(1), or who are members of a group of persons acting in concert, are treated as a single person.

The exception from the application of the section 382 limitation under the provision. not change the fact that an ownership change has occurred for other purposes of section 382.[80]

Effective date.—The conference agreement applies to ownership changes after the date of enactment.

8. Deferral of certain income from the discharge of indebtedness (sec. 1231 of the Senate amendment, sec. 1231 of the conference agreement, and sec. 108 of the Code)

PRESENT LAW

In general, gross income includes income that is realized by a debtor from the discharge of indebtedness, subject to certain exceptions for debtors in title 11 bankruptcy cases, insolvent debtors, certain student loans, certain farm indebtedness, certain real property business indebtedness, and certain qualified principal residence indebtedness.[81] In cases involving discharges of indebtedness that are excluded from gross income under the exceptions to the general rule, taxpayers generally are required to reduce certain tax attributes, including net operating losses, general business credits, minimum tax c its, capital loss carryovers, and basis in property, by the amount of the discharge of indebtedness.[82]

The amount of discharge of indebtedness excluded from income by an insolvent debtor not in a title 11 bankruptcy case cannot exceed the amount by which the debtor is insolvent. In the case of a discharge in bankruptcy or where the debtor is insolvent, any reduction in basis may not exceed the excess of the aggregate bases of properties held by the taxpayer immediately after the discharge over the aggregate of the liabilities of the taxpayer immediately after the discharge.[83]

[79] This exception shall not apply in the case of any subsequent ownership change unless such subsequent ownership change also meets the requirements of the exception.

[80] For example, an ownership change has occurred for purposes of determining the testing period under section 382(i)(2).

[81] See sections 61(a)(12) and 108. But see sec. 102 (a debt cancellation which constitutes a gift or bequest is not treated as income to the donee debtor).

[82] Sec. 108(b).

For all taxpayers, the amount of discharge of indebtedness generally is equal to the excess of the adjusted issue price of the indebtedness being satisfied over the amount paid (or deemed paid) to satisfy such indebtedness.[84] This rule generally applies to (1) the acquisition by the debtor of its debt instrument in exchange for cash, (2) the issuance of a debt instrument by the debtor in satisfaction of its indebtedness, including a modification of indebtedness that is treated as an exchange (a debt-for-debt exchange), (3) the transfer by a debtor corporation of stock, or a debtor partnership of a capital or profits interest in such partnership, in satisfaction of its indebtedness (an equity-for-debt exchange), and (4) the acquisition by a debtor corporation of its indebtedness from a shareholder as a contribution to capital.

Debt-for-debt exchanges

If a debtor issues a debt instrument in satisfaction of its indebtedness, the debtor is treated as having satisfied the indebtedness with an amount of money equal to the issue price of the newly issued debt instrument.[85] The issue price of such newly issued debt instrument generally is determined under sections 1273 and 1274.[86] Similarly, a ''significant modification'' of a debt instrument, within the meaning of Treas. Reg. sec. 1.1001–3, results in an exchange of the original debt instrument for a modified instrument. In such cases, where the issue price of the modified debt instrument is less than the adjusted issue price of the original debt instrument, the debtor will have income from the cancellation of indebtedness.

If any new debt instrument is issued (including as a result of a significant modification to a debt instrument), such debt instrument will have original issue discount equal to the excess (if any) of such debt instrument's stated redemption price at maturity over its issue price.[87] In general, an issuer of a debt instrument with original issue discount may deduct for any taxable year, with respect to such debt instrument, an amount of original issue discount equal the aggregate daily portions of the original issue discount for days during such taxable year.[88]

EQUITY-FOR-DEBT EXCHANGES

If a corporation transfers stock, or a partnership transfers a capital or profits interest in such partnership, to a creditor in satisfaction of its indebtedness, then such corporation or partnership is treated as having satisfied its indebtedness with an amount of money equal to the fair market value of the stock or interest.[89]

Related party acquisitions

Indebtedness directly or indirectly acquired by a person who bears a relationship to the debtor described in section 267(b) or section 707(b) is treated as if it were acquired by the debtor.[90] Thus, where a debtor's indebtedness is acquired for less than its adjusted issue price by a person related to the debtor (within the meaning of section 267(b) or 707(b)), the debtor recognizes income from the cancellation of indebtedness. Regulations under section 108 provide that the indebtedness acquired by the related party is

[83] Sec. 1017.

[84] Treas. Reg. sec. 1.61–12(c)(2)(ii). Treas. Reg. sec. 1.1275–1(b) defines ''adjusted issue price.''

[85] Sec. 108(e)(1 0)(A).

[86] Sec. 108(e)(10)(B).

[87] Sec. 1273.

[88] Sec. 163(e).

[89] Sec. 108(e)(8).

[90] Sec. 108(e)(4).

treated as new indebtedness issued by the debtor to the related holder on the acquisition date (the deemed issuance).[91] The new indebtedness is deemed issued with an issue price equal to the amount used under regulations to compute the amount of cancellation of indebtedness income realized by the debtor (i.e., either the holder's adjusted basis or the fair market value of the indebtedness, as the case may be).[92] The indebtedness deemed issued pursuant to the regulations has original issue discount to the extent its stated redemption price at maturity exceeds its issue price.

