THE REPUBLICAN STUDY COMMITTEE
Rep. Jim Jordan, Chairman
Paul Teller, Executive Director
RSC
202.226.9717
rsc.jordan.house.gov

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Contents:

Conference Report for H.R. 4348 - Surface Transportation Extension Act

Conference Report for H.R. 4348 - Surface Transportation Extension Act (Mica, R-FL)

Potential Conservative Concerns/ Supporting Arguments:

Potential Conservative Concerns: The legislation authorizes a total of $120 billion for the highway, mass transit, transportation safety and transportation research programs for 27 months. Some conservatives may be concerned that this creates a permanent framework that tarnishes the highway trust fund as a user pay for system.

Many conservatives believe that the solution to this problem is to reprioritize spending on highways, instead of relying on either tax increases or deficit spending to maintain funding for non-highway, non-federal items. Some of the programs that are extended by this legislation are, in the view of some conservatives, examples of programs that should not be funded by the Highway Trust Fund. The bill authorizes $15 billion more in annual spending than annual revenues. This will set the stage for a future bailout that will be larger than the $35 billion bailout in 2008.

Many conservatives are concerned that the legislation violates the 2010 GOP Pledge to America, which reads: "We will end the practice of packaging unpopular bills with 'must-pass' legislation to circumvent the will of the American people. Instead, we will advance major legislation one issue at a time."

Packaging a major 27-month transportation bill with a 5-year flood insurance extension and a one year extension of subsidized student loans under the guise of "must pass – or else," stands in contrast to the pledge.

Many conservatives are concerned that voting on a 600 page conference report on H.R. 4348, with less than 30 hours of public availability, violates public transparency. Members and the public should have a full 72 hours to read any conference report on this critical legislation before it comes before the House for a vote.

Many conservatives are concerned with the provision of the bill that allows corporations to put less money into company pensions that are backed by the taxpayer-funded Pension Benefit Guaranty Corporation (PBGC). This will expose taxpayers to future bailouts of the PBGC when it becomes clear that the pension plans are underfunded.

Many conservatives have long argued that the overwhelming majority of transportation programs and spending should be devolved to the states. While there is increased state flexibility in this bill, it falls far short of devolution.

Some conservatives may be concerned that the legislation raises taxes to pay for new spending. The proposal would expand the definition of a tobacco manufacturer to include businesses operating a roll-your-own machine. As such, the machine's owner would be responsible for federal excise taxes on the tobacco products manufactured using his or her machine.

Many conservatives are concerned that MAP 21 creates other mandates on the motor coach industry such as Driver Safety Fitness Ratings and the $2 billion Electronic On-Board Recorders mandate. Compliance, Safety, Accountability (CSA) is inflicting considerable damage in the marketplace.

Lastly conservatives may be concerned that by increasing the federal government's role in student loans, we are incentivizing the higher education industry to raise prices, and crowding out the private market.

Supporting Arguments: The bill would appear to eliminate all earmarks from the highway bill. The last surface transportation law approved by Congress in 2005 contained over 6,300 earmarks. The bill modifies formulas for state highway funds and requires that 10% of certain highway funds be set aside for transportation enhancements, such as trails and bikeways. The legislation streamlines environmental reviews and consolidates or eliminates nearly two thirds of its programs.

Order of Business: The Conference Report to H.R. 4348 will be considered on the floor on Friday, June 29, 2012. The rule waives all points of order against the conference report and against its consideration. The rule provides one hour of debate and provides one motion to recommit with or without instructions. The rule also permits the bill to be in order at any time on the legislative day of June 29, 2012, for the Speaker to entertain motions that the House suspend the rules, as though under clause 1(c) of rule XV, relating to the following: (a) measures addressing expiring provisions of law; and (b) a concurrent resolution correcting the enrollment of H.R. 4348.

Lastly the rule states that the requirement of clause 6(a) of rule XIII for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House is waived with respect to any resolution reported on the legislative day of June 29, 2012, providing for consideration or disposition of the following: (a) measures addressing expiring provisions of law; and (b) a concurrent resolution correcting the enrollment of H.R.4348.

Summary: The Conference Report for H.R. 4348 authorizes funds to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund for two years through September 30, 2014. The Conference Report also provides for a five year reauthorization of the National Flood Insurance Program (NFIP), which will expire on September 30, 2017, and amends the Higher Education Act of 1965 to keep the Stafford loan rates to undergraduate students from an automatic rate increase scheduled for July 1, 2012 of this year. The legislation authorizes $37.477 billion in FY 2013 and $37.798 in FY2014 for the national highway performance program, the surface transportation program, the highway safety improvement program, and the congestion mitigation and air quality improvement program. The conference report authorizes a total of $10.5 billion in FY2013 and $10.7 billion in FY 2014 for Transit Administration programs. The legislations also sets obligation limits for the Highway Trust Fund for transportation programs for FY 2013 through FY 2014. The conference report provides for expenditure authority through September 30, 2014.

The conference reports allows a $6.2 billion transfer in FY 2013 and a $10.4 billion transfer in FY2014 deposit of general funds from the Treasury to the Highway Trust Fund for the Highway account and a $2.2 billion transfer in FY2014 deposit of general funds from the Treasury to the Highway Trust Fund for the Mass Transit account. The amount transferred from the General Fund is fully replenished through a provision stabilizing pension interest rates and a provision boosting Pension Benefit Guaranty Corporation premiums, as well as other offsets.

