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NO SMALL CHANGE
THE STIMULUS PACKAGE AND ITS IMPACT

Patton Boggs Analysis of the
American Recovery and Reinvestment Act of 2009

PATTON BOGGS LLP
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AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
PROGRAMMATIC ANALYSIS

Today, February 17, 2009, at an alternative energy facility outside of Denver, Colorado, President Obama signed into law the American Recovery and Reinvestment Act of 2009. This Act amounts to the largest one-time domestic spending program in United States history, coupled with a massive dose of tax relief, all intended to stimulate the faltering economy and, specifically, to create or save 3.5 million jobs during the President's first two years in office.

Summarizing Our Special Report

In brief, the huge and complex stimulus package provides for $212 billon in tax relief and $575 billion in new Federal spending. The following analysis was prepared by experts at Patton Boggs LLP to help you understand the myriad details in the stimulus package, including:

- What the tax and funding provisions target;
- Information on where funding decisions will be made inside the government;
- The methods for allocations of different funding decisions;
- The range of entities eligible for funding;
- The timeline for funding decisions;
- Special criteria for participating in select programs; and
- The long-term policy implications of this temporary, albeit huge, infusion of government funds into the economy.

Understanding the Post-Stimulus Political Realities

As difficult, and as historically significant, as it was for President Obama to gain enactment of the stimulus package as a legislative victory in his first month in office, the hardest work lies ahead.

First, implementation of the massive stimulus package must be carried out by a myriad of Federal, State and local government entities on a severely accelerated timetable. The distribution of funding often involves new grant programs, programs that are parallel to existing funding mechanisms, new regulatory standards, and an array of bureaucratic issues. Moreover, although the money will be awarded quickly, with little initial oversight, during the next few years there will be close scrutiny by Congress and various agency Inspectors General of how the money is distributed and whether it is spent wisely and fairly.

Second, the effectiveness of the stimulus package certainly will have a major impact on the 2010 Congressional elections and perhaps even the 2012 Presidential election. Right or wrong, Congressional Republicans fundamentally disagree with the approach of the stimulus package and, after standing united in opposition in the House and nearly united in the Senate, Republicans are gambling that the Act will fail to improve the economy. If they are right and if the stimulus fails to

put enough people back to work or insufficiently boosts the economy, Republicans could reverse the big losses they suffered in 2006 and 2008 and pick up a large number of House and Senate seats in 2010. If the Republicans are wrong, the Democrats will get the credit for an improving economy, and the stimulus could be the foundation for solidifying their large majorities in the House and the Senate for a very long time. It is quite remarkable that even President Obama's hope for re-election may already hinge on whether tangible improvements are experienced before the end of his first term – like Reagan in 1980, the race in 2012 will surely ask citizens to decide "Am I better off today than I was four years ago?" The Republican candidate for President will be less important than how Americans answer that question, so President Obama has no choice but to see the stimulus succeed. These factors mean that the national debate over how to cure the economy, and whether or not the stimulus package is working, will be extremely partisan because of what is at stake politically.

A third complicating factor is that, in order for the stimulus to succeed, credit must again begin to flow through the clogged arteries of the United States banking and financial services system. Judging from Wall Street's reaction last week to Treasury Secretary Geithner's first post-ESSA/TARP I/TARP II proposed solution to the credit crisis, the availability of sufficient liquidity to enable stimulus-driven commerce to grow is not a forgone conclusion.

Fourth, complicating the credit rescue effort is the uncertainty over how to overhaul the outdated mechanisms for regulating financial services of all kinds. The debate over regulatory reform has begun in earnest in the U.S. and abroad at the national and international levels. Lawmakers do not have the luxury of putting the regulatory boat in dry dock to look for leaks and scrape barnacles. Instead, their mission is the equivalent of trying to conduct major repairs while underway in treacherous waters and foul weather.

Fifth, just as the automakers learned when they sought and accepted government assistance (as have Wall Street firms and banks), previously private corporate actions are now subject to intense public and governmental scrutiny. As the Federal Government becomes even more involved in directly funding business activities, there are likely to be new regulatory oversight, transparency, accountability, and compliance requirements imposed as conditions for receiving that funding. "Business as usual" is dead and gone, replaced by a level of engagement that may make the government a *de facto* member of the corporate board room. It is difficult to overestimate how that seismic shift in governmental involvement will reshape a number of complex and difficult policy choices in the years to come. The corporate political agenda – on issues like executive compensation, immigration reform, tax policy, health care, environmental regulation, foreign trade, and receptivity to unionization of the workforce – will not be what it was before the stimulus, TARP, and a more interventionist government rose out of the ashes of our shared economic pain.

One of the central fights during the next two years in Congress will be efforts from a number of interest groups, alliances, and adhoc advocacy campaigns to ensure that many line items in the Act become a permanent part of the Federal budget. No doubt some of those campaigns will succeed in their efforts to permanently increase the funding for select programs and agencies as a result of the one-time stimulus

The stimulus funding, and the deficit that results from the cost of the Act, also brings closer a day of reckoning for Congress and the Administration on how to rein in the runaway costs of entitlement spending on programs such as Social Security, Medicare and Medicaid. While past Presidents and

Congresses have avoided the opportunity to address the long-term challenges of entitlement spending, the political, economic and cultural conditions may now converge and create conditions for bringing these programs into line with future revenue projections.

Some Historical Perspective: It's Not Yet the Worst of Times

While it is popular for the media to compare our difficult times with events of the Great Depression, there remain glimmers of hope and modest optimism for what remains of the American economy.

- Gross Domestic Product (GDP) in 1929, at the start of the Great Depression, was $865 billion in today's dollars, which is a mere fraction of the real 2008 GDP of $14.3 trillion.

- From 1929 to 1933, GDP fell 30 percent, while the stock market lost a whopping 90 percent of its value. By comparison, stocks lost approximately 30 percent of their value in 2008 and are down approximately another 10 percent so far in 2009.

- In 1933, unemployment was probably at least 25 percent, and many experts put it much higher. By comparison, unemployment today is 7.6 percent of the workforce.

Moreover, the severely damaged economy in the 1930s lacked the governmental platform of safeguards and safety nets - both financial and social - that we enjoy today, and which tend to brake the downturn and provide a foundation for a turnaround. In addition, the amount of the current stimulus dwarfs the 1930s precedent. The total spending of the New Deal was just 2 percent of GDP. The measure the President signed today is 5 percent of GDP, and it is widely regarded as just a down payment on both further stimulus packages and the rest of the Democratic domestic spending agenda.

The initial appropriation for the Works Projects Administration (WPA) was "just" $4.8 billion (roughly $100 billion in today's dollars) compared with the $775 Billion provided today. All of the New Deal WPA programs cost $11 billion dollars and employed 8.5 U.S. million workers. For that money, the country bought 651,000 miles of new roads, built 78,000 bridges, 8,000 parks, and 800 airports. It also funded programs in the humanities, the arts, writing and theatre projects, and a national health survey. In that light, given the amount of money the Federal government is about to spend in the next eighteen months, and given that our economy and government are immeasurably more developed than they were in the 1930s to protect the public, the prospect of creating or saving 3.5 million jobs and securing an economic turnaround with useful public works projects and incentives is not far fetched. Remember, President Franklin Roosevelt is often credited for his Keynesian approach to using government spending to end the Depression. In fact, Lord Keynes' "General Theory" was not published until 1936, long after the FDR Administration had started to grope its way by mere feel and intuition, and without much of a financial infrastructure, to save the economy. Our situation today, though terribly serious, is immeasurably better than the situation faced by earlier generations.

Keeping Up to Date

This report is a living document – check back at www.pattonboggs.com regularly in the days, weeks and months ahead as we update the report to reflect critical new information about the funding available in this Act and how the recovery process is impacting all elements of the political process.

Our website's media center is the hub of information for you on the stimulus Act. On Monday, February 16, we released 10 separate ***Capital Thinking*** podcasts of 10 to 15 minutes each, all focused on how the American Recovery and Reinvestment Act affects different sectors of the American economy. To listen to various segments, please visit us at: http://www.pattonboggs.com/media/podcasts.aspx?pcw=aab4e4f7-d9b9-4ea2-afcb-e0e9042ae010

In the days and weeks ahead, we will be adding more podcasts and other multi-media information on the stimulus Act to our website to keep you up to date. Please make our Media Center on a regular basis: http://www.pattonboggs.com/media.

Conclusion

These are indeed unprecedented times – the economic events of 2007-2009 have created a historical inflection for government. We see the stimulus Act as a tremendous opportunity for those who are: (1) well organized and motivated; (2) able to connect their strategic goals to national priorities; and (3) prepared to move quickly to pursue the programs that best suit their needs. Within this report, we give you a roadmap to begin identifying your best opportunities in this new financial and regulatory landscape. Please don't hesitate to call on us to help guide you through the challenges of using the stimulus Act to meet your own goals.

GENERAL PROVISIONS

The following provisions apply to funding authorized by this Act, unless otherwise noted in the programmatic descriptions below –

- Funding is temporary, intended to preserve and create jobs, and make investments in infrastructure, energy and science, unemployment assistance, and State and local stabilization.
- Additional funds are dedicated to improved oversight, including for the Inspectors General and Government Accountability Office.
- Establishes a new Executive Branch-level board to oversee funding.
- Requirements for Federal agencies to include expenditure plans prior to obligating funds.
- Additional reporting requirements to ensure greater accountability.
- Certification by State and local officials that the spending is an appropriate use of taxpayer funds.

Also, it is important to note that "State Fiscal Stabilization" funds, directed through the Department of Education, allow about $25 billion to be used for education or "*other government services*" such as public safety -- effectively a revenue-sharing provision.

DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION

Distance Learning, Telemedicine and Broadband Program

- **Purpose:** To support grants, loans and loan guarantees for broadband infrastructure through the Department of Agriculture's Rural Utilities Service (RUS) broadband loan program
- **Funding Level:** $2.5 billion
- **Allocation Method:** Grants, loans and loan guarantees
- **Decision-Maker:** Secretary of Agriculture
- **Eligible Applicants:**
  - Eligibility Rules of the RUS Broadband Loan Program apply
    - For RUS broadband loan and loan guarantees, legally organized entities providing or proposing to provide broadband service in eligible rural communities, as defined by the RUS rules, are eligible. Individuals or partnerships of individuals are not eligible. Entities that serve more than 2 percent of the telephone subscriber lines installed in the US are not eligible. State and local governments are eligible if no other eligible entity is already offering or has committed to offer broadband service to eligible rural communities, to be determined by RUS
    - For RUS broadband grants, legally organized entities and State or local governments who have the legal capacity and authority to own and operate broadband facilities are eligible
    - Eligible rural community is defined as a place in the U.S. or its territories that has no more than 20,000 inhabitants based on the most recent U.S. Census

Bureau statistics and is not in an area designated as a standard metropolitan statistical area

- **Special Criteria:**
  - At least 75 percent of the areas targeted for funding must be rural and without sufficient access to high speed broadband service in order to facilitate rural economic development, as determined by the Secretary of Agriculture
  - Priority to projects that offer end users a choice of more than one service provider
  - Priority to projects that provide service to the high proportion of rural residents who do not have access to broadband service
  - Priority given to project applications from current and former borrowers of RUS funds authorized under the Rural Electrification Act and to projects that can commence immediately
  - Priority given to projects that demonstrate that they would be fully funded or can be completed with RUS grants or loan backing
  - No area of a recipient's project funded hereunder may receive funding to provide broadband service under the Broadband Technology Opportunities Program
  - Timing
    - USDA Secretary must issue a report on planned spending and obligations describing the use of the funds within 90 days of enactment of the Act

National Resources Conservation Service (NRCS), Watershed and Flood Prevention Operations Program

- **Purpose:** To purchase and restore floodplain easements and investment in both structural and non-structural watershed infrastructure improvements
- **Funding Level:** $290 million
- **Allocation Method:** Loans
- **Decision-Maker:** NRCS
- **Eligible Applicants:** Sponsoring local organizations of authorized watershed projects
  - "Local organization" means any State, political subdivision thereof, soil or water conservation district, flood prevention or control district, or combinations thereof, or any other agency having authority under State law to carry out, maintain and operate the works of improvement; or any irrigation or reservoir company, water users' association, or similar organization having such authority and not being operated for profit that may be approved by the Secretary; or any Indian tribe or tribal organization having authority under Federal, State, or Indian tribal law to carry out, maintain, and operate the works of improvement
- **Special Criteria:**
  - Priority to projects that most cost-effectively provide the greatest public safety, flood protection, economic, and environmental benefits
  - NRCS must complete existing infrastructure projects that have already initiated the planning, design or construction work
  - Priority to projects that can initiate work as soon as possible
  - Funds should be allocated to projects that can be fully funded and completed with the funds appropriated

NRCS, Watershed Rehabilitation Program

- **Purpose:** To rehabilitate aging flood control infrastructure
- **Funding Level:** $50 million
- **Allocation Method:** Loans
- **Decision-Maker:** NRCS
- **Eligible Applicants:** Sponsoring local organizations of authorized watershed projects
  - Local organization means any State, political subdivision thereof, soil or water conservation district, flood prevention or control district, or combinations thereof, or any other agency having authority under State law to carry out, maintain and operate the works of improvement; or any irrigation or reservoir company, water users' association, or similar organization having such authority and not being operated for profit that may be approved by the Secretary; or any Indian tribe or tribal organization having authority under Federal, State, or Indian tribal law to carry out, maintain, and operate the works of improvement
- **Special Criteria:**
  - Priority to projects that are at greatest risk of failure and present threats to public safety
  - Priority to projects that that can obligate and expend funds cost effectively and quickly
  - NRCS must fully fund the cost of completing rehabilitation projects initiated with the funding allocated

Forest Service, Capital Improvements and Maintenance

- **Purpose:** To provide funding for reconstruction, capital improvement, decommissioning and maintenance of forest roads, bridges and trails including related watershed restoration ecosystem enhancements projects and for remediation of abandoned mine sites, removal of fish passage barriers, and other critical habitat, forest improvements and watershed enhancement projects
- **Funding Level:** $650 million
- **Allocation Method:** Project grants
- **Decision-Maker:** Forest Service
- **Eligible Applicants:** States and U.S. territories

Wildland Fire Management

- **Purpose:** To provide funding for hazardous fuels reduction, forest health protection, rehabilitation and hazard mitigation activities on Federal land including hazardous fuel reduction, forest health and ecosystem improvements
- **Funding Level:** $500 million
- **Allocation Method:** Project grants
- **Decision-Maker:** Forest Service
- **Eligible Applicants:** State and local governments
- **Special Criteria:**
  - $50 million must be used to make wood-to-energy grants to promote increased utilization of biomass from Federal, State and private lands

- Funds provided for activities on State and private lands shall not be subject to matching or cost share requirements

Farm Service Agency

- **Purpose:** To provide funding for salaries and expenses to maintain and modernize the information and technology system
- **Funding Level:** $50 million
- **Allocation Method:** Appropriations and transfers from the CCC export credit guarantees, Public Law 480 loans, and agricultural credit insurance fund program accounts, and miscellaneous advances from other sources
- **Decision-Maker:** Farm Service Agency
- **Eligible Applicants:** FSA, program administration