In the case of a deemed issuance under Treas. Reg. sec. 1.108–2(g), the related holder does not recognize any gain or loss, and the related holder's adjusted basis in the indebtedness remains the same as it was immediately before the deemed issuance.[93] The deemed issuance is treated as a purchase of the indebtedness by the related holder for purposes of section 1272(a)(7) (pertaining to reduction of original issue discount where a subsequent holder pays acquisition premium) and section 1276 (pertaining to acquisitions of debt at a market discount).[94]

Contribution of a debt instrument to capital of a corporation

Where a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital, section 118[95] does not apply, but the corporation is treated as satisfying such indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision permits a taxpayer to elect to defer income from cancellation of indebtedness recognized by the taxpayer as a result of a repurchase by (1) the taxpayer or (2) a person who bears a relationship to the taxpayer described in section 267(b) or section 707(b), of a ''debt instrument'' that was issued by the taxpayer. The provision applies only to repurchases of debt that (1) occur after December 31, 2008, and prior to January 1, 2011, and (2) are repurchases for cash. Thus, for example, the provision does not apply to a debt-for-debt exchange or to any exchange of the taxpayer's equity for a debt instrument of the taxpayer. For purposes of the provision, a ''debt instrument'' is broadly defined to include any bond, debenture, note, certificate or any other instrument or contractual arrangement constituting indebtedness.

Income from the discharge of indebtedness in connection with the repurchase of a debt instrument in 2009 or 2010 must be included in the gross income of the taxpayer ratably in the eight taxable years beginning with (1) for repurchases in 2009, the second taxable year following the taxable year in which the repurchase occurs or (2) for repurchases in 2010, the taxable year following the taxable year in which the repurchase occurs. The provision authorizes the Secretary of the Treasury to prescribe such regulations as may be necessary or appropriate for purposes of applying the provision.

Effective date.—The provision applies to discharges in taxable years ending after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. The provision permits a taxpayer to elect to defer cancellation of indebtedness income arising from a ''reacquisition'' of ''an applicable debt instrument'' after December 31, 2008, and before January 1, 2011. Income deferred pursuant to the election must be included in the gross income of the taxpayer ratably in the five taxable years beginning with (1) for repurchases in 2009, the fifth taxable year following the taxable year in which the repurchase occurs or (2) for repurchases in 2010, the fourth taxable year following the taxable year in which the repurchase occurs.

An ''applicable debt instrument'' is any debt instrument issued by (1) a C corporation or (2 any other person in connection with the conduct of a trade or business by such person. For purposes of the provision, a ''debt instrument'' is broadly defined to include any bond, debenture, note, certificate or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

A ''reacquisition'' is any ''acquisition'' of an applicable debt instrument by (1) the debtor that issued (or is otherwise the obligor under) such debt instrument or (2) any person related to the debtor within the meaning of section 108(e)(4). For purposes of the provision, an ''acquisition'' includes, without limitation, (1) an acquisition of a debt instrument for cash, (2) the exchange of a debt instrument for another debt instrument (including an exchange resulting from a modification of a debt instrument), (3) the exchange of corporate stock or a partnership interest for a debt instrument, (4) the contribution of a debt instrument to the capital of the issuer, and (5) the complete forgiveness of a debt instrument by a holder of such instrument.

Special rules for debt-for-debt exchanges

If a taxpayer makes the election provided by the provision for a debt-for-debt exchange in which the newly issued debt instrument issued (or deemed issued, including by operation of the rules in Treas. Reg. sec. 1.108–2(g)) in satisfaction of an outstanding debt instrument of the debtor has original issue discount, then any otherwise allowable deduction for original issue discount with respect to such newly issued debt instrument that (1) accrues before the first year of the five-taxable-year period in which the related, deferred discharge of indebtedness income is included in the gross income of the taxpayer and (2) does not exceed such related, deferred discharge of indebtedness income, is deferred and allowed as a deduction ratably over the same five-taxable-year period in which the deferred discharge of indebtedness income is included in gross income.

This rule can apply also in certain cases when a debtor reacquires its debt for cash. If the taxpayer issues a debt instrument and the proceeds of such issuance are used directly or indirectly to reacquire a debt instrument of the taxpayer, the provision treats the newly issued debt instrument as if it were issued in satisfaction of the retired debt instrument. If the newly issued debt instrument has original issue discount, the rule described above applies. Thus, all or a portion of the interest deductions with respect to original issue discount on the newly issued debt instrument are deferred into the five-taxable-year period in which the discharge of indebtedness income is recognized. Where only a portion of the proceeds of a new issuance are used by a taxpayer to satisfy outstanding debt, then the deferral rule applies to the portion of the original issue discount on the newly issued debt instrument that is equal to the portion of the proceeds of such newly issued instrument used to retire outstanding debt of the taxpayer.

Acceleration of deferred items

Cancellation of indebtedness income and any related deduction for original issue discount that is deferred by an electing taxpayer (and has not previously been taken into account) generally is accelerated and taken into income in the taxable year in which the taxpayer: (1) dies, (2) liquidates or sells substantially all of its assets (including in a title 11 or similar case), (3) ceases to do business, or (4) or is in similar circumstances. In a case under title 11 or a similar case, any deferred items are taken into income as of the day before the petition is filed. Deferred items are accelerated in a case under Title 11 where the taxpayer liquidates, sells substantially all of its assets, or ceases to do business, but not where a taxpayer reorganizes and emerges from the Title 11 case. In the case of a pass thru entity, this acceleration rule also applies to the sale, exchange, or redemption of an interest in the entity by a holder of such interest.