The conference report extends the taxes dedicated to the Highway Trust Fund at their present law rates through September 30, 2016, and for the heavy vehicle use tax, through September 30, 2017. Here are the following extended taxes:

- Gasoline Tax, 18.3 cents
- Diesel fuel and kerosene 24.3 cents
- Alternative fuels, 18.3 or 24.3 cents per gallon
- A 12-percent excise tax imposed on the first retail sale of heavy highway vehicles, tractors, and trailers (generally, trucks having a gross vehicle weight in excess of 33,000 pounds and trailers having such a weight in excess of 26,000 pounds);
- An excise tax imposed on highway tires with a rated load capacity exceeding 3,500 pounds, generally at a rate of 0.945 cents per 10 pounds of excess; and
- An annual use tax imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more.7 (The maximum rate for this tax is $550 per year, imposed on vehicles having a taxable gross weight over 75,000 pounds.)

Lastly, the legislation streamlines environmental reviews and appears to eliminate all earmarks. According to the Transportation Committee, the legislation consolidates or eliminates programs by nearly two-thirds. The following are highlights of the legislation.
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Highway Programs

- The legislation allows for a total of $79.955 billion obligation limits from the Highway Trust Fund for Federal-aid highway and highway safety construction programs, which include:

- $39.699 billion for FY 2013,
- $40.256 billion for FY 2014,

- The legislation funds the following by the main account of the Highway Trust Fund (Other than the Mass Transit Account):
  - **Federal-Aid Highway Program (FAHP)**, $37.477 billion in FY 2013 and $37.798 in FY2014.
    - National Highway System Program,
    - Highway Safety Improvement Program,
    - Surface Transportation Program (SFP),
    - the Congestion Mitigation and Air Quality Improvement program (CMAQ)
  - **Federal Lands and the Tribal Transportation Program**, $1 billion per year for FY 2013 through 2014.
  - **Transportation Infrastructure Finance and Innovation Program (TIFIA)**, $750 million in FY 2013 and $1 billion in FY 2014.
  - **Territorial and Puerto Rico Highway Program**, $190 million per year for FY 2013 through 2014.
  - **FHWA administrative expenses**, $440 million per year for FY 2013 through 2014.

- The apportionment formula in the conference report works essentially the same as the Senate bill. To begin, each state is apportioned its share of the total contract authority provided by section 1101(a)(1) ($37.477 billion in FY 2013 and $37.798 billion in FY 2014) based on the state's share of total formula apportionments in FY 2012 – but in FY 2014, there is an adjustment made to ensure that each state gets at least a 95 percent rate of return on its Highway Account tax payments from the most recent fiscal year in which data are available. It designates certain percentages for the National Highway Performance Program, the Highway Safety Improvement Program and the Surface Transportation Program. Amounts for Congestion Mitigation and Air Quality Improvement and Metropolitan Planning would be determined by calculating a ratio based on the 2009 amount.

- The conference report modifies the TIFIA program by increasing the maximum share of project costs from 33 percent to 49 percent, and by allowing TIFIA to be used to support a related set of projects, and by setting aside funding for projects in rural areas at more favorable terms. The conference report authorizes the following for credit assistance under TIFIA:
  - $750 million in FY2013
  - $1 billion in FY2014

- The conference report allows states to expand their ability to use federal funds for tolling. It would require for the states to have tolling laws in place, the federal share of toll road projects to not exceed eight percent, and for all the toll facilities on the federal aid highways to incorporate technologies that include electronic collections.

- The conference report retains a Senate provision called Projects of National and Regional Significance Program, which would authorize $500 million in FY2013 for programs improve roadways vital to national energy security.

- The conference report keeps modified Senate provisions establishing a national freight policy, designating a primary freight network of up to 30,000 current or future miles, and requiring the development of a national freight strategic plan. The conference report incorporates House suggestions for state freight advisory committees and state freight plans. Instead of creating a separate freight program with distinct funding, the conference report increases the federal share for qualified freight mobility projects that are identified on state freight plans. The federal share would go from 80 percent to 90 percent for non-Interstate projects and from 90 to 95 percent for projects on the Interstate system, in order to give states incentives to prioritize freight mobility projects (section 1116).

- The conference report leaves the CMAQ and Metropolitan Planning programs intact.

- The conference report makes reforms to transportation enhancements. Under current law, 10 percent of STP funding is set aside for enhancements (and since STP is about 20 percent of total highway program funding, enhancements are about 2 percent of total federal highway funding). The conference report renames "enhancements" as "alternatives" in 23 U.S.C. 101 and consolidates some definitions and remove things like museums from eligibility (though bike paths remain). The conference report then bundles "alternatives" with two other programs being eliminated by the bill (recreational trails and safe routes to school) and a new category of "boulevards and other roadways largely in the right-of-way of former Interstate routes or divided highways" and funds that bundle with a set-aside of each state's formula apportionment in the amount of 2 percent of the total FAHP (including TIFIA, admin expense, fed lands, etc). (See section 1122.) So instead of being 10 percent of 20 percent, the takedown is simply 2 percent. In FY 2009 (the reference year for this purpose), funding for enhancements totaled $818 million. Recreational trails got $84 million and safe routes to schools got $180 million. That adds up to $1.08 billion. Under the conference report, in FY 2013, transportation alternatives will get about $800 million, meaning that total funding for all of these FY 2009 equivalents is cut by 20 percent even before you add in the fact that this money can now be spent on "boulevards" as well. 50 percent of the set-aside is to be sub-allocated to localities based on population and the other half is left to the state discretion. The conference report rejects the House proposal to allow states to opt out of the "TA" set-aside entirely (except for recreational trails, which states can opt out of) but the conference report retains a provision that allow states to transfer funding out of the program to other programs if they get a backlog of 150 percent of an annual TA set-aside.