RUS, Rural Water and Waste Disposal Program

- **Purpose:** To provide funding for rural waste, waste water and waste disposal programs to support $3.788 billion in loans and grants for water and waste disposal facilities in rural areas
- **Funding Level:** $1.38 billion in new budget authority
- **Allocation Method:** Direct loans and grants
- **Decision-Maker:** RUS
- **Eligible Applicants:** Public entities such as municipalities, counties, special-purpose districts, Indian tribes, and corporations not operated for profit
- **Special Criteria:**
  - $2.82 billion for direct loans
  - $986 million for grants

Rural Housing Insurance Fund Program

- **Purpose:** To support the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949 to be available form funds in the Rural Housing Insurance Fund
- **Funding Level:** $200 million
- **Allocation Method:** Direct and guaranteed loans
- **Decision-Maker:** Rural Housing Service
- **Eligible Applicants:**
  - Rental housing insured loans
    - Farm owner or to a public or private nonprofit organization
  - Farm labor housing insured loans
    - Individuals, corporations, associations, trusts, or partnerships
- **Special Criteria:**
  - Loan programs are limited to rural areas which include towns, villages, and other places of not more than 10,000 people, which are not part of an urban area.
  - Loans may also be made in areas with a population in excess of 10,000, but less than 20,000, if the area is not included in a standard metropolitan statistical area and has a serious lack of mortgage credit for low- and moderate-income borrowers
  - $1 billion for direct single family housing loans
    - Additional $67 million for direct loans, including modifying loans under Section 502 of the Congressional Budget Act

- $10.472 billion for guaranteed single family housing loans
    - Additional $133 million for Section 502 unsubsidized guaranteed loans

Rural Community Facilities Program

- **Purpose:** To support $1.234 billion in loans and grants authorized by Section 381E(d)(1) of the Consolidated Farm and Rural Development Act for rural community facilities including hospitals, health clinics, health and safety vehicles and equipment, public buildings, and child and elder care facilities
- **Funding Level:** $130 million
- **Allocation Method:** Loans and block grants
- **Decision-Maker:** Rural Housing Service
- **Eligible Applicants:** Multi-State, regional, private, non-profit 501(c)(3) tax-exempt organizations
- **Special Criteria:**
    - $1.171 billion for direct community facility loans
    - $63 million for community facility grants

Rural Business Program

- **Purpose:** To support $3.01 billion in rural business loans and grants authorized by Section 310B(a)(2)(A) and 310B(c) of the Consolidated Farm and Rural Development Act
- **Funding Level:** $150 million in new Budget Authority
- **Allocation Method:** Loans and grants
- **Decision-Maker:** Rural Business – Cooperative Service
- **Eligible Applicants:** Public bodies and private nonprofit corporations
    - Including eligible nonprofit entity, or other tax-exempt organization, with a principal office in an area that is located on land of an existing or former Native American reservation and in a city, town, or unincorporated area that has a population of not more than 5,000 inhabitants
- **Special Criteria:**
    - $2.99 billion for guaranteed and industry loans
    - $20 million for rural business enterprise grants

USDA Buildings & Facilities and Rental Payments

- **Purpose:** To provide funding for construction, repair and improvement of the Department of Agriculture's headquarters buildings and facilities
- **Funding Level:** $24 million
- **Allocation Method:** Funds directed to agency
- **Decision-Maker:** Secretary of Agriculture
- **Eligible Applicants:** N/A

USDA Research Service, Buildings and Facilities

- **Purpose:** To provide funding for maintenance of the USDA's laboratory and research infrastructure
- **Funding Level:** $176 million

- **Allocation Method:** Funds directed to agency
- **Decision-Maker:** Secretary of Agriculture
- **Eligible Applicants:** N/A
- **Special Criteria:**
  - Priority in use of these funds will be given to critical deferred maintenance
  - Priority given to projects that can be completed
  - Priority given to activities that can commence promptly following enactment of the Act

Office of Inspector General (OIG)

- **Purpose:** To provide funding for oversight and audit functions of programs, grants and activities funded by this Act and administered by USDA, including $7.5 million for the U.S. Forest Service
- **Funding Level:** $22.5 million
- **Allocation Method:** Funds directed to office
- **Decision-Maker:** OIG
- **Eligible Applicants:** N/A

National School Lunch Program

- **Purpose:** To provide funding for the National School Lunch Program under the Richard B. Russell National School Lunch Act, except Section 21, and the Child Nutrition Act of 1966, except Sections 17 and 21 to carry out a grant program for the National School Lunch Program equipment assistance
- **Funding Level:** $100 million
- **Allocation Method:** Competitive grants
- **Decision-Maker:** States
- **Eligible Applicants:** Public and non-profit private schools and residential child care institutions
- **Special Criteria:**
  - Funds must be provided in proportion to each State's administrative expense allocation
  - States must provide competitive grants to school food authorities based on the need for equipment assistance in participating schools
    - Priority given to schools in which 50 percent or more of the students are eligible for free or reduced price meals under the National School Lunch Program

Nutrition Program for Women, Infants and Children (WIC)

- **Purpose:** To provide additional funding for the Special Supplemental Nutrition Program authorized by Section 17 of the Child Nutrition Act of 1966
- **Funding Level:** $500 million
- **Allocation Method:** Federal grant program
- **Decision-Maker:** Secretary of Agriculture
- **Eligible Applicants:**
  - Local agency

        - A public or private, nonprofit health or human service agency which provides health services, either directly or through contract
        - an Indian Health Service (IHS)
        - an Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an IHS unit or an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an IHS service unit
- **Special Criteria:**
    - $400 million to be placed in reserve to be allocated as deemed necessary by the USDA Secretary, notwithstanding Section 17(i) of the Child Nutrition Act of 1966
    - $100 million for purposes specified in Section 17(h)(10)(B)(ii)
        - Up to 1 percent of the funding provided under Section 17(h)(10)(B)(ii) may be reserved for administrative activities

<u>Commodity Assistance Program</u>

- **Purpose:** To provide funding for the emergency food assistance program as authorized by Section 27(a) of the Food and Nutrition Act of 2008 and Section 204(a)(1) of the Emergency Food Assistance Act of 1983
- **Funding Level:** $150 million
- **Allocation Method:** Federal grants to States
- **Decision-Maker:** Secretary of Agriculture
- **Eligible Applicants:** State distributing agencies
    - Distributing to public or private nonprofit organizations that provide food and nutrition assistance to the needy
    - Households that meet State eligibility criteria
- **Special Criteria:**
    - Secretary may use up to $50 million for costs associated with the distribution of commodities
        - $25 million must be available in Fiscal Year 2009

<u>Supplemental Nutrition Assistance Program</u>

- **Purpose:** To provide funding for food purchases under the Supplemental Nutrition Assistance Program (f.k.a. the Food Stamp Program), to increase benefits under this program, and to supplement the costs relating to facility improvements and equipment upgrades associated with the Food Distribution Program on Indian Reservations as established under Section 4(b) of the Food and Nutrition Act of 2008
- **Funding Level:** Estimated cost is $4.9 billion for Fiscal Year 2009; administrative expenses detailed below
- **Allocation Method:** Benefits and block grants
- **Decision-Maker:** Secretary of Agriculture
- **Eligible Applicants:** States
- **Special Criteria:**
    - Benefits increase

        - Beginning on the 1st full month 25 days after enactment, benefit values will be calculated using 113.6 percent of the June 2008 value of the thrifty food plan as specified under the Food and Nutrition Act of 2008
            - Terminates on September 30, 2009
    - Supplemental Nutrition Assistance Program
        - $145 million for State administrative expenses for Fiscal Year 2009, to be made available within 60 days of enactment of the Act
        - $150 million for State administrative expenses for Fiscal Year 2010
            - $4.5 million for Secretary oversight and management
        - Allocation
            - 75 percent of funds available for each Fiscal Year must be allocated to States based on the share of each State of households that participate in the Supplemental Nutrition Assistance Program as reported by USDA for the most recent 12 month period that data is available, adjusted by participate in disaster programs
            - 25 percent of funds available for each Fiscal Year must be allocated to States based on the increase in number of households that participate in the Supplemental Nutrition Assistance Program as reported by USDA for the most recent 12-month period for which data are available, adjusted by participation in disaster programs
    - Food Distribution Program on Indian Reservations
        - $5 million for facility improvements and equipment upgrades associated with the Food Distribution Program on Indian Reservations
            - Administrative costs sharing requirements are not applicable to funds provided in accordance with this provision

<u>Agriculture Disaster Assistance Transition, Farm Operating Loans</u>

- **Purpose:** To provide the principal amount of direct farm operating loans under Section 311 of the Consolidated Farm and Rural Development Act
- **Funding Level:** $193.807 million
- **Allocation Method:** Loans
- **Decision-Maker:** Secretary of Agriculture
- **Eligible Applicants:** Eligible producers under the Consolidated Farm and Rural Development Act
    - Farmers and ranchers in the U.S., and farm cooperatives and private domestic corporations, partnerships, joint operations, trusts, and limited liability companies that are controlled by farmers and ranchers and engaged primarily and directly in farming or ranching in the U.S., subject to certain conditions
- **Special Criteria:**
    - $193.807 million for direct farm operating loan program
        - Additional $20.44 million for direct farm operating loan program, including modifying the loan

Aquaculture Assistance

- **Purpose:** To assist eligible aquaculture producers for losses associated with the high feed input costs during the 2008 calendar year
- **Funding Level:** $50 million
- **Allocation Method:** Grant
- **Decision-Maker:** Secretary of Agriculture
- **Eligible Applicants:** States, eligible aquaculture producers
  - Aquaculture is the business of farming aquatic plants and animals
- **Special Criteria:**
  - "Eligible aquaculture producers" means an aquaculture producer that during the 2008 calendar year, as determined by the Secretary, produced an aquaculture species for which feed costs represented a substantial percentage of the input costs of the aquaculture operation and experienced a substantial price increase in feed costs above the previous 5-year average
  - Funded through the Commodity Credit Corporation
    - $50 million will remain available until September 30, 2010
  - Timing
    - Within 60 days of enactment, the Secretary must notify the State Department of agriculture in each State of the availability of funds
    - Within 120 days of enactment, the Secretary must make grants to the State
  - Requirements
    - Funds allocated only to States that demonstrate that the State will:
      - Use the grant funds to assist eligible aquaculture producers
      - Provide assistance within 60 days after the date on which the State receives grant funds
      - Within 30 days after the State provides assistance to eligible aquaculture producers, submit a report that describes its funding activities, the amount of assistance and the procedures it used
    - Eligible aquaculture producers that receive funding under this provision may not receive any other assistance under the supplemental agriculture disaster assistance program

DEPARTMENT OF COMMERCE

Economic Development Assistance Programs

- **Purpose:** To leverage private investment, stimulate employment and increase incomes in economically distressed communities
- **Funding Level:** $150 million, with $50 million for economic adjustment assistance
- **Allocation Method:** Applicants submit an Investment Assistance proposal. Proposals are Accepted on a competitive and continuing basis
- **Decision-Maker:** Economic Development Administration (EDA)
- **Eligible Applicants:** EDA considers "eligible applicants" to be a city or political subdivision of a State, State, public or private non-profit organization or association, district organization, Indian tribe or consortium of Indian tribes, private individual or for-profit organization

- **Special Criteria:**
  - Priority consideration given to areas that experienced sudden and severe economic dislocation and job loss due to corporate restructuring
  - Up to $50 million of funds may be transferred to federally authorized regional economic development commissions
  - Under EDA, project must be in a regional is subject to distress criteria:
    - An unemployment rate that is at least one percentage point greater than national average unemployment rate
    - Per capita income that is 80 percent or less of the national average per capita income; or
    - A special need, as determined by the Economic Development Administration

Periodic Censuses and Programs

- **Purpose:** To ensure a successful decennial for hiring additional personnel, to provide required training, increase targeted media purchases, and improve management of operational and programmatic risks
- **Funding Level:** $1 billion
- **Allocation Method:** (None specified)
- **Decision-Maker:** Bureau of Census
- **Eligible Applicants:** To be determined
- **Special Criteria:**
  - $250 million of which shall be provided for partnership and outreach efforts to minority communities and hard-to-reach populations

Digital-To-Analog Converter Box Program

- **Purpose:** To provide 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
- **Funding Level:** $650 million, with $90 million toward education and outreach to organizations for programs to educate vulnerable populations, senior citizens, minority communities, people with disabilities, low-income individuals and people living in rural areas, about the transition and to provide one-on-one assistance for converter box installation
- **Allocation Method:** Coupons mailed directly to applicants' home. Education and outreach fund allocation to be determined
- **Decision-Maker:** National Telecommunications and Information Administration
- **Eligible Applicants:** General public
- **Special Criteria:**
  - Amounts may be transferred to the Federal Communications Commission if the Secretary of Commerce, in consultation with the FCC, deems it necessary and appropriate, and only if the House and Senate Appropriations Committees are notified up to 5 days in advance of the fund transfer

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST)

Scientific and Technical Research Services

- **Purpose:** To provide funding for NIST's in-house research and development effort, competitive grants, additional research fellowships and advanced research and measurement equipment and supplies
- **Funding Level:** $220 million, plus $20 million transfer from the Health Information Technology (HIT) initiative at the Department of Health and Human Services for HIT activities
- **Allocation Method:** Competitive grants
- **Decision-Maker:** National Institute of Standards and Technology
- **Eligible Applicants:** To be determined, but likely to be U.S. businesses and industries that assist NIST in cooperative research
- **Special Criteria:**
  - Of the HIT funds, 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

- **Purpose:** To address National Institute of Standards and Technology (NIST) backlog of maintenance and renovation for construction of new facilities and laboratories
- **Funding Level:** $360 million
- **Allocation Method:** Competitive grants for $180 million for research science buildings
- **Decision-Maker:** National Institute of Standards and Technology
- **Eligible Applicants:** Institutions of higher education and nonprofit organizations are eligible to apply for grants under NIST's Technology Construction Grant Program
- **Special Criteria:**
  - The $180 million for competitive construction grant programs for research science buildings shall include Fiscal Year 2008 and 2009 competitions
  - For purposes of the construction grant program, NIST defines "research science building" as a building or facility whose purpose is to conduct scientific research, including laboratories, test facilities, measurement facilities and/or observatories
  - Competitive grants are awarded based upon published evaluation criteria

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

Operations, Research and Facilities

- **Purpose:** To provide funding for NOAA operations, research and facilities to address backlog of research, restoration, navigation, conservation and management activities
- **Funding Level:** $230 million
- **Allocation Method:** Likely to be dedicated to the Operations, Research and Facilities

(ORF) discretionary account or ORF offices--National Weather Service, NOAA research, NOAA Satellites, NOAA Fisheries and NOAA Ocean Services

- **Decision-Maker:** National Oceanic and Atmospheric Administration
- **Eligible Applicants:** N/A

Procurement, Acquisition and Construction

- **Purpose:** To provide funding for construction and repair of NOAA facilities, ships and equipment to improve weather forecasting and to support satellite development
- **Funding Level:** $600 million
- **Allocation Method:** To be determined
- **Decision-Maker:** National Oceanic and Atmospheric Administration
- **Eligible Applicants:** N/A
- **Special Criteria:**
  - Up to $170 million 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