Special rule for partnerships

In the case of a partnership, any income deferred under the provision is allocated to the partners in the partnership immediately before the discharge of indebtedness in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at the time of the discharge. Any decrease in a partner's share of liabilities as a result of such discharge is not taken into account for purposes of section 752 at the time of the discharge to the extent the deemed distribution under section 752 would cause the partner to recognize gain under section 731. Thus, the deemed distribution under section 752 is deferred with respect to a partner to the extent it exceeds such partner's basis. Amounts so deferred are taken into account at the same time, and to the extent remaining in the same amount, as income deferred under the provision is recognized by the partner.

Coordination with section 108(a) and procedures for election

Where a taxpayer makes the election provided by the provision, the exclusions provided by section 108(a)(1)(A), (B), (C), and (D) shall not apply to the income from the discharge of indebtedness for the year in which the taxpayer makes the election or any subsequent year. Thus, for example, an insolvent taxpayer may elect under the provision to defer income from the discharge of indebtedness rather than excluding such income and reducing tax attributes by a corresponding amount. The election is to be made on an instrument by instrument basis; once made, the election is irrevocable. A taxpayer makes an election with respect to a debt instrument by including with its return for the taxable year in which the reacquisition of the debt instrument occurs a statement that (1) clearly identifies the debt instrument and (2) includes the amount of deferred income to which the provision applies and such other information as may be prescribed by the Secretary. The Secretary is authorized to require reporting of the election (and other information with respect to the reacquisition) for years subsequent to the year of the reacquisition.

Regulatory authority

The provision authorizes the Secretary of the Treasury to prescribe such regulations as may be necessary or appropriate for purposes of applying the provision, including rules extending the acceleration provisions to other circumstances where appropriate, rules requiring reporting of the election and such other information as the Secretary may require on returns of tax for subsequent taxable years, rules for the application of the

[91] Treas. Reg. sec. 1.108–2(g).

[92] Id.

[93] Treas. Reg. sec. 1.108–2(g)(2).

[94] Id.

[95] Section 118 provides, in general, that in the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

provision to partnerships, S corporations, and other pass thru entities, including for the allocation of deferred deductions.

Effective date.—The provision is effective for discharges in taxable years ending after December 31, 2008.

9. Modifications of rules for original issue discount on certain high yield obligations (sec. 1232 of the conference agreement and sec. 163 of the Code)

PRESENT LAW

In general, the issuer of a debt instrument with original issue discount may deduct the portion of such original issue discount equal to the aggregate daily portions of the original issue discount for days during the taxable year.[96] However, in the case of an applicable high-yield discount obligation (an ''AHYDO'') issued by a corporate issuer: (1) no deduction is allowed for the ''disqualified portion'' of the original issue discount on such obligation, and (2) the remainder of the original issue discount on any such obligation is not allowable as a deduction until paid by the issuer.[97]

An AHYDO is any debt instrument if (1) the maturity date on such instrument is more than five years from the date of issue; (2) the yield to maturity on such instrument exceeds the sum of (a) the applicable Federal rate in effect under section 1274(d) for the calendar month in which the obligation is issued and five percentage points, and (3) such instrument has ''significant original issue discount.[98] An instrument is treated as having ''significant original issue discount'' if the aggregate amount of interest that would be includible in the gross income of the holder with respect to such instrument for periods before the close of any accrual period (as defined in section 1272(a)(5)) ending after the date five years after the date of issue, exceeds the sum of (1) the aggregate amount of interest to be paid under the instrument before the close of such accrual period, and (2) the product of the issue price of such instrument (as defined in sections 1273(b) and 1274(a)) and its yield to maturity.[99]

The disqualified portion of the original issue discount on an AHYDO is the lesser of (1) the amount of original issue discount with respect to such obligation or (2) the portion of the ''total return'' on such obligation which bears the same ratio to such total return as the ''disqualified yield'' (i.e., the excess of the yield to maturity on the obligation over the applicable Federal rate plus six percentage points) on such obligation bears to the yield to maturity on such obligation.[100] The term ''total return'' means the amount which would have been the original issue discount of the obligation if interest described in section 1273(a)(2) were included in the 101 stated redemption to maturity.[101] A corporate holder treats the disqualified portion of original issue discount as a stock distribution for purposes of the dividend received deduction.[102]

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement adds a provision that suspends the rules in section 163(e)(5) for certain obligations issued in a debt-for-debt exchange, including an exchange resulting from a significant modification of a debt instrument, after August 31, 2008, and before January 1, 2010.

In general, the suspension does not apply to any newly issued debt instrument (including any debt instrument issued as a result of a significant modification of a debt instrument) that is issued for an AHYDO. However, any newly issued debt instrument (including any debt instrument issued as a result of a significant modification of a debt instrument) for which the AHYDO rules are suspended under the provision is not treated as an AHYDO for purposes of a subsequent application of the suspension rule. Thus, for example, if a new debt instrument that would be an AHYDO under present law is issued in exchange for a debt instrument that is not an AHYDO, and the provision suspends application of section 163(e)(5), another new debt instrument, issued during the suspension period in exchange for the instrument with respect to which the rule in section 163(e)(5) was suspended, would be eligible for the relief provided by the provision despite the fact that it is issued for an instrument that is an AHYDO under present law.

In addition, the suspension does not apply to any newly issued debt instrument (including any debt instrument issued as a result of a significant modification of a debt instrument) that is (1) described in section 871(h)(4) (without regard to subparagraph (D) thereof) (i.e., certain contingent debt) or (2) issued to a person related to the issuer (within the meaning of section 108(e)(4)).