- The conference report consolidates the existing Interstate Maintenance and National Highway System formula programs, along with the on-system portion of the existing Highway Bridge program, into one formula program (called National Highway Performance Program – section 1106). The existing Surface Transportation Program is modified to incorporate off-system bridges as well as make eligible projects from other programs that were formerly separate programs under prior law (congestion

pricing, recreational trails, ferry boats and terminals, border infrastructure, truck parking facilities).

Highway Safety Programs

- The bill authorizes $4.8 billion for highway-safety programs administered by the National Highway Traffic Safety Administration (NHTSA) over the period of FY2013 through FY2014. The legislation extends the following highlighted safety programs:
  - **Chapter 4 Highway Safety Programs**, $235 million per year through 2014.
  - **Highway Safety Research and Development**, $110 million in FY 2013 and $113 million in FY 2014
  - Nation Priority Safety Program, $265 million in FY 2013 and $272 million in FY 2014
  - **National Driver Register**, $5 million per year for FY 2013 through 2014.
  - **High Visibility Enforcement Program**, $29 million per year for FY 2013 through 2014
  - **Administrative Expenses**, $25.5 million per year for FY 2013 through 2014

- The conference report includes provisions that restructure the existing highway safety grant programs administered by the National Highway Traffic Safety Administration (NHTSA). The conference report largely reflects the Senate approach on modifications to the existing formula grant programs, including the establishment of a single grant application and reporting process for all grants received under this title, the adoption of performance measures, and the establishment of planning and reporting requirements for the states. In addition, the conference report inserts a prohibition on state use of these formula grant funds to pay for red light or speed cameras. The report moves a provision establishing a cooperative research and evaluation program into a different section, but continues to fund it from the funds provided for the formula grant program.

- The conference report includes $215 million in FY 2013, $218 million in FY 2014 for Motor Carrier Safety Grants, $251 million in FY 2013, and $259 million in FY 2014 for Administrative Expenses of the Federal Motor Carrier Safety Administration. The conference report includes provisions directing the Secretary to issue regulations requiring electronic logging devices for recording hours of service in commercial motor vehicles and sets basic performance standards for the device. The conference report adopted the Senate approach with some amendments. The conference report adds an hours of service field study to expand on a previous Federal Motor Carrier Safety Administration (FMCSA) report on driver fatigue and maximum driving time requirements focusing on the 34-hour restart rule. The conference report directs the Secretary, in prescribing regulations, to consider how the rule may reduce or eliminate requirements for drivers and motor carriers to retain supporting documentation associated with paper-based records. The conference report changes the name of the device and adds other language to make clear that the devices are to be used only to enforce federal regulations. The report also includes a definition of “tamper resistant” and provisions to ensure that appropriate measures are taken to protect the privacy of individuals and the confidentiality of the data.

- The conference report includes Senate provisions directing the Secretary to establish a national repository for records relating to alcohol and controlled substances testing of CMV drivers. The records will be used to determine the qualifications for operating a CMV. The clearinghouse will include safeguards to protect the privacy of individuals to whom the information pertains and ensure that the information is not divulged to anyone not directly involved in evaluating the individual's qualifications to drive a CMV. The conference report also includes Senate provisions for prohibiting an employer from hiring a driver unless he or she has determined that during the preceding three years that such driver: did not test positive in violation of the regulations at title 49, Code of Federal Regulations; and did not refuse a test under these regulations. Other included provisions grant preemption authority to the Secretary in regard to the reporting of valid positive results or refusals to take alcohol screening and drug tests, and apply civil penalties to any violators of privacy and reporting requirements. The conference report amends Senate provisions for archiving personal records to ensure further individual privacy protections. The conference report also includes amendments to the National Transportation Safety Board's access to clearinghouse records. The conference report makes amendments to clarify that the clearinghouse will be used to determine whether individuals have existing employment prohibitions at the time of making hiring decisions.

- The conference report maintains a Senate provision that establishes a Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies to build, implement, and aggregate NHTSA's expertise in passenger motor vehicle electronics and other new and emerging technologies. The conference report includes a provision calling on NHTSA to evaluate vehicle electronic systems and report to Congress on highest priority areas for safety. The conference report strikes all other safety mandates contained in Subtitle D of the Senate bill.

- The conference report includes provisions directing the Secretary to study the effects of truck, size and weight on highway safety and infrastructure and compile a list of existing state truck size and weight laws. The conference report amends the Senate study provisions. The conference report includes language directing the Secretary to consider the effects of trucks operating in excess of federal law and regulations in comparison to those trucks that do not operate in excess of federal law and regulations, when assessing accident frequency and impacts to highway and bridge infrastructure. The conference report adopts the Senate requirement that the report must be submitted to Congress not later than 2 years after enactment.