- **Purpose:** To provide funding for oversight
- **Funding Level:** $6 million
- **Allocation Method:** To be determined
- **Decision-Maker:** National Oceanic and Atmospheric Administration
- **Eligible Applicants:** N/A
- **Special Criteria:**
  - Funds to remain available until September 30, 2013

DEPARTMENT OF JUSTICE

Justice Assistance Grant (Byrne)

- **Purpose:** To provide funding for broad-based public safety prevention, intervention, and suppression activities; law enforcement personnel; equipment and facilities (including crime laboratories); community-policing; prosecution and court programs; corrections and community corrections programs; drug treatment and enforcement; planning and evaluation; technology improvements; crime victim and witness programs, etc.
- **Funding Level:** $2 billion
- **Allocation Method:** Formula
- **Decision-Maker:** Bureau of Justice Assistance
- **Eligible Applicants:** Local law enforcement agencies, and States

Byrne Competitive Grants

- **Purpose:** To provide funding for broad-based public safety prevention, intervention, and suppression activities; law enforcement personnel; community-policing; prosecution and court programs; corrections and community corrections programs; drug treatment and enforcement; planning and evaluation; technology improvements; crime victim and witness programs, etc.
- **Funding Level:** $225 million
- **Allocation Method:** Competitive
- **Decision-Maker:** Bureau of Justice Assistance
- **Eligible Applicants:** Local, State, and Tribal governments, and non-profit organizations
- **Special Criteria:**
  - No use for compensation to victims of crime

Community Oriented Policing Services (Hiring Grants)

- **Purpose:** To provide funding for hiring and rehiring of additional career law enforcement officers
- **Funding Level:** $1 billion
- **Allocation Method:** Competitive
- **Decision-Maker:** Office of Community Oriented Policing Services
- **Eligible Applicants:** Local, State, and federally-recognized Tribal governments, and other multi-jurisdictional or regional consortia
- **Special Criteria:**
  - Waivers – applicable to stimulus funding, and Fiscal Year 2009 and Fiscal Year 2010 Appropriations
    - Eliminates $75,000 cap on salary and benefits per officer
    - Eliminates 25% local match requirement
  - Funds available until September 30, 2010

STOP Violence Against Women

- **Purpose:** To provide funding for law enforcement, prosecution, and victim services enhancements, such as training public safety and court-related personnel, expanding specialized units, enhancing technology, etc.
- **Funding Level:** $175 million
- **Allocation Method:** Formula
- **Decision-Maker:** Office of Violence Against Women
- **Eligible Applicants:** States, with required local and nonprofit suballocation percentages for various law enforcement and victim services

Transitional Housing Assistance Grants for Victims of Violence Against Women

- **Purpose:** To provide temporary housing assistance for victims, integrated with supportive services such as case management and counseling, and practical transitional aids (child care, employment, transportation)
- **Funding Level:** $50 million
- **Allocation Method:** Competitive
- **Decision-Maker:** Office of Violence Against Women

- **Eligible Applicants:** Local, State, and Tribal governments, and certain qualified nonprofit service providers

Victims Assistance and Compensation

- **Purpose:** To provide services and compensation (e.g. medical, wages, funeral, cooperation) to victims of criminal violence
- **Funding Level:** $100 million
- **Allocation Method:** Formula
- **Decision-Maker:** Office for Victims of Crime
- **Eligible Applicants:** States with an established crime victim compensation program

Internet Crimes Against Children (ICAC) Task Force Program

- **Purpose:** To enhance responses to offenders who use computer technology to sexually exploit children, including forensic and investigative components, training and technical assistance, victim services, and community education
- **Funding Level:** $50 million
- **Allocation Method:** Either formula (likely), or competitive – cooperative agreements.
- **Decision-Maker:** Office of Juvenile Justice and Delinquency Prevention
- **Eligible Applicants:** If by formula (likely), States; if competitive, States and local law enforcement or prosecutorial agencies in certain States to be pre-identified by DOJ for solicitation

Rural Law Enforcement

- **Purpose:** To provide funding for drug enforcement, drug prevention and treatment, and other law enforcement activities in rural areas
- **Funding Level:** $125 million
- **Allocation Method:** Competitive
- **Decision-Maker:** Bureau of Justice Assistance
- **Eligible Applicants:** Local, State, and Tribal governments, and national, regional and local non-profit organizations
- **Special Criteria:**
  - Special Eligible Uses
    - Police officer hiring
    - Community drug prevention and treatment

Drug Interdiction – Southwest Border / High-Intensity Drug Trafficking Areas

- **Purpose:** To provide assistance and equipment to local law enforcement along the Southwestern border or in High-Intensity Drug Trafficking Areas to combat criminal narcotic activity
- **Funding Level:** $30 million
- **Allocation Method:** Competitive
- **Decision-Maker:** Bureau of Justice Assistance (perhaps Office of National Drug Control Policy)
- **Eligible Applicants:** Local law enforcement

- **Special Criteria:**
  - Bureau of Alcohol, Tobacco, Firearms and Explosives also receives $10 million for Project Gunrunner, but only for Federal agency activities

Tribal Law Enforcement Assistance

- **Purpose:** To provide funding for renovation and constructing of juvenile and adult prison and rehabilitation facilities, and community-based alternative substance abuse programs to reduce prison populations
- **Funding Level:** $225 million
- **Allocation Method:** Competitive, in accordance with Correctional Facilities on Tribal Lands Program
- **Decision-Maker:** Bureau of Justice Assistance, in coordination with the Bureau of Indian Affairs
- **Eligible Applicants:** Federally-recognized Tribal governments
- **Special Criteria:**
  - Consideration for grant approval shall include:
    - Detention bed space needs of the tribe.
    - Violent crime statistics of the tribe.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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

Science

- **Purpose:** To accelerate 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 abilities
- **Funding Level:** $400 million
- **Decision-Maker:** NASA
- **Eligible Applicants:** N/A
- **Special Criteria:**
  - Funds remain available until September 30, 2010

Aeronautics

- **Purpose:** To provide funding for system-level research, development and demonstration activities related to aviation safety, environmental impact mitigation and the Next Generation Air Transportation System (NextGen)
- **Funding Level:** $150 million
- **Decision-Maker:** NASA
- **Eligible Applicants:** N/A
- **Special Criteria:**
  - Funds remain available until September 30, 2010

Exploration

- **Purpose:** To provide funding for exploration
- **Funding Level:** $400 million
- **Decision-Maker:** NASA
- **Eligible Applicants:** N/A
- **Special Criteria:**
  - Funds remain available until September 30, 2010

Cross Agency Support

- **Purpose:** To provide funding for cross agency support
- **Funding Level:** $50 million
- **Decision-Maker:** NASA
- **Eligible Applicants:** N/A
- **Special Criteria:**
  - Funds remain available until September 30, 2010
  - Highest priority to restore NASA-owned facilities damaged from hurricanes and other natural disasters occurring during calendar year 2008

Office of Inspector General

- **Purpose:** To provide funding for oversight
- **Funding Level:** $2 million
- **Decision-Maker:** NASA
- **Eligible Applicants:** N/A
- **Special Criteria:**
  - Funds remain available until September 30, 2013

NATIONAL SCIENCE FOUNDATION

Research and Related Activities

- **Purpose:** To fund research and research facility modernization
- **Funding Level:** $2.5 billion of which $300 million is available solely for the Major Research Instrumentation program and $200 million is allocated for academic research facilities modernization
- **Allocation Method:** (None specified)
- **Decision-Maker:** NSF Director
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - NSF must submit its spending plan to the House and Senate Appropriations Committees within 60 days of enactment
  - Directs that NSF support research divisions and advancements in supercomputing technology

Education and Human Resources

- **Purpose:** To provide additional funding for education and human resources
- **Funding Level:** $100 million of which $60 million is allocated to the Robert Noyce Scholarship Program, $25 million to Math and Science Partnerships, and $15 million to Professional Science Master's Programs
- **Allocation Method:** Grants
- **Decision-Maker:** (None specified)
- **Eligible Applicants:**
  - Robert Noyce Scholarship Program – undergraduate science, technology, engineering, and mathematics (STEM) majors and post-baccalaureate students holding STEM degrees who commit to teaching in high-need K-12 school districts
  - Math and Science Partnerships – Higher education institute or consortia and non-profit institute or consortia
  - Professional Science Master's Programs – None specified
- **Special Criteria:**
  - NSF must submit its spending plan to the House and Senate Appropriations Committees within 60 days of enactment
  - Funding to remain available until September 30, 2010

Major Research Equipment and Facilities Construction

- **Purpose:** To provide additional funding for research equipment and facility construction
- **Funding Level:** $400 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** (None specified)
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - NSF must submit its spending plan to the House and Senate Appropriations Committees within 60 days of enactment
  - Funding to remain available until September 30, 2010

Office of Inspector General

- **Purpose:** To provide funding for oversight
- **Funding Level:** $2 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** (None specified)
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - NSF must submit its spending plan to the House and Senate Appropriations Committees within 60 days of enactment
  - Funding to remain available until September 30, 2013

DEPARTMENT OF DEFENSE

Facility Infrastructure Investments

- **Purpose:** To provide funding for facility sustainment, restoration and modernization associated with maintaining physical structures at Department of Defense posts, camps and stations
- **Funding Level:** $4.24 billion (Army: $1,474,525,000; Navy: $657,051,000; Marine Corps $113,865,000; Air Force: $1,095,959,000; Army Reserve: $98,269,000; Navy Reserve: $55,083,000; Marine Corps Reserve: $39,909,000; Air Force Reserve: $13,187,000; Army National Guard: $266,304,000; Air National Guard: $25,848,000)
- **Allocation Method:** Discretionary
- **Decision-Maker:** Service Installation Commands
- **Eligible Applicants:** Department of Defense facilities
- **Special Criteria:**
  - The Secretary of Defense shall provide a written report to the congressional defense committees within 60 days of enactment with a project listing of how the funds will be obligated
  - Funds will remain available for obligation until September 30, 2010
  - For facilities in the United States and its territories

Energy Efficiency Technology and Research

- **Purpose:** To provide funding for the funding of research, development, test and evaluation projects, including pilot projects, demonstration projects 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
- **Funding Level:** $300 million (Army: $75,000,000; Navy: $75,000,000; Air Force: $75,000,000; Defense Wide: $75,000,000)
- **Allocation Method:** Discretionary
- **Decision-Maker:** Offices of the Assistant Secretaries for Research, Development and Acquisition
- **Eligible Applicants:** Contractors, government laboratories and facilities, universities and nonprofit organizations
- **Special Criteria:**
  - The Secretary of Defense is directed to provide a report to the congressional defense committees detailing the planned use of these funds within 60 day of enactment
  - Funds will remain available for obligation until September 30, 2010

Defense Health Program

- **Purpose:** To provide funding for the improvement, repair, and modernization of military medical facilities, and invest in the energy efficiency of military medical facilities

- **Funding Level:** $400 million (Army: $220,000,000; Navy: $50,000,000; Air Force: $130,000,000)
- **Allocation Method:** Discretionary
- **Decision-Maker:** Office of the Assistant Secretary for Health Affairs
- **Eligible Applicants:** Military medical facilities
- **Special Criteria:**
  - The Secretary of Defense shall provide a written report to the congressional defense committees within 60 days of enactment with a project listing of how the funds will be obligated
  - Funds will remain available for obligation until September 30, 2010

ARMY CORPS OF ENGINEERS

Army Corps of Engineers- Civil Works: General Investigations

- **Purpose:** To provide funding for investigations
- **Funding Level:** $25 million
- **Allocation Method:** Discretionary allocations to Corps activities, projects or programs
- **Decision-Maker:** Secretary of the Army
- **Eligible Applicants:** Army Corps, for managed projects, programs and activities normally funded by Energy and Water Appropriations Acts
- **Special Criteria:**
  - Spending limited to projects that can be carried out without new budget authority
  - Secretary must report to Congress within 45 days of enactment on the planned allocation, obligation and expenditures in this account
  - Secretary is given unlimited reprogramming authority

Army Corps of Engineers- Civil Works: Construction General

- **Purpose:** To provide supplemental funds for Construction projects
- **Funding Level:** $2 billion
- **Allocation Method:** Discretionary allocations to Corps projects
- **Decision-Maker:** Secretary of the Army
- **Eligible Applicants:** Army Corps, for managed projects, programs and activities normally funded by Energy and Water Appropriations Acts
- **Special Criteria:**
  - Not less than $200 million set aside for water-related environmental infrastructure (Section 219) project assistance
  - Spending limited to projects that can be carried out without new budget authority
  - Funding cannot be cost-shared with the Inland Waterways Trust Fund
  - For the purposes of this Act, waives portions of existing law that cap annual spending on certain Corps projects or limit total project costs
  - Secretary must report to Congress within 45 days of enactment on the planned allocation, obligation and expenditures in this account
  - Secretary is given unlimited reprogramming authority

Army Corps of Engineers- Civil Works: Operations and Maintenance

- **Purpose:** To provide supplemental funding for operations and maintenance
- **Funding Level:** $2.075 Billion
- **Allocation Method:** Discretionary allocation by the Secretary of the Army
- **Decision-Maker:** Secretary of the Army
- **Eligible Applicants:** Corps projects, activities and programs normally funded by Energy and Water Appropriations Acts
- **Special Criteria:**
  - Spending limited to projects that can be carried out without new budget authority
  - Removes the $20 million annual cap for spending on levees authorized in the Water Resources Development Act of 2007
  - Secretary must report to Congress within 45 days of enactment on the planned allocation, obligation and expenditures in this account and shall submit a quarterly report thereafter
  - Secretary is given unlimited reprogramming authority

Army Corps of Engineers- Civil Works: Mississippi River and Tributaries

- **Purpose:** To provide supplemental funds for the Mississippi River and Tributaries Project
- **Funding Level:** $375 million
- **Allocation Method:** Congressional Designation
- **Decision-Maker:** Secretary of Army/ Mississippi Valley Division RIT
- **Eligible Applicants:** Mississippi River and Tributaries project/Mississippi River Commission
- **Special Criteria:**
  - Spending limited to projects that can be carried out without new budget authority
  - For the purposes of this Act, waives portions of existing law that limits total project costs
  - Secretary must report to Congress within 45 days of enactment on the planned allocation, obligation and expenditures in this account and shall submit a quarterly report thereafter
  - Secretary is given unlimited reprogramming authority

Army Corps of Engineers- Civil Works: Regulatory Program

- **Purpose:** To provide supplemental funding for the regulatory program
- **Funding Level:** $25 million
- **Allocation Method:** Discretionary allocations within the Regulatory Program
- **Decision-Maker:** Secretary of the Army
- **Eligible Applicants:** Army Corps of Engineers
- **Special Criteria:**
  - The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands ("404" permit process). The mission of the Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions

Army Corps of Engineers-Civil Works: Formerly Utilized Sites Remedial Action Program (FUSRAP)