The provision provides authority to the Secretary to apply the suspension rule to periods after December 31, 2009, where the Secretary determines that such application is appropriate in light of distressed conditions in the debt capital markets. In addition, the provision grants authority to the Secretary to use a rate that is higher than the applicable Federal rate for purposes of applying section 163(e)(5) for obligations issued after December 31, 2009, in taxable years ending after such date if the Secretary determines that such higher rate is appropriate in light of distressed conditions in the debt capital markets.

Effective date.—The temporary suspension of section 163(e)(5) applies to obligations issued after August 31, 2008, in taxable years ending after such date. The additional authority granted to the Secretary to use a rate higher than the applicable Federal rate for purposes of applying section 163(e)(5) applies to obligations issued after December 31, 2009, in taxable years ending after such date.

10. Special rules applicable to qualified small business stock for 2009 and 2010 (sec. 1241 of the Senate amendment, sec. 1241 of the conference agreement, and sec. 1202 of the Code)

PRESENT LAW

Under present law, individuals may exclude 50 percent (60 percent for certain empowerment zone businesses) of the gain from the sale of certain small business stock acquired at original issue and held for at least five years.[103] The portion of the gain includible in taxable income is taxed at a maximum rate of 28 percent under the regular tax.[104] A percentage of the excluded gain is an alternative minimum tax preference,[105] the portion of the gain includible in alternative minimum taxable income is taxed at a maximum rate of 28 percent under the alternative minimum tax.

Thus, under present law, gain from the sale of qualified small business stock is taxed at effective rates of 14 percent under the regular tax[106] and (i) 14.98 percent under the alternative minimum tax for dispositions before January 1, 2011; (ii) 19.98 percent under the alternative minimum tax for dispositions after December 31, 2010, in the case of stock acquired before January 1, 2001; and (iii) 17.92 percent under the alternative minimum tax for dispositions after December 31, 2010, in the case of stock acquired after December 31, 2006.[107]

The amount of gain eligible for the exclusion by an individual with respect to any corporation is the greater of (1) ten times the taxpayer's basis in the stock or (2) $10 million. In order to qualify as a small business, when the stock is issued, the gross assets of the corporation may not exceed $50 million. The corporation also must meet certain active trade or business requirements.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the percentage exclusion for qualified small business stock sold by an individual is increased from 50 percent (60 percent for certain empowerment zone businesses) to 75 percent.

As a result of the increased exclusion, gain from the sale of qualified small business stock to which the provision applies is taxed at effective rates of seven percent under the regular tax[108] and 12.88 percent under the alternative minimum tax.[109]

Effective date.—The provision is effective for stock issued after the date of enactment and before January 1, 2011.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

11. Temporary reduction in recognition period for S corporation built-in gains tax (sec. 1261 of the Senate amendment, sec. 1251 of the conference agreement, and sec. 1374 of the Code)

PRESENT LAW

A ''small business corporation'' (as defined in section 1361(b)) may elect to be treated as an S corporation. Unlike C corporations, S corporations generally pay no corporate-level tax. Instead, items of income and loss of an S corporation pass though to its shareholders. Each shareholder takes into account separately its share of these items on its individual income tax return.[110]

A corporate level tax, at the highest marginal rate applicable to corporations (currently 35 percent) is imposed on an S corporation's gain that arose prior to the conversion of the C corporation to an S corporation and is recognized by the S corporation

[96] Sec. 163(e)(1). For purposes of section 163(e)(1), the daily portion of the original issue discount for any day is determined under section 1272(a) (without regard to paragraph (7) thereof and without regard to section 1273(a)(3)).

[97] Sec. 163(e)(5).

[98] Sec. 163(i)(1).

[99] Sec. 163(i)(2).

[100] Sec. 163(e)(5)(C).

[101] Sec. 163(e)(5)(C)(ii).

[102] Sec. 163(e)(5)(B).

[103] Sec. 1202.

[104] Sec. 1(h).

[105] Sec. 57(a)(7). In the case of qualified small business stock, the percentage of gain excluded from gross income which is an alternative minimum tax preference is (i) seven percent in the case of stock disposed of in a taxable year beginning before 2011; (ii) 42 percent in the case of stock acquired before January 1, 2001, and disposed of in a taxable year beginning after 2010; and (iii) 28 percent in the case of stock acquired after December 31, 2000, and disposed of in a taxable year beginning after 2010.

[106] The 50 percent of gain included in taxable income is taxed at a maximum rate of 28 percent.

[107] The amount of gain included in alternative minimum tax is taxed at a maximum rate of 28 percent. The amount so included is the sum of (i) 50 percent (the percentage included in taxable income) of the total gain and (ii) the applicable preference percentage of the one-half gain that is excluded from taxable income.

[108] The 25 percent of gain included in taxable income is taxed at a maximum rate of 28 percent.

[109] The 46 percent of gain included in alternative minimum tax is taxed at a maximum rate of 28 percent. Forty-six percent is the sum of 25 percent (the percentage of total gain included in taxable income) plus 21 percent (the percentage of total gain which is an alternative minimum tax preference).