- The conference report contains a provision that would grant the U.S. Department of Transportation $5 million to coerce states to enact and enforce federal distracted driving laws; something that 39 states already have on their books.

- The bill extends the authorization for sport fish conservation and management programs under the Dingell-Johnson Sport Fish Restoration Act.

<u>Transit Programs</u>

- The conference report would authorize a total of $10.5 billion in FY 2013 and $10.7 billion in FY 2014 for Federal Transit Administration programs.

- The conference report maintains the basic structure for urbanized area grants under Section 5307. The program continues to be the largest program for federal investment in public transportation. The "Job Access and Reverse Commute" program (JARC) has been moved to Section 5307 and the conferees have removed the Senate bill set-aside for JARC activities. Maintains the existing criteria for use of 5307 funds for capital projects (operating expenses continue to be ineligible) in urban areas with a population greater than 200,000. In addition, the bill maintains language allowing small urbanized areas with populations under 200,000 to use up to 100 percent of their 5307 funding for operating expenses. A modified "100 bus rule" has been included, allowing systems with 76-100 buses operating in peak service to use up to 50% of their 5307 funding for operating expenses and those operating 75 or fewer buses to use up to 75% for operating expenses.

- The bill authorizes a total of $8.5 billion in FY 2013 and $8.6 billion in FY 2014 for formula and bus grant programs, including the following two year totals:
  - metropolitan and state transportation planning, $20 million
  - urbanized area formula grants, $8.5 billion
  - bus and bus facilities formula grants, $849 million
  - rural area formula grants, $1.2 billion
  - bus testing, $6 million
  - buses and bus facilities, $849 million
  - national transit database activities, $7.7 million
  - state of good repair formula grants, $4.3 billion
  - fast growth/high density formula grants, $1 billion

- The bill authorizes a total of $1.9 billion in FY 2013 and FY 2014 for capital investment grants. Reforms and streamlines the "Fixed Guideway Capital Investment Grant" program (previously the "Major Capital Investment Grant" or "New Starts" program). Based on extensive feedback from project sponsors and other stakeholders, the bill streamlines the New Starts process to accelerate project delivery by eliminating duplicative steps in project development and instituting a modified program structure that will allow the Federal Transit Administration to review proposals quickly, without sacrificing effective project oversight. Projects under $100 million can utilize an expedited review process if they meet standards of similar highly qualified projects. The bill also creates a category of demonstration projects for sponsors that propose a significant amount of local and/or private funding and reduce the federal commitment required for the projects. Establishes a new category for capital investment projects by authorizing core capacity projects, which will undergo the same process as other "new starts" projects but provide an opportunity for existing systems to make necessary but significant investments that were not previously eligible for funding. The conference report requires that eligible activities under a core capacity project achieve at least a 10% increase in capacity along a corridor. The Senate agreed to a House request to modify the definition of Bus Rapid Transit projects in the Senate bill to allow broader use of the program. The

conference report also includes incentives for the development of bus rapid transit projects that incorporate elements of fixed guideway transit like light rail.

- The conference committee requires the structure of all Metropolitan Planning Organizations include officials of public agencies that administer or operate public transportation systems within two years of enactment. The conference report creates a pilot program for transit-oriented development planning to advance planning efforts that support transit-oriented development around fixed guideway capital investment projects. Grants for planning will help communities develop strategies to facilitate transit-oriented development.

- Maintains the existing structure providing funding to states for public transportation in rural areas. Funding for the "Public Transportation on Indian Reservations" program is increased to $30 million. The Secretary will distribute $5 million competitively each fiscal year, and $25 million will be available to Indian Tribes as formula grants to continue and expand public transportation services. The conference report also establishes a new "Appalachian Development Public Transportation Program" to distribute $20 million to states within the Appalachian region with a goal of providing greater public transportation opportunities to residents in these challenged areas.

- The conference report establishes a program to assist States and public transportation systems pay for protecting, repairing, or replacing equipment and facilities that are in danger of suffering serious damage or have suffered serious damage as a result of an emergency.

Other Transportation Provisions

- The bill streamlines the environmental review procedures required under the National Environmental Policy Act (NEPA) by creating enforceable deadlines for project approval and exempting small scale projects from NEPA reviews. The conference report requires a rulemaking to classify projects with a small amount of federal funding ($5 million) as a categorical exclusion from NEPA reviews. The conference report also requires the Secretary of Transportation to set deadlines to make sure all approvals occur within 4 years, or agencies lose funding through an automatic rescission. To create an incentive for agencies to expedite their reviews or to issue approved permits, the measure requires cuts to the budgets of such agencies if they fail to take action within a certain time period. Cuts would occur if an agency fails to complete its portion of a review within 180 days of the time the managing agency has taken certain actions or fails to issue a permit after the permit application has been approved. Lastly, the conference report requires a study on which state laws provide the same level of protection as federal law.

- The conference report modifies a Senate provision related to Gulf Coast restoration known as the Resources and Ecosystems Sustainability, Tourism Opportunities and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The provision establishes the Gulf Coast Restoration Trust Fund and places in the Trust Fund 80% of all civil penalties paid by responsible parties in connection with the

Deepwater Horizon oil spill. Funding may be used to invest in projects and activities to restore the long-term health of the coastal ecosystem and local economies in the Gulf Coast Region, which includes the states of Mississippi, Louisiana, Alabama, Florida, and Texas.