- **Purpose:** To provide supplemental funding for FUSRAP projects
- **Funding Level:** $100 million
- **Allocation Method:** Discretionary allocations
- **Decision-Maker:** Secretary of the Army/ FUSRAP Military Programs Team
- **Eligible Applicants:** FUSRAP projects
- **Special Criteria:**
  - There are currently 23 active FUSRAP sites in nine States that are in the program, and none of them pose an immediate threat to human health or the environment. At these sites, remedial action is planned, under way or pending final closeout
  - Funds can be spent on Corps FUSRAP projects that can be carried out without new budget authority
  - Secretary must report to Congress within 45 days of enactment on the planned allocation, obligation and expenditures in this account and shall submit a quarterly report thereafter
  - Secretary is given unlimited reprogramming authority

DEPARTMENT OF ENERGY

OFFICE OF ENERGY EFFICIENCY AND RENEWBLE ENERGY (EERE): $16.8 billion

Energy Efficiency and Conservation Block Grants

- **Purpose:** To assist States, local governments, and tribes reduce fossil fuel emissions and total energy use, and improve energy efficiency in the transportation, building, and other appropriate sectors, funding financial incentives, grants for retrofits, transportation conservation, building codes, energy distribution technologies, landfill gas capture, etc.
- **Funding Level:** $3.2 billion
- **Allocation Method:** $2.8 billion through formula
  $400 million on a competitive basis
- **Decision-Maker:** Office of Energy Efficiency and Renewable Energy
- **Eligible Applicants:** States (to receive 28 percent of formula funding), eligible units of local governments (68 percent of formula), and tribes (2 percent of formula)
- **Special Criteria:**
  - Requires the local government allocation be based equally on (1) resident population; and (2) daytime populations and factors such as amount of commercial or office space
  - DOE may use the most recent and accurate population data available to satisfy determination of eligible units of local governments for formula methodology

Weatherization Assistance Program

- **Purpose:** To install energy efficiency improvements in the homes of low-income families to reduce their energy bills

- **Funding Level:** $5 billion
- **Allocation Method:** Formula
- **Decision-Maker:** States, for suballocation to local agencies
- **Eligible Applicants:** States and Tribes
- **Special Criteria:**
  - Eligibility for services increased to 200% of poverty, up from 150%
  - Costs allowed per housing unit increased to $6,500 from $2,50
  - Further assistance allowed for units partially weatherized between 1975 and 1994
  - Priority allowance given to use of funds for the most cost-effective efficiency activities, such as insulation of attics
  - Training and technical assistance funding permitted up to 20% of total appropriation.

State Energy Program

- **Purpose:** To promote energy conservation and reduce rate of energy demand
- **Funding Level:** $3.1 billion
- **Allocation Method:** Formula
- **Decision-Maker:** State energy office
- **Eligible Applicants:** As determined by States under existing guidelines

Advanced Battery Manufacturing Grants

- **Purpose:** To support manufacturing advanced vehicle batteries & components
- **Funding Level:** $2 billion
- **Allocation Method:** Competitive grants
- **Decision-Maker:** Office of Energy Efficiency and Renewable Energy
- **Eligible Applicants:** Manufacturers and others determined eligible by DOE
- **Special Criteria:**
  - DOE must provide facility funding awards to manufacturers of advanced battery systems and vehicle batteries produced in the United States, including advanced lithium ion batteries, hybrid electrical systems, component manufacturers, and software designers

Miscellaneous Provisions

- The Secretary may use a portion EERE funds to accelerate hiring of expert staff
- $2.5 billion for applied research, development, demonstration and deployment activities, including –
  - $800 million for projects related to biomass;
  - $400 million for geothermal projects and activities; and
  - $50 million to support research to increase the efficiency of information and communications technology and improve standards
- $400 million for transportation electrification
- $300 million for an Alternative Fueled Vehicles Pilot Grant Program
- $300 million for the Energy Efficient Appliance Rebate Program and the Energy Star Program

ELECTRICITY DELIVERY AND ENERGY RELIABILITY (EDER)

- **Purpose:** To modernize the nation's electric grid
- **Funding Level:** $4.5 billion, of which funds $100 million are for worker training and $10 million to implement a smart grid interoperability framework
- **Allocation Method:** Varies depending on program
- **Decision-Maker:** Office of Electricity Delivery and Energy Reliability
- **Eligible Applicants:** Varies depending on program
- **Use of funds:** To purchase demand response equipment; to enhance energy infrastructure security and reliability; for energy storage research, development, demonstration and deployment, and facilitate recovery from energy supply disruptions; and for implementation of programs authorized under Title XIII – Smart Grid – of the Energy Independence and Security Act of 2007, which include--
  - Smart Grid Technology Research, Development, and Demonstration (Section 1304) that includes a "Power Grid Digital Information" program and a "Smart Grid Regional Demonstration Initiative"
  - Implementing the Smart Grid Interoperability Framework (Section 1305)
  - A Federal matching fund for Smart Grid investment costs (Section 1306)
  - Amendment to the Public Utility Regulatory Policies Act (PURPA) of 1978 that each State must consider requiring that, prior to undertaking investments in non-advanced grid technologies, an electric utility of the State demonstrate to the State that they considered an investment in a qualified smart grid system (Section 1307)
  - DOE, in consultation with States and other appropriate entities, to study the effect of private wire laws on the development of combined heat and power facilities (Section 1308)

Miscellaneous Provisions

- The Secretary may use a portion EDER funds to accelerate hiring of expert staff
- $80 million for EDER to conduct a resource assessment and analysis of future demand and transmission requirements after consultation with the Federal Energy Regulatory Commission (FERC)
- Includes technical assistance, in coordination with FERC, to the North American Electric Reliability Corporation (NERC), the regional reliability entities, the State, and other transmission owners and operators for the formation of interconnection-based transmission plans for the Eastern and Western Interconnections and the Electric Reliability Council of Texas (ERCOT) – this assistance may include modeling, support to regions and States for the development of coordinated State electricity policies, programs, laws, and regulations
- Enables the Secretary of Energy to use funds for transmission improvements authorized in any subsequent Act
- DOE may use or transfer funds to carry out new authority for transmission improvements if such authority is enacted in any subsequent Act

FOSSIL ENERGY RESEARCH AND DEVELOPMENT

- $3.4 billion to include –
  - $1.52 billion 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 carbon reuse
  - $1 billion for fossil energy research and development programs
  - $800 million for additional amounts for the Clean Coal Power Initiative Round III Funding Opportunity Announcement
  - $50 million for a competitive solicitation for site characterization activities in geologic formations
  - $20 million for geologic training and research grants
  - $10 million for program direction funding

NON-DEFENSE ENVIRONMENTAL CLEANUP - $483 million

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

- $390 million, of which $70 million must be made available in accordance with Remedial Action at Active Processing Sites (uranium and thorium) (Title X, Subtitle A of the Energy Policy Act of 1992)

OFFICE OF SCIENCE

- $1.6 billion
- $400 million for the Advanced Research Projects Agency – Energy (ARPA-E)

INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

- **Purpose:** To promote use of renewable technology to produce electricity and transportation fuels
- **Funding:** $6 billion to cover credit subsidy for loan guarantees. Assuming a 10 percent credit subsidy, the provision would support $60 billion in loan guarantees
- **Mechanism:** Temporary new loan guarantee program, added to a program originally authorized in the Energy Policy Act of 2005, by adding Section 1705: *Temporary Program for Rapid Deployment of Renewable Energy and Electric Power Transmission,* to sunset on September 30, 2011
- **Allocation Method:** Competitive, subject to a maximum of $500 million per project
- **Special Criteria:**
  - Requirements - Construction must commence not later than September 30, 2011 and meet Davis-Bacon prevailing wage requirements
  - Qualifying projects:
    - Renewable energy systems, including incremental hydropower, that generate electricity or thermal energy, and facilities that manufacture related components
    - Electric power transmission systems, including upgrading and reconductoring projects, where DOE considers the 1) viability of the project without guarantees; 2) availability of other Federal and incentives;

3) importance of the project in meeting reliability needs; and 4) effect of the project in meeting a State or region's environment (including climate change) and energy goals

- Leading-edge biofuel projects that will use technologies performing at the pilot or demonstration scale that the Secretary determines are likely to become commercial technologies and will produce transportation fuels that substantially reduce lifecycle greenhouse gas emission compared to other transportation fuels

DEFENSE ENVIRONMENTAL CLEANUP - $5.127 billion

WESTERN AREA POWER ADMINISTRATION (WAPA)

- $10 million in non-reimbursable funds for construction, rehabilitation, operations, and maintenance, including for conservation and renewable resources programs
- Provides for additional, non-reimbursable WAPA staffing levels for $3.25 billion in borrowing authority as now authorized in a new Title III Section 402 of the Hoover Power Plant Act of 1984 (Public Law 98-381)

BONNEVILLE POWER AUTHORITY (BPA)

- Raises the borrowing authority ceiling for BPA by $3.25 billion

General Provisions

- Up to 0.5 percent of funds may be used for expenses of management and oversight of programs, grants, and activities funded through September 30, 2012 (Section 403)

- Makes technical corrections to the Energy Efficiency and Conservation Block Grants funding allocation (Section 543(a)) of the Energy Independence and Security Act of 2007 (EISA 2007)–
  - It provides further direction to DOE that the 68 percent allocation of funds to local governments must be split half / half according to alternatives developed in accordance with subsections relative to (1) populations served and (2) daytime populations and other similar factors, such as commercial or office space

- Amends the Smart Grid Technology Research, Development, and Demonstration's *Smart Grid Regional Demonstration Initiative* (Section 1304(b)(3)(A)) of Title XIII (Smart Grid) of EISA 2007 to now read as follows:

  - (3) DEMONSTRATION PROJECTS.—
    (A) IN GENERAL.—In carrying out the initiative, the Secretary shall ~~carry out~~ provide financial support to smart grid demonstration projects in ~~up to 5 electricity control areas,~~ urban, suburban, tribal, and ~~including~~ rural areas, including areas where electric system ~~and at least 1 area in which the majority of generation and transmission~~ assets are controlled by nonprofit entities and areas where electric systems assets are controlled by investor-owned utilities ~~a tax-exempt entity~~.

- Further amends EISA 2007 *Smart Grid Regional Demonstration Initiative* demonstration projects (Section 1304(b)(3)(C)) to read as follows:

- (C) FEDERAL SHARE OF COST OF TECHNOLOGY INVESTMENTS.—The Secretary shall provide to an electric utility described in subparagraph (B) or to other parties financial assistance for use in paying an amount equal to not more than 50 percent of the cost of qualifying advanced grid technology investments made by the electric utility or other party to carry out a demonstration project.

- Further amends EISA 2007 *Smart Grid Regional Demonstration Initiative* demonstration projects by adding new sections relative to data availability and Internet protocols (Section 1304(b)(3)(E) and (F)) as follows:

  - (E) AVAILABILITY OF DATA.—The Secretary shall establish and maintain a smart grid information clearinghouse in a timely manner which will make data from smart grid demonstration projects and other sources available to the public. As a condition of receiving financial assistance under this subsection, a utility or other participant in a smart grid demonstration project shall provide such information as the Secretary may require to become available through the smart grid information clearinghouse in the form and within the timeframes as directed by the Secretary. The Secretary shall assure that business proprietary information and individual customer information is not included in the information made available through the clearinghouse.

  - (F) OPEN PROTOCOLS AND STANDARDS.—The Secretary shall require as a condition of receiving funding under this subsection that demonstration projects utilize open protocols and standards (including Internet-based protocols and standards) if available and appropriate.

- Further amends EISA 2007 Smart Grid Technology Research, Development, and Demonstration (Section 1304(c)(2) to delete the authorization cap of $100 million for each of Fiscal Years 2008 through 2012 and instead authorize "such sums as may be necessary" to carry out the *Smart Grid Regional Demonstration Initiative*.

- Amends EISA 2007 *Federal Matching Fund for Smart Grid Investment Costs* (Section 1306(a)) to raise the Federal match limits, as grants rather than reimbursement, as follows:

  - (a) MATCHING FUND.—The Secretary shall establish a Smart Grid Investment Matching Grant Program to provide ~~reimbursement of one-fifth (20 percent)~~ grants of up to one-half (50 percent) of qualifying Smart Grid investments.

- Amends EISA 2007 *Federal Matching Fund for Smart Grid Investment Costs* relative to qualifying investments (Section 1306(b)(9)) by striking, "In making such grants, the Secretary shall seek to reward innovation and early adaptation, even if success is not complete, rather than deployment of proven and commercially viable technologies".

- Amends EISA 2007 *Federal Matching Fund for Smart Grid Investment Costs* relative to qualifying Smart Grid investments not including any of the following (Section 1306(c)(1)): "Investments or expenditures for Smart Grid technologies, devices, or equipment that ~~are eligible for~~ utilize specific tax credits or deductions under the Internal Revenue Code, as amended."

- Amends EISA 2007 general provisions for the *Federal Matching Fund for Smart Grid Investment Costs* (Section 1306(e)) relative to the Secretary of Energy establishing and publishing procedures for programmatic enactment within 1 year of EISA 2007 enactment to now read as follows:

    - (e) PROCEDURES AND RULES. —(1) The Secretary shall, within 60 days after the enactment of the American Recovery and Reinvestment Act of 2009, by means of a notice of intent and subsequent solicitation of grant proposals –
        - (A) establish procedures by which applicants can obtain grants of not more than one-half of their documented costs;
        - (B) require as a condition of receiving funding under this subsection that demonstration projects utilize open protocols and standards (including Internet-based protocols and standards) if available and appropriate;
        - (C) establish procedures to ensure that there is not duplication or multiple payment for the same investment or costs, that the grant goes to the party making the actual expenditures for the qualifying Smart Grid investments, and that the grants made have a significant effect in encouraging and facilitating the development of a smart grid;
        - (D) establish procedures to ensure there will be public records of grants made, recipients, and qualifying Smart Grid investments which have received grants; and
        - (E) establish procedures to provide advance payment of moneys up to the full amount of the grant award.

- Modifies a Weatherization Assistance Program definitional provision; to expand low-income household eligibility (42 U.S.C. 6862(7)); increases the funding assistance level per dwelling unit limit (42 U.S.C. 6865(c)(1)); and extends the historical qualification timeline (42 U.S.C. 6865(c)(2)) as follows:
    - Section 6862(7) The term "low-income" means that income in relation to family size which (A) is at or below ~~150 percent~~ <u>200 percent</u> of the poverty level determined in accordance with criteria established …(C) if a State elects, is the basis for eligibility for assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621), provided that such basis is at least ~~150 percent~~ <u>200 percent</u> of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget
    - Section 6865(c)(1) …the expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters shall not exceed an average of ~~$2,500~~ <u>$,6,500</u> per dwelling unit weatherized in that State…
    - Section 6865(c)(2) Dwelling units partially weatherized under this part or under other Federal programs during the period September 30, 1975, through ~~September 30, 1979~~ <u>September 30, 1994</u>, may receive further financial assistance for weatherization under this part.

- Further modifies the Weatherization Assistance Program, relative to increasing DOE's limit per Fiscal Year in providing training and technical assistance (42 U.S.C. 6866), as follows:

- Section 6866 …The Secretary may provide technical assistance to any such project, directly and through persons and entities with a demonstrated capacity in developing and implementing appropriate technology for enhancing the effectiveness of the provision of weatherization assistance to the dwelling units of low-income persons, utilizing in any Fiscal Year not to exceed ~~10 percent~~ up to 20 percent of the sums appropriated for such year under this part.