[110] Sec. 1366.

during the recognition period, i.e., the first 10 taxable years that the S election is in effect.[111]

Gains recognized in the recognition period are not built-in gains to the extent they are shown to have arisen while the S election was in effect or are offset by recognized built-in losses. The built-in gains tax also applies to gains with respect to net recognized built-in gain attributable to property received by an S corporation from a C corporation in a carryover basis transaction.[112] The amount of the built-in gains tax is treated as a loss taken into account by the shareholders in computing their individual income tax.[113]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that, for any taxable year beginning in 2009 and 2010, no tax is imposed on an S corporation under section 1374 if the seventh taxable year in the corporation's recognition period preceded such taxable year. Thus, with respect to gain that arose prior to the conversion of a C corporation to an S corporation, no tax will be imposed under section 1374 after the seventh taxable year the S corporation election is in effect. In the case of built-in gain attributable to an asset received by an S corporation from a C corporation in a carryover basis transaction, no tax will be imposed under section 1374 if such gain is recognized after the date that is seven years following the date on which such asset was acquired.[114]

Effective date.—The provision applies to taxable years beginning after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

12. Broadband internet access tax credit (sec. 1271 of the Senate amendment)

PRESENT LAW

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system (''MACRS'').[115] Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property (generally tangible property other than residential rental property and nonresidential real property) range from three to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

No credit is specifically designed under present law to encourage the development of qualified broadband expenditures.

HOUSE BILL

No provision.

SENATE AMENDMENT

The amendment provides an investment tax credit for ''qualified broadband expenditures.'' Qualified broadband expenditures comprise both ''current-generation'' and ''next-generation'' broadband. The provision establishes a 10 percent credit for investment in current-generation broadband in rural and underserved areas. The provision establishes a 20 percent credit for investment in current-generation broadband in unserved areas. The provision establishes a 20 percent credit for investment in next-generation broadband in rural, underserved, unserved, and residential areas. The basis of qualified property must be reduced by the amount of credit received. To qualify for the credit, the qualified broadband equipment must be placed in service after December 31, 2008, and before January 1, 2011.

''Current-generation'' broadband services are defined as the transmission of signals at a rate of at least 5 million bits per second to the subscriber and at a rate of at least 1 million bits per second from the subscriber or wireless technology transmission of signals at a rate of at least 3 million bits per second to the subscriber and at a rate of at least 768 kilobits per second from the subscriber. ''Next-generation'' broadband services are defined as the transmission of signals at a rate of at least 100 million bits per second to the subscriber and at a rate of at least 20 million bits per second from the subscriber.

Qualified broadband expenditures means the direct or indirect costs properly taken into account for the taxable year for the purchase or installation of qualified equipment (including upgrades) and the connection of the equipment to a qualified subscriber.

Qualified broadband expenditures include only the portion of the purchase price paid by the lessor, in the case of leased equipment, that is attributable to otherwise qualified broadband expenditures by the lessee. In the case of property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was originally placed in service, the property is treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback.

A qualified subscriber, with respect to current-generation broadband services, means any nonresidential subscriber maintaining a permanent place of business in a rural, underserved, or unserved area, or any residential subscriber residing in a rural, underserved, or unserved area that is not a saturated market. A qualified subscriber, with respect to next generation broadband services, means any nonresidential subscriber maintaining a permanent place of business in a rural, underserved, or unserved area, or any residential subscriber.

For this purpose, a rural area is a low-income community designated under section 45D which is defined as a population census tract located in a with either (1) a poverty rate of at least 20 percent or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income).

An underserved area means a census tract located in an empowerment zone or enterprise community designated under section 1391, or the District of Columbia Enterprise Zone established under section 1400, or a renewal community designated under section 1400E, or a low-income community designated under section 45D.

An unserved area is an area without current-generation broadband service.

A saturated market, for this purpose, means any census tract in which, as of the date of enactment, current generation broadband services have been provided by a single provider to 85 percent or more of the total potential residential subscribers. The services must be usable at least a majority of the time during periods of maximum demand, and usable in a manner substantially the same as services provided through equipment not eligible for the deduction under this provision.

If current- or next-generation broadband services can be provided through qualified equipment to both qualified subscribers and to other subscribers, the provision provides that the expenditures with respect to the equipment are allocated among subscribers to determine the amount of qualified broad broadband expenditures that may be deducted under the provision.

Qualified equipment means equipment that provides current- or next-generation broadband services at least a majority of the time during periods of maximum demand to each subscriber, and in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under the provision. Limitations are imposed under the provision on equipment depending on where it extends, and on certain packet switching equipment, and on certain multiplexing and demultiplexing equipment.

Expenditures generally are not taken into account for purposes of the credit under the provision with respect to property used predominantly outside the United States, used predominantly to furnish lodging, used by a tax-exempt organization (other than in a business whose income is subject to unrelated business income tax), or used by the United States or a political subdivision or by a possession, agency or instrumentality thereof or by a foreign person or entity. The basis of property is reduced by the cost of the property that is taken into account as a deduction under the provision. Recapture rules are provided. The credit is part of the general business credit.

Effective date.—The provision is effective for property placed in service after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

C. Fiscal Relief for State and Local Governments

1. De minimis safe harbor exception for tax-exempt interest expense of financial institutions and modification of small issuer exception to tax-exempt interest expense allocation rules for financial institutions (secs. 1501 and 1502 of the House bill, secs. 1501 and 1502 of the Senate amendment, secs. 1501 and 1502 of the conference agreement, and sec. 265 of the Code)

PRESENT LAW

Present law disallows a deduction for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is exempt from tax.[116] In general, an interest deduction is disallowed only if the taxpayer has a purpose of using borrowed funds to purchase or carry tax-exempt obligations; a determination of the taxpayer's purpose in borrowing funds is made based on all of the facts and circumstances.[117]

Two-percent rule for individuals and certain nonfinancial corporations

In the absence of direct evidence linking an individual taxpayer's indebtedness with the purchase or carrying of tax-exempt obligations, the Internal Revenue Service takes

[111] Sec. 1374.

