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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 (110<sup>th</sup> Congress) and section 301(b)(2) of S. Con. Res. 70 (110<sup>th</sup> 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 account instead of \$44,000,000 as proposed by the House. The Senate bill contained no such account.

(and Rental Payments)

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 non-structural 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 non-structural 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

### 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.

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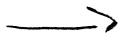
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CHILD NUTRITION PROGRAMS

includes

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

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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.

Year

TITLE II - COMMERCE, JUSTICE, SCIENCE,  
DEPARTMENT OF COMMERCE AND RELATED AGENCIES

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 ~~State and local governments, nonprofits, and public-private partnerships~~ to accelerate wireless and 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 ~~September 30, 2013~~.

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#### DIGITAL-TO-ANALOG CONVERTER BOX COUPONS

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 ~~computer~~ box installation.

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converter

#### 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 OF VIOLENCE AGAINST WOMEN

ON

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 account.

] OFFICE OF JUSTICE PROGRAMS [ CNSC

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

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*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

UC

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. 2001. For COPS Hiring Grants, waives the \$75,000 per officer cap codified at 42 U.S.C. 2976dd-3(c) and the 25 percent local match requirement codified at 42 U.S.C. 3796dd(g).

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### 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 the passage of this Act with a project listing of how these funds will be obligated. (enactment)

##### 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. e

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.

IV

Title ~~X~~—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 ~~in this Act~~. The House bill included no similar provision.

*under this heading*

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 in this Act. The House bill included no similar provision. under  
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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. uc

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. uc

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

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

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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 (SEP), 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 includes 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 includes 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<sub>2</sub> 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 a 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.

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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 ~~had~~ 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.

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TITLE V —FINANCIAL SERVICES AND GENERAL GOVERNMENT

DEPARTMENT OF THE TREASURY

~~DEPARTMENTAL OFFICES~~

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION (C+SC)

SALARIES AND EXPENSES (S)

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 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 ~~combined~~<sup>9</sup> 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 Act.



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## 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.



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### 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.

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#### 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 Act.

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#### SURETY BOND GUARANTEES REVOLVING FUND

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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.

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.

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## 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 ~~direct, indirect, and induced~~ 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 ~~amount~~ of Federal positions.

The conferees include bill language as proposed by the Senate to require an expenditure plan. Consistent with direction provided previously ~~in~~ 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.

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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 USC 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 relate to authorization of the Basic Pilot system.

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TITLE VII - DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED  
AGENCIES ~~AMERICAN RECOVERY AND REINVESTMENT ACT, 2009~~

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 create 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 create 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 create 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 create 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 create 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 a 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. ~~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 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, ~~school replacement, school improvement and~~ repair and detention center maintenance and repair. *repair and restoration of roads,*

#### 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

2 The amended bill includes \$7,220,000,000 for the Environmental Protection Agency instead of \$9,400,000,000 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 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, <sup>to</sup> the Conferees have increased the tribal set-aside from the Clean Water State Revolving Funds ~~for~~ 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 create ~~lasting value for the~~ <sup>3</sup> 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 <sup>and</sup> ~~\$415,000,000~~ for Indian Health Facilities instead of \$410,000,000 as proposed by the Senate, ~~instead of \$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

<sup>1</sup> ~~No funds are~~ 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.



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. The 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, and 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 ~~both the House, and the Senate~~. 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, ~~and 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.

*instead of \$500,000,000 as proposed by the*

The conference agreement also provides \$1,100,000,000 for Early Head Start, as proposed by the House, ~~and 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 ~~his/her~~ 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.

*instead of \$550,000,000 as proposed by the*

*(the*

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~~ <sup>(effect)</sup> 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 ~~from~~ <sup>year</sup> State and local services, during the 2008-2009 academic ~~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~~ <sup>le</sup> 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 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> 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 611 and \$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 coordinat~~o~~n, as proposed by the House.

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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. 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. 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 ~~appropriate~~ 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.

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## 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 Act will create or sustain 97,200 jobs.

(title

### 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

1,000  
The conferees agree to provide ~~\$850~~,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

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The conferees agree to provide \$100,000,000, 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

~~XXXXX~~ 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

~~SUPPLEMENTAL DISCRETIONARY GRANTS FOR AIRPORT INVESTMENT~~

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.

on-the-job training

FEDERAL RAILROAD ADMINISTRATION

CORRIDORS

CAPITAL ASSISTANCE FOR HIGH SPEED RAIL 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.

R

CAPITAL ~~AND INTERCITY PASSENGER RAIL SERVICE~~ 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~~

(lc)

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.

INSERT  
5A

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

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.

5A

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 instead of \$2,500,000,000 as proposed by the House ~~and \$3,500,000,000~~ as proposed by the Senate. 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

~~LEAD HAZARD REDUCTION~~

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

and)

The conference agreement provides \$15,000,000, as proposed by the House, instead of \$12,250,000 as proposed by the 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 ~~THIS TITLE~~

~~Section \_\_\_\_\_ 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.~~

1202

Section ✓ 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.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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.

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# 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 bills, 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 (NIST) 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(f)(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 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 be 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, or 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*

The Senate bill does not include this same provision, but has corresponding limitations 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 II—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 is 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 maintain most all study language and add a study to require 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 a study all impact of all the provisions of the HITECH Act on health care costs, adoption of electronic health record by providers, and reduction sin 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 [

ALL CAPS

## 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.~~ 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 ~~at least~~ 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

shall) 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 may~~ 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 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.

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*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.

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*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.

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*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 IG which rejects a Board recommendation regarding investigations to submit a report to the President, 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.

Board

Inspectors General (IG)

*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. 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 <sup>↑</sup>management and Budget.

UC

*Sec. 1552. Set-Aside for State and Local Government ~~Cost~~ Reporting.*—The conference agreement includes new language allowing agencies, after notice and comment rulemaking, to reasonably adjust limits on administrative expenditures for <sup>↑</sup>federal grants to help recipients defray costs of data collection requirements under this Act.

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*Sec. 1553. ~~Protecting State and Local Government and Contractor Whistleblowers.~~*—The conference agreement includes language providing new protection <sup>↑</sup>against reprisals for employees of <sup>↑</sup>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.

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*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.

*Sec. 1555. Contracting.*—The conference agreement requires contracts using funds made available by this Act to be awarded in accordance with certain <sup>↑</sup>federal laws and regulations relating, among other things, to competition in contracting, unless otherwise authorized by law. This is a modification of language proposed by the Senate requiring competition in awarding grants and contracts under this Act.

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*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. H-1B

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 the current fiscal year for Agency heads to transfer up to 1% of ~~the~~ funds within their *certain* 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 provision 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