- Further provides additional guidance in effective use of available funds for the Weatherization Assistance Program through the Act, that the Secretary of Energy may encourage States to give priority to using such funds for the most cost-effective efficiency activities, which may include insulation of attics, if, in the Secretary's view, such use of funds would increase the effectiveness of the program.

- Makes technical corrections by redesignating sectional paragraphs pertaining to the State's consideration of smart grid in the Public Utility Regulatory Policies Act of 1978 (Section 111(d))

- Provides further instructions to DOE in completing the 2009 National Electric Transmission Congestion Study, which is required every three years by the Federal Power Act (as amended by the Energy Policy Act of 2005 Title XII – Electricity – Subtitle B – Transmission Infrastructure Modernization – Section 1221 relative to siting of interstate electric transmission facilities), pertaining to renewable energy and related transmission capacity constraints as follows:

  - The Secretary of Energy shall include –
    - (1) an analysis of the significant potential sources of renewable energy that are constrained in accessing appropriate market areas by lack of adequate transmission capacity;
    - (2) an analysis of the reasons for failure to develop the adequate transmission capacity;
    - (3) recommendations for achieving adequate transmission capacity;
    - (4) an analysis of the extent to which legal challenges filed at the State and Federal level are delaying the construction of transmission necessary to access renewable energy; and
    - (5) an explanation of assumptions and projects made in the Study, including
      - (A) assumptions and projections relating to energy efficiency improvements in each load center;
      - (B) assumptions and projects regarding the location and type of projected new generation capacity; and
      - (C) assumptions and projections regarding deployment of distributed generation infrastructure.
- Includes additional provision for receipt of State Energy Grants in this Act (Section 410), where DOE can provide additional programmatic grant funding only if the governor of the recipient State notifies the Secretary of Energy in writing that the governor has obtained necessary assurances relative to regulatory policies, building code requirements, and the prioritization of existing State programs, as follows:

- (1) The applicable State regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility, with respect to which the State regulatory authority has ratemaking authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently.
- (2) The State, or the applicable units of local government that have authority to adopt building codes, will implement the following:
  - (A) A building energy code (or codes) for residential buildings that meets or exceeds the most recently published International Energy Conservation Code, or achieves equivalent or greater energy savings.
  - (B) A building energy code (or codes) for commercial buildings throughout the State that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1-2007, or achieves equivalent or greater energy savings.
  - (C) A plan for the jurisdiction achieving compliance with the building energy code or codes described in subparagraphs (A) and (B) within 8 years of the date of enactment of this Act in at least 90 percent of new and renovated residential and commercial building space. Such plan shall include active training and enforcement programs and measurement of the rate of compliance each year.
- (3) The State will to the extent practicable prioritize the grants toward funding energy efficiency and renewable energy programs, including –
  - (A) the expansion of existing energy efficiency programs approved by the State or the appropriate regulatory authority, including energy efficiency retrofits of buildings and industrial facilities, that are funded – (i) by the State; or (ii) through rates under the oversight of the applicable regulatory authority, to the extent applicable
  - (B) the expansion of existing programs, approved by the State or the appropriate regulatory authority to support renewable energy projects and deployment activities, including programs operated by entities which have the authority and capability to manage and distribute grants, loans, performance incentives, and other forms of financial assistance; and
  - (C) cooperation and joint activities between States to advance more efficient and effective use of this funding to support the priorities described in this paragraph

- Waives the per project limitations for grants under the State Energy Conservation Program (Section 399A(f)(2), (3), and (4)), which requires each State to match in cash or in kind not less than 20 percent of the Federal contribution (42 U.S.C. Section 6323a).

- The conference report stipulates that State Energy Conservation Program grants must be available for no more than 80 percent of the costs of the grant-funded project. The text of the Act provides no limitation on the percentage of funding that may be used for the purchase and installation of equipment and materials for energy efficiency measures and renewable energy measures.

BUREAU OF RECLAMATION

Water and Water Related Resources

- **Purpose:** To provide supplemental funding for water and water related resource activities and projects
- **Funding Level:** $1 billion
- **Allocation Method:** Competitive grants/ allocations by cooperative agreements
- **Decision-Maker:** Bureau of Reclamation/Secretary of Interior
- **Eligible Applicants:** State agencies, municipalities, water districts
- **Special Criteria:**
  - Funding shall be used for elements of projects, programs or activities that can be competed within these funding amounts and not create budgetary obligations in future Fiscal Years
  - Not less than $126 million to be spent on water reclamation and reuse projects authorized in the Reclamation Wastewater and Groundwater Study and Facilities Act of 1992
    - Funding apportioned by formula (cooperative agreements)
    - Water districts and municipalities in Bureau of Reclamation regions
  - $50 million may be transferred to the Department of Interior for programs, projects and activities authorized by the Central Utah Project Completion Act
  - $50 million may be spent on programs, projects and activities authorized by the California Bay-Delta Restoration Act (CALFED)
  - Not less than $60 million shall be spent on rural water projects, primarily on water intake and treatment facilities
  - Not less than $10 million to be spent on Bureau-wide inspection of canals program in urbanized areas
  - Costs of extraordinary maintenance and replacement activities shall be repaid pursuant to existing authority, except:
    - The Secretary shall determine the length of repayment period (not to exceed 50 years)
    - Repayment shall include interest
      - Interest rates will be set by the Secretary of Treasury according to additional specifications in the Act
  - Expired funds may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on such projects and on subsequent claims
  - The Secretary of Interior is granted unlimited reprogramming authority

SMALL BUSINESS ADMINISTRATION

Surety Bond Guarantees Revolving Fund

- **Purpose:** To provide funding for the Surety Bond Guarantees Revolving Fund authorized by the Small Business Investment Act of 1958
- **Funding Level:** $15 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** Small Business Administration
- **Eligible Applicants:** (None specified)

- **Special Criteria:**
  - The funds will remain available until expended

Business Loans Program Account

- **Purpose:** To provide funding for the cost of direct loans and guaranteed loans
- **Funding Level:** $6 million (direct loans) and $630 million (guaranteed loans)
- **Allocation Method:** Direct and guaranteed loans
- **Decision-Maker:** Small Business Administration
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The funds will remain available until September 30, 2010
  - $375 million of the amount of the cost of guaranteed loans must be for reimbursements, loan subsidies and loan modifications for loans to small business concerns authorized in Section 501
  - $255 million must be for loan subsidies and loan modifications for loans to small business concerns authorized in Section 506
  - The cost of modifying the loans must be as defined in Section 502 of the Congressional Budget Act of 1974

The Conference Report also contains new authorities, which include fee reductions under Section 502 and temporary fee elimination for the 504 loan program; guarantees of up to 90 percent of qualifying small business loans; SBA Secondary Market Guarantee Authority; low interest refinancing under the Local Development Business Loan Program; simplification of the maximum leverage limits and aggregate investment limits required of small business investment companies; the small business stabilization program; certain revisions to the Section 508 surety bond provisions; and establishment of the SBA secondary market lending authority.

Notably, the Act does not contain any changes to the existing Small Business and 8(a) Federal Contracting Programs.

GENERAL SERVICES ADMINISTRATION

Federal Building Fund

- **Purpose:** To carry out the purpose of the Federal Building Fund
- **Funding Level:** $5.55 billion, of which not less than:
  - $750 million must be available for Federal buildings and U.S. courthouses
  - $300 million must be available for border stations and land ports of entry
  - $4.5 billion for measures necessary to convert GSA facilities to High Performance Green Buildings
- **Allocation Method:** (None specified)
- **Decision-Maker:** General Services Administration
- **Eligible Applicants:** (None specified)
- **Special Criteria:**

- Not less than $5 billion of the funds must be obligated by September 30, 2010 and the remainder of the funds must be obligated no later than September 30, 2011
- No more than $108 million can be spent on rental of space related to leasing of temporary space in connection with the funded projects
- No more than $127 million can be spent for building operations, administrative costs of completing the funded projects
- No more than $3 million of the funds can be spent on on-the-job pre-apprenticeship and apprenticeship training programs registered with the Department of Labor for the construction, repair and alteration of Federal buildings
- $4 million will be transferred to the "Government Wide Policy" for the Office of Federal High-Performance Green Buildings
- The Administrator of GSA is authorized to undertake the projects through its existing authorities
- The General Service Administration is required to submit a detailed plan, by project, detailing the use of the funds to the House and Senate Committees on Appropriations within 45 days of the enactment of the Act; the Administrator must also provide the Committees with notification of any changes/reallocations to the use of funds 15 days prior to the change; the Administrator must also submit quarterly reports on the obligation of funds starting September 30, 2009

Energy-Efficient Federal Motor Vehicle Fleet Procurement

- **Purpose:** To provide funding for capital expenditures and necessary expenses of acquiring motor vehicles with higher fuel economy, including hybrid vehicles, electric vehicles and commercially-available plug in hybrid vehicles
- **Funding Level:** $300 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** General Services Administration
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The funds will remain available until September 30, 2011
  - None of the funds can be obligated until the Administrator submits a plan for expenditure of the funds that details the current inventory of the Federal fleet owned by Federal agencies and the strategy to spend the funds to replace a portion of the Federal fleet to the House and Senate Appropriations Committees within 90 days of the enactment of the Act

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Program

- **Purpose:** To provide additional capital funding to Community Development Financial Institutions under the FY2009 funding round for use in economic development, business development, and commercial real estate development; affordable housing development and homeownership; and community financial services to underserved communities

- **Funding Level:** $100 million
- **Allocation Method:** Competitive
- **Decision-Maker:** Community Development Financial Institutions Fund
- **Eligible Applicants:** Certified Community Development Entity or Community Development Financial Institution, per Treasury processes
- **Special Criteria:**
  - Funds remain available until September 30, 2010
  - Up to $8 million may be for financial assistance, technical assistance, training and outreach programs designed to benefit Native American, Native Hawaiian and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers
  - Up to $2 million may be used for administrative expenses
  - For the purpose of the Fiscal Year 2009 funding round, the statutory provisions set forth in 12 U.S.C. 4707(e) and 12 U.S.C. 4707(d)
  - No awardee, together with its subsidiaries and affiliates, may be awarded more than 5 percent of the aggregate funds available during Fiscal Year 2009 from the Program
  - Treasury must submit a plan to Congress within 60 days of enactment for expenditure of funds

Health Insurance Tax Credit Administration

- **Purpose:** To implement the health insurance tax credit under the TAA Health Coverage Improvement Act of 2009
- **Funding Level:** $80 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** Department of Treasury
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The funds will remain available until September 30, 2010

DEPARTMENT OF HOMELAND SECURITY

Homeland Security Headquarters

- **Purpose:** To provide funding for planning, design, construction costs, site security, information technology infrastructure, fixtures, and related costs to consolidate the Department of Homeland Security headquarters
- **Funding Level:** $200 million
- **Allocation Method:** Discretionary, for internal agency purposes
- **Decision-Maker:** Office of the Under Secretary for Management
- **Eligible Applicants:** Department of Homeland Security
- **Special Criteria:**
  - The Secretary of Homeland Security, in consultation with the Administrator the General Services Administration (GSA), is required to submit a plan for the

expenditure of the funds to the House and Senate Appropriations Committees within 60 days of enactment of the Act

U.S. Customs and Border Protection – Non-Intrusive Inspection and Tactical Communications

- **Purpose:** To provide funding for the procurement and deployment of non-intrusive inspection systems and tactical communications equipment and radios
- **Funding Level:** $160 million, of which $100 million for non-intrusive inspection systems and $60 million for tactical communications equipment and radios
- **Allocation Method:** (None specified)
- **Decision-Maker:** U.S. Customs and Border Protection
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The Secretary of Homeland Security is required to submit a plan for the expenditure of the funds to the House and Senate Appropriations Committees within 45 days of enactment of the Act

U.S. Customs and Border Protection – Border Security Fencing, Infrastructure and Technology

- **Purpose:** To provide funding for expedited development and deployment of border security technology on the Southwest border
- **Funding Level:** $100 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** U.S. Customs and Border Protection
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The Secretary of Homeland Security is required to submit a plan for the expenditure of the funds to the House and Senate Appropriations Committees within 45 days of enactment of the Act

U.S. Customs and Border Protection – CBP Land Points of Entry

- **Purpose:** To provide funding for planning, management, design, alteration and construction of U.S. Customs and Border Protection owned land border ports of entry
- **Funding Level:** $420 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** U.S. Customs and Border Protection
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The Secretary of Homeland Security is required to submit a plan for the expenditure of the funds to the House and Senate Appropriations Committees within 45 days of enactment of the Act

U.S. Immigration and Customs Enforcement – Modernization of Tactical Communications Equipment and Radios

- **Purpose:** To provide funding for "Automation Modernization" for the procurement and deployment of tactical communications equipment and radios
- **Funding Level:** $20 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** U.S. Immigration and Customs Enforcement
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The Secretary of Homeland Security is required to submit a plan for the expenditure of the funds to the House and Senate Appropriations Committees within 45 days of enactment of the Act

Transportation Security Administration – Explosive Detections Equipment

- **Purpose:** To provide funding for the procurement and installation of checked baggage explosives detection systems and check-point explosives detection equipment
- **Funding Level:** $1 billion
- **Allocation Method:** Discretionary, based on review of pending projects and relative risk factors
- **Decision-Maker:** Transportation Security Administration
- **Eligible Applicants:** Airports
- **Special Criteria:**
  - The Transportation Security Administration is required to prioritize the award of the funds to accelerate the installations at locations with completed design plans
  - The Secretary of Homeland Security is required to submit a plan for the expenditure of the funds to the House and Senate Appropriations Committees within 45 days of enactment of the Act

Coast Guard – Shore Facilities and Aids to Navigation

- **Purpose:** To provide funding for shore facilities and aids to navigation facilities; for priority procurements due to materials and labor cost increases; and for costs to repair, renovate, assess or improve vessels
- **Funding Level:** $98 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** U.S. Coast Guard
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The Secretary of Homeland Security is required to submit a plan for the expenditure of the funds to the House and Senate Appropriations Committees within 45 days of enactment of the Act

Coast Guard – Alteration/Removal of Bridges

- **Purpose:** To provide funding for alteration or removal of obstructive bridges, as authorized by Section 6 of the Truman-Hobbs Act
- **Funding Level:** $142 million

- **Allocation Method:** (None specified)
- **Decision-Maker:** U.S. Coast Guard
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The Coast Guard must award the funds to those bridges that are ready to proceed to construction
  - The Secretary of Homeland Security is required to submit a plan for the expenditure of the funds to the House and Senate Appropriations Committees within 45 days of enactment of the Act

Federal Emergency Management Agency – State and Local Programs – Public Transportation and Railroads Security

- **Purpose:** To provide funding for Public Transportation Security Assistance and Railroad Security Assistance under Sections 1406 and 1513 of the Implementing Recommendations of the 9/11 Commission Act of 2007
- **Funding Level:** $150 million
- **Allocation Method:** Grants
- **Decision-Maker:** FEMA
- **Eligible Applicants:** (None specified)