[112] Sec. 1374(d)(8). With respect to such assets, the recognition period runs from the day on which such assets were acquired (in lieu of the beginning of the first taxable year for which the corporation was an S corporation). Sec. 1374(d)(8)(B).

[113] Sec. 1366(f)(2).

[114] Shareholders will continue to take into account all items of gain and loss under section 1366.

[115] Sec. 168.

[116] Sec. 265(a).

[117] See Rev. Proc. 72–18, 1972–1 C.B. 740.

the position that it ordinarily will not infer that a taxpayer's purpose in borrowing money was to purchase or carry tax-exempt obligations if the taxpayer's investment in tax-exempt obligations is ''insubstantial.'' [118] An individual's holdings of tax-exempt obligations are presumed to be insubstantial if during the taxable year the average adjusted basis of the individual's tax-exempt obligations is two percent or less of the average adjusted basis of the individual's portfolio investments and assets held by the individual in the active conduct of a trade or business.

Similarly, in the case of a corporation that is not a financial institution or a dealer in tax-exempt obligations, where there is no direct evidence of a purpose to purchase or carry tax-exempt obligations, the corporation's holdings of tax-exempt obligations are presumed to be insubstantial if the average adjusted basis of the corporation's tax-exempt obligations is two percent or less of the average adjusted basis of all assets held by the corporation in the active conduct of its trade or business.

Financial institutions

In the case of a financial institution, the Code generally disallows that portion of the taxpayer's interest expense that is allocable to tax-exempt interest. [119] The amount of interest that is disallowed is an amount which bears the same ratio to such interest expense as the taxpayer's average adjusted bases of tax-exempt obligations acquired after August 7, 1986, bears to the average adjusted bases for all assets of the taxpayer.

Exception for certain obligations of qualified small issuers

The general rule in section 265(b), denying financial institutions' interest expense deductions allocable to tax-exempt obligations, does not apply to ''qualified tax-exempt obligations.'' [120] Instead, as discussed in the next section, only *percent of the interest expense allocable to ''qualified tax-exempt obligations'' is disallowed. [121] A ''qualified tax-exempt obligation'' is a tax-exempt obligation that (1) is issued after August 7, 1986, by a qualified small issuer, (2) is not a private activity bond, and (3) is designated by the issuer as qualifying for the exception from the general rule of section 265(b).

A ''qualified small issuer'' is an issuer that reasonably anticipates that the amount of tax-exempt obligations that it will issue during the calendar year will be $10 million or less. [122] The Code specifies the circumstances under which an issuer and all subordinate entities are aggregated. [123] For purposes of the $10 million limitation, an issuer and all entities that issue obligations on behalf of such issuer are treated as one issuer. All obligations issued by a subordinate entity are treated as being issued by the entity to which it is subordinate. An entity formed (or availed of) to avoid the $10 million limitation and all entities benefiting from the device are treated as one issuer.

Composite issues (i.e., combined issues of bonds for different entities) qualify for the ''qualified tax-exempt obligation'' exception only if the requirements of the exception are met with respect to (1) the composite issue as a whole (determined by treating the composite issue as a single issue) and (2) each separate lot of obligations that is part of the issue (determined by treating each separate lot of obligations as a separate issue). [124] Thus a composite issue may qualify for the exception only if the composite issue itself does not exceed $10 million, and if each issuer benefitting from the composite issue reasonably anticipates that it will not issue more than $10 million of tax-exempt obligations during the calendar year, including through the composite arrangement.

Treatment of financial institution preference items

Section 291(a)(3) reduces by 20 percent the amount allowable as a deduction with respect to any financial institution preference item. Financial institution preference items include interest on debt to tax-exempt obligations acquired after December 31, 1982, and before acquired on August 7, 1986. [125] Section 265(b)(3) treats qualified tax-exempt obligations as if they were acquired on August 7, 1986. As a result, the amount allowable as a deduction by a financial institution with respect to interest incurred to carry a qualified tax-exempt obligation is reduced by 20 percent.

HOUSE BILL

Two-percent safe harbor for financial institutions

The provision provides that tax-exempt obligations issued during 2009 or 2010 and held by a financial institution, in an amount not to exceed two percent of the adjusted basis of the financial institution's assets, are not taken into account for the purpose of determining the portion of the financial institution's interest expense subject to the pro rata interest disallowance rule of section 265(b). For purposes of this rule, a refunding bond (whether a current or advance refunding) is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

The provision also amends section 291(e) to provide that tax-exempt obligations issued during 2009 and 2010, and not taken into account for purposes of the calculation of a financial institution's interest expense subject to the pro rata interest disallowance rule, are treated as having been acquired on August 7, 1986. As a result, such obligations are financial institution preference items, and the amount allowable as a deduction by a financial institution with respect to interest incurred to carry such obligations is reduced by 20 percent.

Modifications to qualified small issuer exception

With respect to tax-exempt obligations issued during 2009 and 2010, the provision increases from $10 million to $30 million the annual limit for qualified small issuers.