- The Conference report modifies a Senate provision highlighting the significance of the nation's ports for efficient movement of goods and products and the need for increased investment in the maintenance of these ports to promote the economic competiveness of the United States. The provision states the Sense of Congress that the Administration should request and the Congress should fully expend each year all of the revenues collected in the Harbor Maintenance Trust Fund (HMTF) for the operation and maintenance of the nation's federally maintained ports. The provision also expresses the importance of protecting other critical Army Corps programs, including inland navigation, flood and coastal storm protection, and ecosystem restoration, from funding reductions. Finally, the provision directs the Administration to provide an annual estimate of national harbor maintenance needs, including an estimate of the percentage of waterways that will be available for use based on the annual budget request as well as how much funding would be needed to achieve 95 percent availability of the nation's ports and waterways within 3 year.

Background: The last long-term authorization for highway, transit and safety programs was passed in 2005 and is known as the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The legislation expired Sept. 30, 2009. The federal highway programs and certain transit programs are directly funded through contract authority provided in authorizing legislation unlike other federal programs, to which new federal funding can be provided through appropriations measures without prior authorization. The current surface transportation authorities expire June 30, 2012

Flood Insurance Provisions

The conference report provides for a five year reauthorization of the National Flood Insurance Program. Specifically, the conference report reauthorizes the National Flood Insurance Program from until September 30, 2017, and enacts into law some reforms to flood insurance reform. The following highlights the reforms in the bill.

- **Elimination of Subsidies:** The conference report eliminates decades-old National Flood Insurance Program (NFIP) subsidies. The bill ends subsidized insurance rates for commercial properties, severe repetitive loss properties, and properties with flood-related damage exceeding their fair market value, and prohibits subsidies for new or lapsed insurance policies. These changes build upon the reforms Congress enacted in May (P.L. 112-123) to end subsidies for second and vacation homes. Combined, the Congressional Budget Office (CBO) has estimated ending these subsidies will bring an additional 355,000 existing policyholders up to actuarial rates, generating more than $2 billion in new revenue for the program over the next 10 years.

- **Phase-in of Full Rates:** The conference report phases in the cost of full actuarial insurance rates for newly mapped properties starting at 20 percent in their first year and increasing by 20 percent each year thereafter. The conference report also gives NFIP policyholders the flexibility to pay in installments instead of one lump sum.

The conference report increases the annual cap on premium rate increases from 10 percent to 20 percent, which will give the Federal Emergency Management Agency (FEMA) more flexibility to adjust rates within risk categories to match actual risks faced by those properties. It also requires that FEMA incorporate historical flood loss obligations into its calculations to determine how to set its actuarial premiums.

- **Taxpayer Protections:** The conference report requires FEMA to establish a new reserve fund in a separate account at Treasury and maintain a balance of at least 1 percent of the total program's potential loss exposure to decrease the likelihood of future borrowing from taxpayers. It also requires FEMA to submit a report to Congress on various options for eliminating the NFIP's outstanding debt within 10 years, as well as create a repayment schedule for retiring that debt and report on its progress towards that goal every six months.

- **Notification and Outreach:** The conference report authorizes $400 million for outreach from FY 2013 through FY 2017. The conference report requires FEMA to conduct outreach regarding flood insurance. Specifically, the measure requires FEMA to notify property owners of their inclusion in or exclusion from mandatory flood insurance; to educate owners on the flood risk to property, even if they are not required to have mandatory flood insurance; to educate property owners regarding flood map revisions and the process of appeal of the inclusion of a property in a flood zone; and to encourage property owners to maintain or acquire flood insurance.

- **Escrow Requirements:** Currently, if a lending institution must escrow taxes, insurance premiums, fees or any other charges for a loan secured by residential real estate, then it must also escrow all premiums and fees for flood insurance. The agreement exempts from this escrow requirement banks with assets of less than $1 billion that did not have escrow requirements before enactment of the measure.

- **Greater Private Sector Participation:** The conference report encourages greater private sector participation by requiring lenders to accept non-NFIP backed flood insurance coverage provided by a private entity if that coverage meets all the same requirements as NFIP-backed flood insurance. FEMA's ability to get private reinsurance to back the program instead of relying upon borrowing from the Treasury, and authorizes FEMA and GAO to conduct a study on various options, methods, and strategies for privatizing the NFIP. Additionally, the conference report does not include language expanding NFIP insurance to additional living expenses and business interruption lines of coverage, but it does require a study of these expansions.

- **Mapping Fairness:** The conference report restores integrity to the mapping process by permanently reinstating the Technical Mapping Advisory Council, which relies on the expertise and perspectives of local and industry stakeholders to recommend new mapping standards based on modern data and technology. The legislation requires FEMA to report annually to Congress on how it is acting on those recommendations and justify why it has deferred action on any recommendation. As FEMA adopts new recommendations, the legislation gives local communities the ability to request to be remapped based on those new standards. It also expands FEMA's existing map

appeals process to allow for greater appeals based on scientifically or technically incorrect data.