Federal Emergency Management Agency – State and Local Programs - Port Security

- **Purpose:** To provide funding for the protection of critical port infrastructure from terrorism, including risk management capabilities, domain awareness, training and exercises, and capabilities to prevent, detect, respond to, and recover from attacks involving improvised explosive devices and other non-conventional weapons
- **Funding Level:** $150 million
- **Allocation Method:** Discretionary / competitive
- **Decision-Maker:** FEMA
- **Eligible Applicants:** Specified port area systems, by invitation -- owners and operators of port facilities, port authorities, and consortia of stakeholders

Federal Emergency Management Agency – State and Local Programs - Firefighter Assistance Grants

- **Purpose:** To provide funding for modifying, upgrading or constructing non-Federal fire stations
- **Funding Level:** $210 million
- **Allocation Method:** Competitive grants
- **Decision-Maker:** FEMA
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - Up to 5 percent must be for program administration
  - Maximum grant is $15 million

Federal Emergency Management Agency – Disaster Assistance Direct Loan Program Account

- **Purpose:** Notwithstanding Section 417(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, sets forth the following limitations on loans given under the Direct Assistance Direct Loan Program Account:
  - The amount of any loan issued for major disasters occurring in calendar year 2008 may exceed $5 million and may be equal to not more than 50 percent of the annual operating budget of the local government in any case in which that local government has suffered a loss of 25 percent or more in tax revenues
  - The cost of modifying such loans must be as defined in Section 502 of the Congressional Budget Act of 1974 (U.S.C. 661a)
- **Funding Level:** (None specified)
- **Allocation Method:** (None specified)
- **Decision-Maker:** FEMA
- **Eligible Applicants:** (None specified)

Federal Emergency Management Agency – Emergency Food and Shelter

- **Purpose:** To carry out the emergency food and shelter program pursuant to Title III of the McKinney-Vento Homeless Assistance Act
- **Funding Level:** $100 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** FEMA
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The total administrative costs cannot exceed 3.5 percent of the total amount made available

General Provisions - Hurricanes Katrina and Rita Arbitration Panel

- **Purpose:** Requires the President to establish an arbitration panel under FEMA's public assistance program to expedite the recovery efforts from Hurricanes Katrina and Rita within the Gulf Coast Region
- **Funding Level:** (None specified)
- **Allocation Method:** (None specified)
- **Decision-Maker:** FEMA
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - The arbitration panel must have sufficient authority regarding the award or denial of disputed public assistance applications for covered hurricane damage under Sections 403 (Essential Assistance), 406 (Repair, Restoration and Replacement of Damaged Facilities) or 407 (Debris Removal) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172 or 5173) for a total project amount above $500,000

General Provisions – Revisions Relating to Hurricanes Katrina and Rita Hazard Mitigation Grant Program

- Prohibits the FEMA Administrator from prohibiting or restricting the use of funds designated under the hazard mitigation grant program for damage caused by Hurricanes Katrina and Rita if the homeowner who is an applicant for assistance under the program commenced work otherwise eligible for hazard mitigation grant assistance under Section 404 (Hazard Mitigation) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C 5170c) without approval of the Administrator

General Provisions – Revisions Relating to the Pre-September 11, 2001 Fire Grant Program

- Waives Section 34(a)(1)(E) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a(a)(1)(E)), which provides for the expansion of the pre-September 11, 2001 fire grant program and places limits on the amount of the grant funds that can be used to cover the cost of hiring firefighters, with respect to funds appropriated in the stimulus Act, as well as any other Act making appropriations for Fiscal Year 2009 or 2010 for grants under Section 34

General Provisions – Buy America Provisions

- Funds appropriated or otherwise available to the Department of Homeland Security may not be used for the procurement of specified "covered items," namely clothing and other textiles, that are not grown, reprocessed, reused or purchased in the U.S. and are directly related to the national security interest of the U.S.
- There are exceptions for certain items based on lack of availability, *de minimus* amounts and for procurements outside of the U.S., small purchases and commercial items. Sensors and other electronic items are also exempt from this restriction
- The Department is obligated to ensure that each member of the acquisition workforce that participates personally and substantially in the acquisition of textiles on a regular basis receive training on the new requirements in Fiscal Year 2009
- The new provisions apply to contracts entered into by the Department of Homeland Security 180 days after enactment

DEPARTMENT OF THE INTERIOR

General Provisions

- Office of Inspector General Salaries and Expenses
  - $10 million to remain available through September 30, 2012

Bureau of Land Management

Management of Lands and Resources

- **Purpose:** To provide supplemental funding for the management of lands and resources
- **Funding Level:** $125 Million
- **Allocation Method:** BLM Discretionary allocations to regional/State BLM offices
- **Decision-Maker:** BLM Director
- **Eligible Recipients:** BLM projects/facilities/activities
- **Special Criteria:**

- Emphasis on maximizing jobs in the shortest period of time
- Funding for deferred maintenance, rehabilitation, and restoration of facilities, property, trails, and lands and for abandoned mines and wells

Construction

- **Purpose:** To provide funding for construction on BLM lands
- **Funding Level:** $180 Million
- **Allocation Method:** BLM discretionary allocations to regional/State BLM offices
- **Decision-Maker:** BLM Director
- **Eligible Recipients:** BLM facilities
- **Special Criteria:**
  - Emphasis on maximizing jobs in the shortest period of time
  - Funding for:
    - Priority road, bridge, trail repair or decommissioning,
    - Critical deferred maintenance projects,
    - Facilities construction and renovation, and for
    - Remediation of abandoned mines and wells and for energy efficient retrofits of existing facilities

Wildland Fire Management

- **Purpose:** To provide funding for hazardous fuel reduction
- **Funding Level:** $15 Million
- **Allocation Method:** BLM discretionary allocations to regional/State BLM offices
- **Decision-Maker:** BLM Director
- **Eligible Recipients:** BLM
- **Special Criteria:**
  - Funding for priority hazardous fuels reduction projects on Federal lands

United States Fish and Wildlife Service

Resource Management

- **Purpose:** To provide supplemental funding for the management of lands and resources
- **Funding Level:** $165 Million
- **Allocation Method:** FWS allocations to regional/State offices
- **Decision-Maker:** FWS Director
- **Eligible Recipients:** National Wildlife Refuges, National Fish Hatcheries, and other service properties
- **Special Criteria:**
  - Emphasis on maximizing the largest number of jobs in the shortest period of time.
  - Funding for critical deferred maintenance, capital improvement projects, trail maintenance and habitat restoration

Construction

- **Purpose:** To provide supplemental funding for construction
- **Funding Level:** $165 Million
- **Allocation Method:** FWS allocations to regional/State offices

- **Decision-Maker:** FWS Director
- **Eligible Recipients:** National Wildlife Refuges, National Fish Hatcheries, and other service properties
- **Special Criteria:**
  - Emphasis on maximizing jobs in the shortest period of time
  - Funding for:
    - Construction, reconstruction, and repair of roads, bridges, property and facilities
    - Energy efficient retrofits of existing facilities

National Park Service

Operations

- **Purpose:** To provide funding for deferred maintenance and other critical repair
- **Funding Level:** $146 million
- **Allocation Method:** NPS allocations to NPS facilities
- **Decision-Maker:** NPS Director
- **Eligible Recipients:** National Parks and NPS facilities
- **Special Criteria:**
  - Emphasis on maximizing jobs in the shortest period of time
  - Emphasis on lasting value for the Park Service and its visitors
  - 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
    - Other critical infrastructure needs

Historic Preservation Fund

Historic Preservation Grants for Historically Black Colleges and Universities

- **Purpose:** To provide funding for historic preservation grants
- **Funding Level:** $15 million
- **Allocation Method:** Competitive grants
- **Decision-Maker:** NPS/Historic Preservation Fund
- **Eligible Recipients:** Qualified Historically Black Colleges
- **Special Criteria:**
  - Waives matching requirements for these funds

Construction

- **Purpose:** To provide funding for construction funding for NPS facilities
- **Funding Level:** $589 Million
- **Allocation Method:** NPS discretionary allocation to NPS facilities
- **Decision-Maker:** NPS Director
- **Eligible Recipients:** NPS
- **Special Criteria:**
  - Emphasis on prioritizing projects that maximize jobs in the shortest period of time
  - Emphasis on lasting value for the Park Service and its visitors
  - Eligible projects to be funded within this account include but are not limited to:

- Major facility construction
- Road maintenance
- Abandoned mine cleanup
- Equipment replacement
- Preservation and rehabilitation of historic assets

United States Geological Survey

<u>Surveys, Investigations and Research</u>

- **Purpose:** To authorize a wide variety of activities
- **Funding Level:** $140 million
- **Allocation Method:** USGS discretionary allocations
- **Decision-Maker:** USGS Director
- **Eligible Recipients:** USGS programs
- **Special Criteria:**
  - Emphasis on maximizing jobs and improving the nation's science capacity
  - A wide variety of activities is authorized, including:
    - Repair, construction and restoration of facilities
    - Equipment replacement and upgrades including
      - Stream gages
      - Seismic and volcano monitoring systems
      - National map activities
      - Other critical deferred maintenance and improvement projects

Bureau of Indian Affairs

<u>Operation of Indian Programs</u>

- **Purpose:** To provide funding for workforce training and housing improvement programs
- **Funding Level:** $40 million
- **Allocation Method:** Grants/direct payments
- **Decision-Maker:** BIA/ Tribal governments
- **Eligible Recipients:** Authorized Tribal governments
- **Special Criteria:**
  - Emphasis on maximizing jobs and funding for workforce development and housing programs

<u>Construction</u>

- **Purpose:** To provide funding for construction
- **Funding Level:** $450 million
- **Allocation Method:** Grants/direct payments
- **Decision-Maker:** BIA/ Tribal governments
- **Eligible Recipients:** Authorized Tribal governments
- **Special Criteria:**
  - Emphasis on maximizing the largest number of jobs in the shortest period of time.
  - Waives prevailing wage requirements in the Act

- Bureau should consider:
  - Priority critical facility improvement and repair
  - School replacement
  - School improvement and repair
  - Detention center maintenance and repair
- Includes $10 million for the Indian Guaranteed Loan Program

ENVIRONMENTAL PROTECTION AGENCY

Office of the Inspector General

- $20 million to remain available until September 30, 2012

Hazardous Substance Superfund

- **Purpose:** To provide supplemental funding for Superfund
- **Funding Level:** $600 Million
- **Allocation Method:** Project grants (cooperative agreements)
- **Decision-Maker:** EPA, Office of Superfund Remediation and Technology, Office of Solid Waste and Emergency Response
- **Eligible Recipients:** States (and political subdivisions thereof), Commonwealths, U.S. Territories and Possessions, and Federally recognized Indian Tribal Governments, including intertribal consortia
- **Special Criteria:** None. Existing Superfund law/eligibility applies

Leaking Underground Storage Tank Trust Fund Program

- **Purpose:** To provide supplemental funding for LUSTTF cleanup activities
- **Funding Level:** $600 million
- **Allocation Method:** Formula grants
- **Decision-Maker:** EPA, Office of Underground Storage Tanks, Office of Solid Waste and Emergency Response
- **Eligible Recipients:** States and Federally recognized Indian Tribal Governments, including intertribal consortia
- **Special Criteria:**
  - Waives applicable matching fund requirements

State and Tribal Assistance Grants: State Revolving Funds

- **Purpose:** To provide supplemental capital funding for State Revolving Funds
- **Funding Level:** $4 billion for Clean Water State Revolving Funds
  $2 Billion for Drinking Water State Revolving Funds
- **Allocation Method:** Formula grants to States; project grants from each State SRF
- **Decision-Maker:** State Revolving Fund administrators/ EPA Administrator
- **Eligible Applicants:** State Revolving Fund programs
  - SRF loans/grants are distributed by each State's SRF to wastewater treatment facilities; local communities, State programs, interstate agencies, and Indian tribes
- **Special Criteria:**
  - Waives matching requirements

- Funds can be redistributed by the EPA Administrator if projects are not under contract or construction within one year
- Notwithstanding priority rankings otherwise assigned, priority shall be given to projects on a State priority list that are ready to proceed to construction within 12 months of the date of enactment of this Act
- Each State shall use at least 50 percent of the funds to provide additional subsidization in the form of forgiveness of principle, negative interest loans, grants, or any combination thereof
- Not less than 20 percent of the SRF funds should be available for projects to address green infrastructure; water or energy efficiency improvements or other environmentally innovative activities (to the extent that such projects are available for funding)
- Tribal set aside may be up to 1.5 percent of the total amount appropriated
  - Up to 4 percent of the funds appropriated may be transferred to the Indian Health Service to support management and oversight of tribal projects
- No funds may be used to purchase land or easements
- Funds may be used to buy, refinance or restructure debt obligations of eligible recipients only where such debt was incurred on or after October 1, 2008

State and Tribal Assistance Grants: Brownfields Projects

- **Purpose:** To provide supplemental funding for projects authorized by CERCLA
- **Funding Level:** $100 million
- **Allocation Method:** Project grants (cooperative agreements)
- **Decision-Maker:** Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response; Environmental Protection Agency
- **Eligible Applicants:** Indian tribes, State and local governments, quasi-governmental authorities, universities and colleges, industry, and other public and private institutions and individuals
- **Special Criteria:**
  - Waives the 20 percent cost share requirements under CERCLA.
  - Brownfields project grants must be used for training, research, and technical assistance to individuals and organizations, to facilitate the inventory of brownfields properties, site assessments, cleanup of brownfields properties, community involvement, or site preparation. Grants and cooperative agreements are available to support recipients' eligible and allowable direct costs incurred under an approved work plan plus allowable programmatic costs, in accordance with established EPA policies and regulations

State and Tribal Assistance Grants: Diesel Emission Reduction Act (DERA) grants

- **Purpose:** To provide supplemental funding for projects and activities authorized under DERA
- **Funding Level:** $300 million
- **Allocation Method:** Project grants
- **Decision-Maker:** Office of Air and Radiation; Environmental Protection Agency
- **Eligible Applicants:** A regional, State, local or tribal agency or port authority with jurisdiction over transportation or air quality; and a nonprofit

organization or institution that represents or provides pollution reduction or educational services to persons or organizations that own or operate diesel fleets; or has, as its principal purpose, the promotion of transportation or air quality are eligible for assistance under this program. City, county, or municipal agencies, school districts, and metropolitan planning organizations (MPOs) that have jurisdiction over transportation or air quality are all eligible entities under this program

- **Special Criteria:**
  - For the purpose of these funds, the Act waives the State Grant and Loan Matching Incentive Provisions in the Diesel Emission Reduction Act
  - DERA Grants and Cooperative agreements are available to support recipient's allowable costs incident to supporting projects to reduce emissions from diesel engines, plus allowable indirect costs, in accordance with established EPA policies and regulations. No grant or loan provided under this program shall be used to fund the costs of emissions reductions that are mandated under Federal, State or local law. Voluntary or elective emission reduction measures shall not be considered "mandated", regardless of whether the reductions are included in the implementation plan of a State