In addition, in the case of ''qualified financing issue'' issued in 2009 or 2010, the provision applies the $30 million annual volume limitation at the borrower level (rather than at the level of the pooled financing issuer). Thus, for the purpose of applying the requirements of the section 265(b)(3) qualified small issuer exception, the portion of the proceeds of a qualified financing issue that are loaned to a ''qualified borrower'' that participates in the issue are treated as a separate issue with respect to which the qualified borrower is deemed to be the issuer.

A ''qualified financing issue'' is any composite, pooled or other conduit financing issue the proceeds of which are used directly or indirectly to make or finance loans to one or more ultimate borrowers all of whom are qualified borrowers. A ''qualified borrower'' means (1) a State or political subdivision of a State or (2) an organization described in section 501(c)(3) and exempt from tax under section 501(a). Thus, for example, a $100 million pooled financing issue that was issued in 2009 could qualify for the section 265(b)(3) exception if the proceeds of such issue were used to make four equal loans of $25 million to four qualified borrowers. However, if (1) more than $30 million were loaned to any qualified borrower, (2) any borrower were not a qualified borrower, or (3) any borrower would, if it were the issuer of a separate issue in an amount equal to the amount loaned to such borrower, fail to meet any of the other requirements of section 265(b)(3), the entire $100 million pooled financing issue would fail to qualify for the exception.

For purposes of determining whether an issuer meets the requirements of the small issuer exception, qualified 501(c)(3) bonds issued in 2009 or 2010 are treated as if they were issued by the 501(c)(3) organization for whose benefit they were issued (and not by the actual issuer of such bonds). In addition, in the case of an organization described in section 501(c)(3) and exempt from taxation under section 501(a), requirements for ''qualified financing issues'' shall be applied as if the section 501(c)(3) organization were the issuer. Thus, in any event, an organization described in section 501(c)(3) and exempt from taxation under section 501(a) shall be limited to the $30 million per issuer cap for qualified tax exempt obligations described in section 265(b)(3).

Effective Date.—The provisions are effective for obligations issued after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Temporary modification of alternative minimum tax limitations on tax-exempt bonds (sec. 1503 of the House bill, sec. 1503 of the Senate amendment, sec. 1503 of the conference agreement, and secs. 56 and 57 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax (''AMT'') on individuals and corporations. AMT is the amount by which the tentative minimum tax exceeds the regular income tax. The tentative minimum tax is computed based upon a taxpayer's alternative minimum taxable income (''AMTI''). AMTI is the taxpayer's taxable income modified to take into account certain preferences and adjustments. One of the preference items is tax-exempt interest on certain tax-exempt bonds issued for private activities (sec. 57(a)(5)). Also, in the case of a corporation, an adjustment based on current earnings is determined, in part, by taking into account 75 percent of items, including tax-exempt interest, that are excluded from taxable income but included in the corporation's earnings and profits (sec. 56(g)(4)(B)).

HOUSE BILL

The House bill provides that tax-exempt interest on private activity bonds issued in 2009 and 2010 is not an item of tax preference for purposes of the alternative minimum tax and interest on tax exempt bonds issued in 2009 and 2010 is not included in the corporate adjustment based on current earnings. For these purposes, a refunding bond is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

Effective date.—The provision applies to interest on bonds issued after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

[118] Id.

[119] Sec. 265(b)(1). A ''financial institution'' is any person that (1) accepts deposits from the public in the ordinary course of such person's trade or business and is subject to Federal or State supervision as a financial institution or (2) is a corporation described in section 585(a)(2). Sec. 265(b)(5).

[120] Sec. 265(b)(3).

[121] Secs. 265(b)(3)(A), 291(a)(3) and 291(e)(1).

[122] Sec. 265(b)(3)(C).

[123] Sec. 265(b)(3)(E).

[124] Sec. 265(b)(3)(F).

[125] Sec. 291(e)(1).

CONFERENCE AGREEMENT

The conference agreement provides that tax-exempt interest on private activity bonds issued in 2009 and 2010 is not an item of tax preference for purposes of the alternative minimum tax and interest on tax exempt bonds issued in 2009 and 2010 is not included in the corporate adjustment based on current earnings. For these purposes, a refunding bond is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

The conference agreement also provides that tax-exempt interest on private activity bonds issued in 2009 and 2010 to currently refund a private activity bond issued after December 31, 2003, and before January 1, 2009, is not an item of tax preference for purposes of the alternative minimum tax. Also tax-exempt interest on bonds issued in 2009 and 2010 to currently refund a bond issued after December 31, 2003, and before January 1, 2009, is not included in the corporate adjustment based on current earnings.

Effective date.—The provision applies to interest on bonds issued after December 31, 2008.

3. Temporary expansion of availability of industrial development bonds to facilities creating intangible property and other modifications (sec. 1301 of the Senate amendment, sec. 1301 of the conference agreement, and sec. 144(a) of the Code)

PRESENT LAW

Qualified small issue bonds (commonly referred to as ''industrial development bonds'' or ''small issue IDBs'') are tax-exempt bonds issued by State and local governments to finance private business manufacturing facilities (including certain directly related and ancillary facilities) or the acquisition of land and equipment by certain farmers. In both instances, these bonds are subject to limits on the amount of financing that may be provided, both for a single borrowing and in the aggregate. In general, no more than $1 million of small-issue bond financing may be outstanding at any time for property of a business (including related parties) located in the same municipality or county. Generally, this $1 million limit may be increased to $10 million if, in addition to outstanding bonds, all other capital expenditures of the business (including related parties) in the same municipality or county are counted toward the limit over a six-year period that begins three years before the issue date of the bonds and ends three years after such date. Outstanding aggregate borrowing is limited to $40 million per borrower (including related parties) regardless of where the property is located.