- **Communities Making Progress Towards Flood Protection System:** The conference report allows for communities making adequate progress in the construction of their flood protection systems to qualify for lowest possible chargeable risk premiums for up to five years, meaning that the rates they pay during construction will be set at the level they would be paying once their dams and levee projects were complete. Certain communities close to achieving that adequate progress standard may qualify for two additional years of the lowest possible rates.

- **Studies and Reports:** The conference report requires several studies by FEMA and GAO aimed at improving the actuarial soundness of the flood insurance program to be provided to Congress. For example, GAO is to required to provide A study of pre-FIRM structures (those built before the effective date of the first flood insurance rate map), which must detail the composition, number, fair market value, income of owners, number of times sold since 1968, total losses incurred, annual cost of subsidies and options for eliminating the subsidies to these buildings.

- **Flood Mitigation:** The conference report allows mitigation financial assistance in the form of mitigation assistance grants to be made available:

  - to States and communities in the form of grants under this section for carrying out mitigation activities;
  - to States and communities in the form of grants under this section for carrying out mitigation activities that reduce flood damage to severe repetitive loss structures; and
  - to property owners in the form of direct grants under this section for carrying out mitigation activities that reduce flood damage to individual structures for which 2 or more claim payments for losses have been made under flood insurance coverage under this title if the Administrator, after consultation with the State and community, determines that neither the State nor community in which such a structure is located has the capacity to manage such grants.

  Amounts provided under this section may be bused only for mitigation activities that are consistent with mitigation plans that are approved by the Administrator and identified reducing mitigation activities. The Administrator may approve only mitigation activities that the Administrator determines:

  - are technically feasible and cost-effective; or
  - will eliminate future payments from the National Flood Insurance Fund for severe repetitive loss structures through an acquisition or relocation activity. In making a determination, the Administrator shall take into consideration recognized ancillary benefits.

- **Reform of Coverage Terms:**

- **PRE-FIRM PROPERTIES**.—For any structure which is covered by flood insurance under this title, and on which construction or substantial improvement occurred on or before December31, 1974, or before the effective date of an initial flood insurance rate map published by the Administrator under section 1360 for the area in which such structure is located, the minimum annual deductible for damage to such structure shall be:

    - $1,500, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount equal to or less than $100,000; and
    - $2,000, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount greater than $100,000.

- **POST-FIRM PROPERTIES**.—For any structure which is covered by flood insurance under this title, and on which construction or substantial improvement occurred after December31, 1974, or after the effective date of an initial flood insurance rate map published by the Administrator under section 1360 for the area in which such structure is located, the minimum annual deductible for damage to such structure shall be:
    - $1,000, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount equal to or less than $100,000; and
    - $1,250, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount greater than $100,000.''.

Background: The National Flood Insurance Program (NFIP) was created by Congress in 1968 to provide insurance as an alternative to direct federal disaster assistance for individuals living in flood-prone areas. The program is administered by the FEMA, and the NFIP provides financial protection by offering flood insurance to homeowners, renters and businesses if their community participates in the NFIP. Flood insurance is mandatory for properties financed by a federally regulated lending institution, a government sponsored enterprise (GSE) for housing, or a federal lender. Additionally, flood insurance is mandatory for properties located within an area designated as having at least a one percent chance of being flooded in any year, and these areas are known as Special Flood Hazard Area (SFHA).

Throughout the NFIP's history, FEMA has charged premiums well below the full-risk or actuarial cost for properties built before a community's Flood Insurance Rate Map (FIRM) was completed. The NFIP is not actuarially sound, meaning that its premiums will not cover the average claims and expenses expected over the long run. According to Congressional Budget Office (CBO), pre-FIRM properties, make up over 20 percent of all NFIP policies, and FEMA estimates that pre-FIRM policyholders pay average premiums that are about 40 percent to 45 percent of the full-risk cost. Post-FIRM properties, in the past, also receive discounted premiums under current law, but they only account for less than 1 percent of all NFIP policies.

As of February 2011, CBO reports that the NFIP insured approximately 5.6 million policies with written annual premiums in force of $3.4 billion. Most of the NFIP's expenses include payments for insured claims resulting from outstanding coverage in force for a total of roughly $1.2 trillion. FEMA estimates that claims payments in 2011 will total about 43.5 percent of premium income, based on the historical experience of policies and coverage amounts currently insured by the program.

CBO estimates that the program will—on average—have greater annual expenses than revenue. This differential became apparent in the aftermath of Hurricanes Katrina, Rita, and Wilma in 2005. Because of the severe and widespread damages experienced during those storms, the program borrowed an unprecedented $16.7 billion in fiscal year 2006 to cover claims and interest expenses. According to the committee report, Congress made up for the shortfall by increasing the program's borrowing authority three times between September 2005 and January 2007 (from $1.5 billion to $20.8 billion). NFIP's current debt to the Treasury stands at $17.8 billion. It is highly unlikely that the program will have sufficient income to repay those borrowed funds within the next 10 years.

According to the committee report, "Congress last passed a long-term NFIP reauthorization and reform bill in 2004 (P.L. 108-264). The House and Senate each passed significant reform measures during the 110th Congress but could not agree on final legislation. Since September 2008, the NFIP has been extended eleven times; the program authorization has lapsed three times during that same time period. Last year, after several short-term extensions and three temporary lapses in the program, Congress extended the current program through September 30, 2011. These short-term extensions and lapses in the program have created needless uncertainty in the residential and commercial real estate sectors in communities across the country."