DEPARTMENT OF LABOR

Employment and Training Administration – Training and Employment Services

- **Purpose:** To provide funding for activities under the Workforce Investment Act of 1998 ("WIA")
- **Funding Level:** $3.95 billion
- **Allocation Method:** (See summaries of specific programs below)
- **Decision-Maker:** Employment and Training Administration
- **Eligible Applicants:** (See summaries of specific programs below)
- **Special Criteria:**
  - Funds made available will remain available through June 30, 2010
  - A local board may award a contract to an institution of higher education or other eligible training provider if the local board determines that it would facilitate the training of multiple individuals in high-demand occupations, if such contract does not limit customer choice

SPECIFIC PROGRAMS

Adult Employment and Training – Workforce Investment Act

- **Purpose:** To provide funding for adult employment and training activities, including supportive services and needs-related payments described in the one-stop delivery system provisions (specifically Section 134(c)(2) and (3)) of WIA
- **Funding Level:** $500 million
- **Allocation Method:** Formula
- **Decision-Maker:** Employment and Training Administration

- **Eligible Applicants:** States, with 85% suballocation to local Workforce Investment Boards
- **Special Criteria:**
  - Priority use of the funds is for services to individuals on public assistance and other low-income individuals (WIA Section 134(d)(4)(E) of WIA)

Dislocated Worker Grants – Workforce Investment Act

- **Purpose:** To provide funding for employment and training programs for eligible workers who are unemployed through no fault of their own or have received an official layoff notice
- **Funding Level:** $1.25 billion
- **Allocation Method:** Formula
- **Decision-Maker:** Employment and Training Administration
- **Eligible Applicants:** States, with 85% suballocation to local Workforce Investment Boards
- **Special Criteria:**
  - Funds remain available through June 30, 2010
  - Workforce Investment Boards may award contracts to institution of higher education or other training provider if it would facilitate the training of multiple individuals in high-demand occupations and does not limit customer choice

Youth Grants - Workforce Investment Act

- **Purpose:** To provide funding for youth training and employment activities, including summer employment, occupational skills, counseling, mentoring, supportive services, etc.
- **Funding Level:** $1.2 billion
- **Allocation Method:** Formula
- **Decision-Maker:** Employment and Training Administration
- **Eligible Applicants:** States, with 85% suballocation to local Workforce Investment Boards
- **Special Criteria:**
  - Age eligibility of youth participants increased from 21 to 24, for this funding only
  - Allocation of minimum allotments and minimum or maximum percentages available for youth activities (WIA Section 127(b)(1)(C)(iv)) must be made as if the total amount available for youth activities in the Fiscal Year does not exceed $1 billion.
  - Measure of performance used to assess summer employment program is the work readiness performance indicator -- attainment of basic skills, work readiness, and/or occupational skills (WIA Section 136(b)(2)(A)(ii)(I))
  - No standard set-aside for Youth Opportunities Grants
  - Funds remain available through June 30, 2010
  - Workforce Investment Boards may award contracts to institution of higher education or other training provider if it would facilitate the training of multiple individuals in high-demand occupations and does not limit customer choice

National Emergency Grants – Workforce Investment Act

- **Purpose:** To expand service capacity at the State and local levels in response to significant events that cannot reasonably be expected within the formula-funded program
- **Funding Level:** $200 million
- **Allocation Method:** Discretionary / Competitive

- **Decision-Maker:** Employment and Training Administration
- **Eligible Applicants:** Designated State WIA organizations; local workforce investment boards
- **Special Criteria:**
  - Funds remain available through June 30, 2010
  - Workforce Investment Boards may award contracts to institution of higher education or other training provider if it would facilitate the training of multiple individuals in high-demand occupations and does not limit customer choice

High-Growth Industry Training and Placement – Workforce Investment Act

- **Purpose:** To provide funding for a program for worker training and placement in high growth and emerging industry sectors
- **Funding Level:** $750 million
- **Allocation Method:** Competitive
- **Decision-Maker:** Employment and Training Administration
- **Eligible Applicants:** Likely to be Workforce Investment Boards, and States
- **Special Criteria:**
  - Green Jobs set-aside of $500 million for careers in the energy efficiency and renewable energy (WIA Section 171(c)(1)(B))
  - Priority Employment Training Categories
    - health care
    - broadband deployment
    - advanced manufacturing

YouthBuild

- **Purpose:** To provide funding for projects to assist high-risk youth (ages 16-24) to complete their high school education and learn housing construction job skills through work on low-income and affordable housing building or rehab
- **Funding Level:** $50 million
- **Allocation Method:** Discretionary
- **Decision-Maker:** Employment and Training Administration
- **Eligible Applicants:** Nonprofit organizations
- **Special Criteria:**
  - Allows participation by an individual who has dropped out of high school and re-enrolled in an alternative school, if that re-enrollment is part of a sequential service strategy, for program years 2008 and 2009
  - Funds remain available through June 30, 2010

Community Service Employment for Older Americans

- **Purpose:** To provide funding for community service and work-based subsidized training programs for low-income persons over age 55 (Older Americans Act, Title V)
- **Funding Level:** $120 million
- **Allocation Method:** Formula
- **Decision-Maker:** Employment and Training Administration
- **Eligible Applicants:** States and 18 designated national nonprofits, often

with subgrants to Area Agencies on Aging or other local implementers

- **Special Criteria:**
  - Allocated within 30 days of enactment to current grantees, in proportion to funding in program year 2008
  - Unexpended funds may be recaptured and reobligated
  - Funds remain available through June 30, 2010

Job Corps

- **Purpose:** To provide funding for construction, rehabilitation and acquisition of Job Corps Centers, with limited flexibility to use for certain training and operational needs
- **Funding Level:** $250 million
- **Allocation Method:** Discretionary, for Office of Job Corps activities
- **Decision-Maker:** Employment and Training Administration
- **Eligible Applicants:** Office of Job Corps, for internal priorities
- **Special Criteria:**
  - Funds remain available for obligation through June 30, 2010
  - Waives certain procedures relating to appropriation accounts available for definite periods (31 U.S.C. 1552(a)) if funds are used for a multiyear lease agreement that will result in construction of activities that can commence within 120 days of enactment.
  - Waives limits on advance, progress, and other payments (31 U.S.C. 3324(a)) in order to expedite projects
  - Allows the Secretary to transfer up to 15% of the funds to meet Job Corps Center operational needs, including training for careers in the energy efficiency, renewable energy, and environmental protection industries
  - Report to Congress no later than September 30, 2009, with operating plan for allocation of funds and reports on the actual obligations, expenditures and unobligated balances, and providing quarterly reports thereafter until funds fully expended

State Unemployment Insurance and Employment Operations (Reemployment Services)

- **Purpose:** To provide funding for operations of State unemployment insurance and employment operations, including reemployment services
- **Funding Level:** $400 million
- **Allocation Method:** Formula, workload-based
- **Decision-Maker:** Employment and Training Administration
- **Eligible Applicants:** States
- **Special Criteria:**
  - Reemployment services set-aside of $250 million for unemployment insurance claimants, including implementation of the integrated Employment Service and Unemployment Insurance information technology required to identify and serve the needs of the claimants
  - Secretary required to establish planning and report procedures for oversight of funds used for reemployment services
  - Funds remain available to the States through September 30, 2010

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration (HRSA)

- **Purpose:** To improve the infrastructure of community health centers and address shortages in the health care workforce
- **Funding Level:** $2.5 billion
- **Allocation Method:** (None specified)
- **Decision-Maker:** Secretary of Health and Human Services (HHS Secretary)
- **Eligible Applicants:** Federally Qualified Community Health Centers (FQHCs)
- **Special Criteria:**
  - $500 million for grants to FQHCs
  - $1.5 billion for grants for construction, renovation, equipment and health information technologies for FQHCs
  - $500 million to address health professions workforce shortages; of which $75 million is for the National Health Service Corps to provide scholarships, loan repayment, and grants to training programs for equipment
  - Within 90 days, Secretary to provide an operational plan of activities and timeline for expenditures
- **Policy Context:**
  - This funding continues the Bush Administration policy of substantially expanding the number of FQHCs that are now likely to provide major access in a health care reform environment. Funding also allows HRSA to expand its efforts to provide technical assistance to FQHCs on health information technology (HIT) and electronic health records (EHRs)

National Institutes of Health (NIH) National Center for Research Resources

- **Purpose:** To repair, renovate or construct extramural research facilities and to acquire shared instrumentation and other research equipment
- **Funding Level:** $1.3 billion
- **Allocation Method:** Competitive grants and awards
- **Decision-Maker:** National Center for Research Resources
- **Eligible Applicants:** Not known at this time
- **Special Criteria:**
  - $1 billion for grants or contracts to construct, renovate or repair existing Federal research facilities
  - $300 million for National Center for Research Resources to provide shared instrumentation and other capital research equipment to recipients of grants and contracts
- **Policy Context:**
  - These funds are designed to provide the infrastructure to maximize scientific and health benefits of research

National Institutes of Health (NIH) Office of the Director

- **Purpose:** To provide funding for specific scientific challenges, new research that expands the scope of ongoing projects, and research on public and international health priorities; and to fund construction and renovation of NIH buildings and facilities

- **Funding Level:** $8.7 billion
- **Allocation Method:** Short-term grants; and any funding mechanisms and authorities at the Agency's disposal that maximize scientific and health benefit
- **Decision-Maker:** Office of the Director
- **Eligible Applicants:** (None specified)
- **Special Criteria:**
  - $7.4 billion to be transferred to NIH Institutes and Centers with funds not subject to Small Business Innovation Research and Small Business Technology Transfer set-aside requirements
  - $500 million for high priority NIH facility repair, construction, and improvement
- **Policy Context:**
  - Research funding to NIH Institutes and Centers will align with Appropriators funding for these entities, but also targets research on Alzheimer's Disease, Parkinson's Disease, cancer and heart disease

Agency for Healthcare Research and Quality (AHRQ)

- **Purpose:** To facilitate comparative effectiveness research (CER) 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
- **Funding Level:** $1.1 billion
- **Allocation Method:** $300 million is allocated to AHRQ; $400 million is allocated to NIH; and $400 million is allocated at the discretion of the HHS Secretary
- **Decision-Makers:** AHRQ Director/NIH Director/HHS Secretary
- **Eligible Applicants:** Agencies within HHS; other government agencies; private sector entities with CER experience
- **Special Criteria:**
  - Creation of Federal Coordinating Council for Comparative Effectiveness Research
    - The Council consists of up to 15 senior Federal officers or employees with responsibility for health-related programs
    - At least half of the members of the Council must be physicians or have clinical expertise
    - The Council may not mandate coverage, reimbursement, or other policies for any public or private payer.
  - Up to $1.5 million will be provided to the Institute of Medicine (IOM) to develop a report by June 30, 2009, that includes recommendations on national priorities for CER and considers input from stakeholders
  - Fund recipients must provide an opportunity for the public to comment on the research
  - Research must include women and minorities
  - HHS Secretary to report annually to Congress on CER studies
- **Policy Context:**
  - Funding provides a jumpstart for CER, although many issues remain, including significant concerns regarding whether CER findings will be used by public and private insurers to limit coverage and reimbursement
  - The Conference Report did not include "clinical" in its description of research, whereas the Senate-passed version described this initiative as clinical comparative effectiveness

research in an effort to ensure that research is not used to make coverage decisions based on cost effectiveness
  - Senators Baucus and Conrad have drafted separate legislation that would set additional parameters for CER

Office of Inspector General

- **Purpose:** To provide funding for oversight and audit of programs, grants, and projects funded in the Department of Health and Human Services Title of the stimulus
- **Funding Level:** $17 million
- **Allocation Method:** (None specified)
- **Policy Context:**
  - These funds will enable OIG to monitor waste, fraud, and abuse associated with health components of the stimulus package funding
  - In light of concerns raised with Bush Administration monitoring and oversight of bank bailout funds, the HHS OIG is likely to substantially increase its oversight efforts
  - The Obama Administration has promised transparency and oversight of stimulus package funds

Public Health and Social Services Emergency Fund

- **Purpose:** To improve health information technology security at HHS
- **Funding Level:** $50 million
- **Allocation Method:** (None specified)

Prevention and Wellness Fund

- **Purpose:** To fight preventable diseases and conditions with evidence-based strategies
- **Funding Level:** $1 billion
- **Allocation Method:** Funds will be distributed by the HHS Secretary
- **Decision-Maker:** HHS Secretary
- **Eligible Applicants:** Not known at this time; States can receive money to implement healthcare-associated infection reduction strategies
- **Special Criteria:**
  - $300 million will be transferred to the Centers for Disease Control and Prevention (CDC) to carry out the immunization program (Section 317 of the Public Health Service Act)
  - $650 million will used to carry out evidence-based clinical and community-based prevention and wellness strategies that deliver specific, measureable health outcomes and address chronic disease rates; these funds may be transferred to other programs within HHS
  - $50 million for States to implement healthcare-associated infections reduction strategies
  - Within 90 days Secretary to report to Congress on prevention priorities with measurement goals

- **Policy Context:**
  - Medicare costs are highest for a relatively small segment of the population with multiple chronic diseases. Addressing prevention and wellness more broadly should result in significant savings to the Medicare program, although Medicare disease management and care coordinate demonstrations have yet to yield significant health outcomes. Senator Baucus and others are advocating "medical homes" as an approach to coordinate care and decrease costs

INDIAN HEALTH SERVICE

Indian Health Services

- **Purpose:** To fund telehealth services development and related infrastructure and for facility construction projects, deferred maintenance and improvement projects, sanitation projects, and the purchase of equipment
- **Funding Level:** $85 million for health information technology activities and $415 million for health facilities
- **Allocation Method:** Funds will be distributed at the discretion of the Director of Indian Health Services
- **Decision-Maker:** Director of the Indian Health Services
- **Eligible Applicants:** (None specified)

See also, sections on Aging Services Programs, Grants for Development of Loan Programs for Certified EHR Technology; and Medicaid and CHIP

Aging Services Programs

- **Purpose:** To provide nutrition services (congregate and home delivered) to Native Americans
- **Funding Level:** $3 million
- **Allocation Method:** Grants as prescribed under Title VI of the Aging Americans Act of 1965
- **Decision-Maker:** Assistant Secretary for Aging
- **Eligible Applicants:** See Title VI of the Aging Americans Act of 1965
- **Special Criteria:**
  - Funds available upon enactment

DEPARTMENT OF EDUCATION

Education for the Disadvantaged

- **Purpose:** To help school districts mitigate the effect of the reduction in local revenues and State support for education
- **Funding Level:** $13 billion
- **Allocation Method:** State pass-through by formula or grant to Local Education Authority (LEA) (for distribution during schools years 2009-2010 and 2010-2011)

- **Decision-Maker:** Department of Education; Office of Elementary and Secondary Education
- **Eligible Applicants:** States
- **Special Criteria:**
  - Each LEA receiving funds must file a school-by-school listing of per-pupil educational expenditures from State and local sources during the 2008-2009 academic year to its State education agency no later than December 1, 2009. States must report that information to the Secretary of Education by March 31, 2010