The Code permits up to $10 million of capital expenditures to be disregarded, in effect increasing from $10 million to $20 million the maximum allowable amount of total capital expenditures by an eligible business in the same municipality or county. However, no more than $10 million of bond financing may be outstanding at any time for property of an eligible business (including related parties) located in the same municipality or county. Other limits (e.g., the $40 million per borrower limit) also continue to apply.

A manufacturing facility is any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property). Manufacturing facilities include facilities that are directly related and ancillary to a manufacturing facility (as described in the previous sentence) if (1) such facilities are located on the same site as the manufacturing facility and (2 not more than 25 percent of the net proceeds of the issue are used to provide such facilities.[126]

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

For bonds issued after the date of enactment and before January 1, 2011, the provision expands the definition of manufacturing facilities to mean any facility that is used in the manufacturing, creation, or production of tangible property or intangible property (within the meaning of section 197(d)(1)(C)(iii)). For this purpose, intangible property means any patent, copyright, formula, process, design, knowhow, format, or other similar item. It is intended to include among other items, the creation of computer software, and intellectual property associated bio-tech and pharmaceuticals.

In lieu of the directly related and ancillary test of present law, the provision provides a special rule for bonds issued after the date of enactment and before January 1, 2011. For these bonds, the provision provides that facilities that are functionally related and subordinate to the manufacturing facility are treated as a manufacturing facility and the 25 percent of net proceeds restriction does not apply to such facilities.[127] Functionally related and subordinate facilities must be located on the same site as the manufacturing facility.

Effective date

The provision is effective for bonds issued after the date of enactment and before January 1, 2011.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Qualified school construction bonds (sec. 1511 of the House bill, sec. 1521 of the Senate amendment, sec. 1521 of the conference agreement, and new sec. 54F of the Code)

PRESENT LAW

Tax-exempt bonds

Interest on State and local governmental bonds generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units. These can include tax-exempt bonds which finance public schools.[128] An issuer must file with the Internal Revenue Service certain information about the bonds issued in order for that bond issue to be tax-exempt.[129] Generally, this information return is required to be filed no later than the 15th day of the second month after the close of the calendar quarter in which the bonds were issued.

The tax exemption for State and local bonds does not apply to any arbitrage bond.[130] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher-yielding investments or to replace funds that are used to acquire higher yielding investments.[131] In general, arbitrage profits may be earned only during specified periods (e.g., defined ''temporary periods'') before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., ''reasonably required reserve or replacement funds''). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

Qualified zone academy bonds

As an alternative to traditional tax-exempt bonds, State nd local governments were given the authority to issue ''qualified zone academy bonds.''[132] A total of $400 million of qualified zone academy bonds is authorized to be issued annually in calendar years 1998 through 2009. The $400 million aggregate bond cap is allocated each year to the States according to their respective populations of individuals below the poverty line. Each State, in turn, allocates the credit authority to qualified zone academies within such State.

A taxpayer holding a qualified zone academy bond on the credit allowance date is entitled to a credit. The credit is includible in gross income (as if it were a taxable interest payment on the bond), and may be claimed against regular income tax and alternative minimum tax liability.

The Treasury Department sets the credit rate at a rate estimated to allow issuance of qualified zone academy bonds without discount and without interest cost to the issuer.[133] The Secretary determines credit rates for tax credit bonds based on general assumptions about credit quality of the class of potential eligible issuers and such other factors as the Secretary deems appropriate. The Secretary may determine credit rates based on general credit market yield indexes and credit ratings. The maximum term of the bond is determined by the Treasury Department, so that the present value of the obligation to repay the principal on the bond is 50 percent of the face value of the bond.

''Qualified zone academy bonds'' are defined as any bond issued by a State or local government, provided that (1) at least 95 percent of the proceeds are used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a ''qualified zone academy'' and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds.

A school is a ''qualified zone academy'' if (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase graduation and employment

[126] The 25 percent restriction was enacted by the Technical and Miscellaneous Tax Act of 1988 because of concern over the scope of the definition of manufacturing facility. See H.R. Rpt. No. 100–795 (1988). The amendment was intended to clarify that while the manufacturing facility definition does not preclude the financing of ancillary activities, the 25 percent restriction was intended to limit the use of bond proceeds to finance facilities other than for ''core manufacturing.'' The conference agreement followed the House bill, which the conference report described as follows: ''The House bill clarifies that up to 25 percent of the proceeds of a qualified small issue may be used to finance ancillary activities which are carried out at the manufacturing site. All such ancillary activities must be subordinate and integral to the manufacturing process.''

[127] The provision is based in part on a similar rule applicable to exempt facility bonds. Treas. Reg. sec. 1.103–8(a)(3) provides: ''(3) Functionally related and subordinate. An exempt facility includes any land, building, or other property functionally related and subordinate to such facility. Property is not functionally related and subordinate to a facility if it is not of a character and size commensurate with the character and size of such facility.''

[128] Sec. 103.

[129] Sec. 149(e).

[130] Sec. 103(a) and (b)(2).

[131] Sec. 148.

[132] Sec. 1397E.

[133] Given the differences in credit quality and other characteristics of individual issuers, the Secretary cannot set credit rates in a manner that will allow each issuer to issue tax credit bonds at par.