Student Loans Provisions

Summary: This legislation amends the Higher Education Act of 1965 to keep the Stafford loan rates to undergraduate students from an automatic rate increase scheduled for July 1, 2012 of this year. Under current law, the rates were to go from 3.4% to 6.8%, but this legislation would push that increase back for one more year until June 30, 2013. Rates were originally set at these levels for five years under H.R. 5 from 2007 (read our Legislative Bulletin).

Maintaining the lower, taxpayer subsidized loan rate will cost taxpayers $5.985 billion for a one-year extension. This extension is partially off-set by capping the length of time students may take out a subsidized Stafford loan to 150% of the published program length. Under current law, interest does not accrue on a subsidized Stafford loan while the student is enrolled in school. As a result of the new cap at 150% of program length, students pursuing a four-year degree will only be able to receive a subsidized Stafford loan for six years, at which point interest will start to accrue on that loan. Students who exceed the cap will still be able to take out an unsubsidized Stafford loan, which accrues interest while a student is in school. CBO estimates this policy will save $1.2 billion.

Those new borrowers who apply for the loans this year will save about $7 a month after they graduate.

Background: While the cost of attending college has risen rapidly in the last decade even as federal aid has also increased sharply. 65% of students who got a bachelor's degree in 2010 graduated in debt. The federal government's aid is part of the problem.

College costs are increasing faster than the cost of living, over the past 10 years the cost of private college has jumped more than 60%, nearly three times as much as incomes over the same period, and will now set you back $42,000 a year on average.

Prices at public colleges have shot up even more, nearly doubling to $21,000 for in-state students. By 2020, at a four-year bill is likely to top $240,000 for private schools and $155,000 at public universities.

Many conservatives would argue that hiking student aid is not the solution; in fact, that may be the underlying reason for this increase.
When determining the cost of higher education, colleges and universities know they are guaranteed a certain amount from students based on the amount of aid the student receives from the government. The cost of attending college has increased 439 percent since 1982 (after adjusting for inflation). Since 1980, Pell grant funding has increased 475 percent (after adjusting for inflation). *Continuing to increase federal subsidies hasn't helped reduce college costs and has likely exacerbated the problem.*

As federal involvement has increased and the maximum grant/loan amounts have increased, this has allowed colleges and universities to respond by increasing the cost of education expenses, creating an upward spiral of cost and federal involvement. Also, by inflating the demand for higher education through government intervention, basic economics suggests this has the effect of increasing costs. Cato has written extensively on this subject here.

Other Provisions

- The conference report includes Senate language that extends by one year, through fiscal year 2012, the Secure Rural Schools program. The program funds county outlays for public schools, road improvement and maintenance projects, and forest restoration and improvement projects in and around National Forests. The conference report clarifies that funds for eligible Title III projects under the program must be obligated by the end of the following fiscal year but not necessarily initiated.

- The conference report also includes Senate language to extend by one year, through fiscal year 2013, full funding for the Payment in Lieu of Taxes program. The program provides federal payments to local governments to help offset losses in property taxes due to nontaxable federal land within their boundaries.

Revenue Provisions

- The conference agreement transfers $2.4 billion from the LUST Trust Fund to the Highway Account of the Highway Trust Fund. Fuels of a type subject to other trust fund excise taxes generally are subject to an add-on excise tax of 0.1-cent-per-gallon to fund the Leaking Underground Storage Tank ("LUST") Trust Fund. For example,

the LUST excise tax applies to gasoline, diesel fuel, kerosene, and most alternative fuels subject to highway and aviation fuels excise taxes, and to fuels subject to the inland waterways fuel excise tax. This excise tax is imposed on both uses and parties subject to the other taxes, and to situations (other than export) in which the fuel otherwise is tax-exempt. The monies in the LUST Trust Fund are used to pay expenses incurred by the Environmental Protection Agency (the "EPA") and the states for preventing, detecting, and cleaning up leaks from petroleum underground storage tanks, as well as programs to evaluate the compatibility of fuel storage tanks with alternative fuels, MTBE additives, and ethanol and biodiesel blends.

- The conference report, for pension funding purposes, plan liabilities are calculated by discounting projected future payments to a present value by using legally required interest rates based on corporate bonds: the lower the rate, the greater the liability. These rates have been abnormally low for a significant period of time. As a result of the current interest rate climate, contributions for 2012 will be much greater than for prior years. Under this provision, plan liabilities would continue to be determined based on corporate bond segment rates, which are based on the average interest rates over the preceding two years. However, beginning in 2012 for purposes of the minimum funding rules, any segment rate must be within ten percent (increasing to 30 percent in 2016 and thereafter) of the average of such segment rates for the 25-year period preceding the current year. This provision would stabilize the fluctuation of interest rates from year to year, resulting in fewer sharp declines and fewer sharp increases in interest rates. Thus, because there is an inverse relationship between the level of interest rates and the level of required contributions, as compared to current law, higher contributions will be made during periods of abnormally high interest rates and lower contributions will be made during periods of abnormally low interest rates. This provision would not apply with respect to participant disclosures. Participants will be informed of the funded status of their plan using current law interest rate assumptions and this change for three years. This provision is estimated to raise $9.394 billion in revenue over ten years.

- The Senate amendment and the Conference agreement include a new Federal Phased Retirement Program under which a Federal agency may allow a full-time retirement eligible employee to elect to enter phased retirement status in accordance with regulations issued by the Office of Personnel Management (OPM). During that status, generally, the employee's work schedule is a percentage of a full time work schedule, and the employee receives a phased retirement annuity. At full-time retirement, the phased retiree is entitled to a composite retirement annuity that also includes the portion of the employee's retirement annuity attributable to the reduced work schedule. The Conference agreement includes an exception to the early distribution tax for payments under a phased retirement annuity and a composite retirement annuity received by an employee participating in this new Federal Phased Retirement Program. This provision is estimated to save $459 million over ten years.

- The conference agreement provides that out of money in the Treasury not otherwise appropriated, the following transfers are to be made from the General Fund to the Highway Trust Fund: $6.2 billion transfer in FY 2013 and a $10.4 billion transfer in FY2014 deposit of general funds from the Treasury to the Highway Trust Fund for

the Highway account and a $2.2 billion transfer in FY2014 deposit of general funds from the Treasury to the Highway Trust Fund for the Mass Transit account.

- The conference agreement includes the Senate provision that amends the definition of manufacturer of tobacco products to include any person who for commercial purposes makes available machines capable of making tobacco products for consumer use. This includes making a machine available for consumers to produce tobacco products for personal consumption or use. Under current law, there is a difference in the tax treatment of cigarette tobacco and pipe tobacco, excise tax rates on cigarettes ($50.33 / thousand cigarettes), "roll your own" (RYO) cigarette tobacco ($24.78 / pound), and pipe tobacco ($2.83 / pound). As such, the machine's owner would be responsible for federal excise taxes on the tobacco products manufactured using his or her machine. This provision increase taxes by $94 million over ten years.

- The conference agreement increases PBGC premiums for single-employer plans and multiemployer plans. Single-employer plan flat-rate premiums are increased to $42 per participant for 2013 and $49 per participant for 2014 with indexing thereafter. For plan years beginning after 2012, the rate for variable-rate premiums ($9 per $1,000 of unfunded vested benefits) is indexed and the per-participant variable-rate premium is subject to a limit. The limit is $400 for 2013 with indexing thereafter. In addition, the rate for variable-rate premiums per $1,000 of unfunded vested benefits is increased by $4 for 2014 and another $5 for 2015. These increases are applied to the rate applicable for the preceding year 83 (that is, $9 as indexed for the preceding year per $1,000 of unfunded vested benefits) and indexing continues to apply thereafter. Multiemployer plan flat-rate premiums are increased by $2 per participant for 2013. This provision is estimated to save $10.575 billion (including interactions with the interest rate stabilization provision) over ten years.

Outside Organizations Supporting: U.S. Chamber of Commerce

Outside Organization Opposing: Heritage Action, Club for Growth, Americans for Prosperity, and FreedomWorks

Committee Action: H.R. 4348 was introduced by Rep. John Mica (R-FL) on 4/16/2012. The legislation was referred to the Committees on Transportation and Infrastructure; Ways and Means; Natural Resources; Science, Space, and Technology; and Energy and Commerce. On 4/18/2012 the house passed H.R. 4348 by a vote 293 - 127 (Roll no. 170). On 6/28/2012 Conference report H. Rept. 112-557 was filed and Conferees agreed to file conference report.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: According to the CBO report, "CBO estimates that enacting H.R. 4348 would reduce budget deficits over the 2012-2022 periods by $16.3 billion. That figure does not include effects that may be counted for budget enforcement purposes in the House of Representatives. Specifically, the House passed budget resolution calls for counting transfers from the general fund of the Treasury to the Highway Trust Fund as new spending.CBO

estimates that implementing the legislation also would lead to discretionary spending of $95.9 billion over the 2013-2017 period; such spending would be subject to future appropriation actions. Of that amount, the spending on transportation programs would total $94.3 billion, which reflects estimated obligation levels for 2013 and 2014 that are approximately equal to the obligation levels for 2012, adjusted for inflation. In addition, CBO estimates that implementing provisions of the conference report for the remainder of 2012, 2013, and 2014 would result in an end-of-year balance in 2014 of approximately $4 billion in the highway account of the Highway Trust Fund and about $1 billion in the transit account of the Highway Trust Fund."

According to CBO, the legislation reduces mandatory spending by $7 billion of ten years and increases tax revenues by $9 billion over ten years.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. Several provisions in the bill extend government programs otherwise set to expire.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, MAP 21 creates mandates on the motor coach industry such as Driver Safety Fitness Ratings and the $2 billion Electronic On-Board Recorders mandate. Compliance, Safety, Accountability (CSA) is inflicting considerable damage in the marketplace.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: A committee report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. The bill appears to contain no earmarks.

Constitutional Authority: According the author, "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the United States Constitution, specifically Clause 1, Clause 3, and Clause 18."

RSC Staff Contacts:

Ja'Ron Smith, Ja'ron.Smith@mail.house.gov, (202) 226-2076

- (Transportation and Infrastructure, Revenue Provisions, & Flood Insurance)

Derek Khanna, Derek.khanna@mail.house.gov, (202) 226-8576

- (Student Loans)