Title I

- **Purpose:** To distribute funding to schools and school districts with a high percentage of students from low-income families
- **Funding Level:** $10 billion
- **Allocation Method:** State pass-through formula: $5 billion through targeted formula; $5 billion through education finance incentive grant formula
- **Decision-Maker:** State education agencies
- **Eligible Applicants:** LEAs with 40 percent or more students from families that qualify as low-income
- **Special Criteria:**
  - Some of the funding should be used for early childhood programs and activities

School Improvement

- **Purpose:** Funding for academic assessment and LEA and school improvement
- **Funding Level:** $3 billion
- **Allocation Method:** Formula grants
- **Decision-Maker:** State education agencies
- **Eligible Applicants:** LEAs
- **Special Criteria:**
  - 40 percent should be used for middle and high schools

Impact Aid

- **Purpose:** To provide funding for to undertake emergency renovations and modernization projects
- **Funding Level:** $100 million
- **Allocation Method:** Discretionary grants
- **Decision-Maker:** Office of Elementary and Secondary Education
- **Eligible Applicants:** LEAs that educate federally-connected students of have federally-owned land
- **Special Criteria:**
  - Current law modified 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 others

Enhancing Education through Technology

- **Purpose:** To improve student achievement through the use of technology in elementary and secondary schools
- **Funding Level:** $650 million
- **Allocation Method:** Formula grants
- **Decision-Maker:** Office of Elementary and Secondary Education; School Support and Technology Programs
- **Eligible Applicants:** State education agencies
- **Special Criteria:**
  - Funds available during school years 2009-2010 and 2010-2011

Education for the Homeless Children and Youth

- **Purpose:** To ensure that homeless children, including preschoolers and youths, have equal access to free and appropriate public education
- **Funding Level:** $70 million
- **Allocation Method:** Formula grants
- **Decision-Maker:** Office of Elementary and Secondary Education; Student Achievement and School Accountability Programs
- **Eligible Applicants:** State education agencies
- **Special Criteria:**
  - Funds available during school years 2009-2010 and 2010-2011
  - Each State will receive a grant that is proportionate to the number of homeless students identified as such during the 2007-2008 school year relative to the number of homeless children nationally during the same year
  - States will award subgrants to LEAs on a competitive basis, or using a formula based on the number of homeless students identified in each school district in the State

Teacher Incentive Fund (TIF)

- **Purpose:** To develop and implement performance-based teacher and principal compensation systems in high-need schools that consider gains in student academic achievement as well as classroom evaluations conducted multiple times during each school year among other factors and provide educators with incentive to take on additional responsibilities and leadership
- **Funding Level:** $200 million
- **Allocation Method:** Discretionary grants
- **Decision-Maker:** Office of Elementary and Secondary Education; Academic Improvement and Teacher Quality Programs
- **Eligible Applicants:** Local education agencies, nonprofit organizations, other organizations and/or agencies, State education agencies
- **Special Criteria:**
  - The Institute for Education Sciences is required to conduct a rigorous national evaluation of TIF to access the impact of performance-based teacher and principal compensation systems
  - 1 percent of the total funding will be used for management and oversight of the Teacher Incentive Fund

- Some funds will be granted for technical assistance, training, peer review of applications, program outreach, and evaluation activities

Special Education

Individuals with Disabilities Act Part B, Section 611

- **Purpose:** To assist States to provide special education and related services to eligible students with disabilities ages 3 through 21 who are enrolled in special education programs
- **Funding Level:** $11.3 billion
- **Allocation Method:** Grants to States (pass-through to LEAs) based on the number of children with disabilities in the State who are receiving special education and related services
- **Decision-Maker:** Office of Special Education Programs
- **Eligible Applicants:** States
- **Special Criteria:**
  - Funds available during schools years 2009-2010 and 2010-2011
  - The amount set aside for Department of Interior transfer to Native Americans shall be equal to the lesser amount available during Fiscal Year 2008, increased by inflation or an 80 percent increase of the amount allotted for the Fiscal Year

Individuals with Disabilities Act Part B, Section 619 (Preschool Grants)

- **Purpose:** To assist States to provide special education and related services to children with disabilities aged 3 through 5 and, at the State's discretion, to 2-year old children with disabilities who will turn 3 during the school year
- **Funding Level:** $400 million
- **Allocation Method:** Grants to States (pass-through to LEAs) based on population, including consideration for the number of children living in poverty
- **Decision-Maker:** Office of Special Education Programs
- **Eligible Applicants:** States
- **Special Criteria:**
  - Funds available during schools years 2009-2010 and 2010-2011

Individuals with Disabilities Act Part C

- **Purpose:** To assist States to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families
- **Funding Level:** $500 million
- **Allocation Method:** Grants to States
- **Decision-Maker:** Office of Special Education Programs
- **Eligible Applicants:** States
- **Special Criteria:**
  - Funds available during schools years 2009-2010 and 2010-2011
  - The Department of Education is required to reserve the amount needed for grants to outlying areas and allocate any remaining funds to each State an amount that bears

the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States

Rehabilitation Services and Disability Research

Vocational Rehabilitation State Grants

- **Purpose:** To assist States to support a wide range of services designed to help individuals with disabilities prepare for and engage in gainful employment
- **Funding Level:** $540 million
- **Allocation Method:** Formula grants
- **Decision-Maker:** Office of Special Education and Rehabilitative Services; Rehabilitation Services Administration
- **Eligible Applicants:** States
- **Special Criteria:**
  - Funds provided through this Act will not be considered in determining future appropriations.
  - The Federal share of services provided with these funds will be 100 percent

Independent Living Programs – State Grants

- **Purpose:** To support projects that provide independent living services, directly or through grant or contract, and demonstrate ways to expand and improve them
- **Funding Level:** $18.2 million
- **Allocation Method:** Formula grants
- **Decision-Maker:** Office of Special Education and Rehabilitative Services; Rehabilitation Services Administration
- **Eligible Applicants:** States

Independent Living Programs – Independent Living Centers

- **Purpose:** To support the planning, conduct, administration, and evaluation of centers for independent living
- **Funding Level:** $87.5 million
- **Allocation Method:** Discretionary/competitive grants
- **Decision-Maker:** Office of Special Education and Rehabilitative Services; Rehabilitation Services Administration
- **Eligible Applicants:** Nonprofit organizations

Services for Older Blind Individuals

- **Purpose:** To support services for individuals age 55 or older whose severe visual impairment makes competitive employment difficult to obtain but for whom independent living goals are feasible
- **Funding Level:** $34.3 million
- **Allocation Method:** Formula grants
- **Decision-Maker:** Office of Special Education and Rehabilitative Services; Rehabilitation Services Administration

- **Eligible Applicants:** State vocational rehabilitation (VR) agencies serving individuals who are blind

Student Financial Assistance

Pell Grants

- **Purpose:** To provide need-based grants to low-income undergraduate and certain post-baccalaureate students to promote access t postsecondary education
- **Funding Level:** $15.64 billion
- **Allocation Method:** Grants - financial need is determined by the U.S. Department of Education using a standard formula that factors income (student and parents), household size and number of higher education students within the household.
- **Decision maker:** Office of Federal Student Aid
- **Eligible Applicants:** Undergraduate and vocational students enrolled or accepted for enrollment in participating schools
- **Special Criteria:**
  - Funding is available to support a $4,860 maximum Pell Grant award for the 2009-2010 award year
  - $1.474 billion also provided for the mandatory component of the Pell Grant program
  - 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

Federal Work Study

- **Purpose:** To provides funds that are earned through part-time employment to assist students in financing the costs of postsecondary education
- **Funding Level:** $18.2 million
- **Allocation Method:** Formula grants
- **Decision-Maker:** Office of Federal Student Aid
- **Eligible Applicants:** Institutions of higher education may apply for an allocation of funds to be awarded to undergraduate, vocational, and graduate students enrolled or accepted for enrollment at participating schools

Student Aid Administration

- **Purpose:** To provide funding for administration of the Pell Grant, work study, and the direct loan program, which provide grants and loans to help students pay for education after high school
- **Funding Level:** $60 million

Higher Education – Teacher Quality Enhancement

- **Purpose:** To improve teacher recruitment, preparation, and support to reduce shortages of qualified teachers in high-need school districts
- **Funding Level:** $100 million
- **Allocation Method:** Discretionary/competitive grants
- **Decision-Maker:** Office of Postsecondary Education

- **Eligible Applicants:** State Grants: State education agencies
  Partnership and recruitment grants: institutions of eigher education, local education agencies

Institute of Education Sciences

- **Purpose:** For statewide data systems that include postsecondary and workforce information
- **Funding Level:** $250,000,000
- **Allocation Method:** Discretionary/competitive grants
- **Decision maker:** Office of Postsecondary Education
- **Eligible Applicants:** States
- **Special Criteria:**
  - Up to $5 million may be used for State data coordinator and for awards to public or private organizations or agencies to improve data coordination

Office of Inspector General

- **Purpose:** To provide funding for salaries and expenses necessary for oversight and audit of the programs, grants, and projects funding in this Act
- **Funding Level:** $14 million

STATE FISCAL STABILIZATION FUND (DEPT. OF EDUCATION)

State Fiscal Stabilization Fund

- **Purpose:** To provide fiscal relieve to the States to prevent tax increases and cutback in critical education and other services
- **Funding Level:** $53.6 billion (available upon enactment)
- **Allocation Method:** State population allocation; Competitive Incentive Grants and Innovation Fund awards ($5 billion); 0.5 percent set-aside for outlying areas
- **Decision-Maker:** Department of Education, Office of the Secretary
- **Eligible Applicants:** States
- **Special Criteria:**
  - States receiving funds must submit an annual report describing the uses of funds; the distribution of funds; the number of jobs saved or created; tax increases diverted; 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; the extent to which public institutions of higher education maintained, increased, or decreased enrollments of in-State students; and a description of each modernization, renovation and repair project funded, including project costs
  - The Secretary may waive or modify any requirement for States and LEAs that have experienced a precipitous decline in financial resources
  - Funds should not be used to provide financial assistance to students to attend private elementary or secondary schools

State Allocations

- **Purpose:** To restore State aid to elementary, secondary, and higher education
- **Funding Level:** Approximately $48 billion
- **Allocation Method:** Population allocation (61 percent based on relative population of individuals aged 5 through 24; 39 percent based on relative total population)
- **Decision-Maker:** Department of Education, Office of the Secretary
- **Eligible Applicants:** States
- **Special Criteria:**
  - Funds not committed within 2 years will be reallocated
  - Governors must submit applications for funding describing how the States intend to use their allocations and make assurances 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 Fiscal Year 2006 levels and address 4 key areas:
    1) Achieve equity in teacher distribution to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.
    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
    4) Ensure compliance with corrective actions required for low-performing schools
  - Governors must use 81.8 percent of allocation to support elementary, secondary, and higher education:
    1) First to school districts under the State's primary elementary and secondary education funding formula to the greater of Fiscal Year 2008 or Fiscal Year 2009 in each of Fiscal Years 2010, 2011, and 2012;
    2) To public institutions of higher education to the greater of Fiscal Year 2008 or Fiscal Year 2009 to the extent feasible; and
    3) Remaining funds allocated to school districts based on Federal Title I
    4) If funds are insufficient to meet #1 and #2 above, the Governor may allocate funds between clauses in proportion to the relative shortfall in State support for each
  - Governors must use 18.2 percent of allocation for public safety and other government services, including education services. These funds may be used for elementary, secondary, and higher education modernization, renovation, and repair activities that are consistent with State laws
  - Use of funds by LEAs: activities authorized under the ESEA[1], IDEA[2], or Perkins[3] Acts, and for school modernization, renovation, and repair of public facilities (including charter schools), including those consistent with a recognized green building rating system

[1] The Elementary and Secondary Education Act
[2] The Individuals with Disabilities Act
[3] The Carl D. Perkins Career and Technical Education Act of 2006

- Prohibition of use of funds by LEAs: Payment of maintenance costs; modernization, renovation, or repair of stadiums or facilities used for events in which admission is charged; purchase or upgrade of vehicles; and improvement of facilities whose purpose is not the education of children (administration, support facilities)
- Use of funds by institutions of higher education: 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, including those consistent with a recognized green building rating system
- Prohibition of use of funds by institutions of higher education: Endowment increase; maintenance; modernization, renovation, or repair of stadiums or facilities used for events in which admission is charged; modernization, renovation, or repair of facilities used for sectarian instruction or religious worship or those in which a substantial portion of the functions of the facilities are subsumed in a religious mission

State Incentive Grants

- **Purpose:** To reaward 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
- **Funding Level:** Approximately $4.3 billion for Fiscal Year 2010
- **Allocation Method:** Discretionary grants
- **Decision-Maker:** Department of Education, Office of the Secretary
- **Eligible Applicants:** States
- **Special Criteria:**
  - Governors must submit an application that describes the State's progress in the areas mentioned above and how the State would use grant funding to continue making progress toward meeting the State's student academic achievement standards and closing achievement gaps
  - States receiving a grant must use at least 50 percent to provide school districts with subgrants based on the most recent relative Title I allocations

Innovation Fund

- **Purpose:** To provide funding for academic achievement awards to recognize schools that have made achievement gains to allow them to expand their work, to work in partnership with the private sector, and to identify and document best practices
- **Funding Level:** Up to $650 million
- **Allocation Method:** Discretionary grants
- **Decision-Maker:** Department of Education, Office of the Secretary
- **Eligible Applicants:** School districts or partnerships between nonprofit organizations and State educational agencies, school districts, or one or more schools
- **Special Criteria:**
  - An eligible entity will have significantly closed achievement gaps, exceeded the State's annual measurable objectives in the areas identified above, made significant improvement in other areas such as graduation rates, and demonstrate they have established partnerships with the private sector

MILITARY CONSTRUCTION

Military Construction

- **Purpose:** To provide funding for the planning and design of military construction projects in the United States
- **Funding Level:**
  - Army: $180 million ($100 million for troop housing, $80 million for child development centers)
  - Navy and Marine Corps: $280 million ($100 million for troop housing, $80 million for child development centers, $100 million for energy conservation and alternative energy projects)
  - Air Force: $180 million ($100 million troop housing, $80 million for child development)
  - Defense Wide: $1.45 billion ($1.33 billion for construction of hospitals, $120 million for Energy Conservation Investment Program)
  - Army National Guard: $50 million
  - Air National Guard: $ 50 million
  - Army, Family Housing Construction: $34.5 million
  - Army, Family Housing Operation and Maintenance: $3.93 million
  - Air Force, Family Housing Construction: $80.1 million
  - Air Force, Family Housing Operation and Maintenance: $16.46 million
- **Allocation Method:** Discretionary
- **Decision-Maker:** Service Installation Commands
- **Eligible Applicants:** Military branches
- **Special Criteria:**
  - Funds will remain available for obligation until September 30, 2013, provided that within 30 days of enactment, the Secretary of Defense submits to the Committees on Appropriations of both Houses of Congress an expenditure plan for the funds
  - Exception:
    - As for construction for the Army National Guard, the Secretary of Defense, in consultation with the Director of the Army National Guard, shall submit to the Committees on Appropriations of both Houses of Congress within 30 days of the enactment, an expenditure plan for the funds
    - As for construction for the Air National Guard, the Secretary of Defense, in consultation with the Director of the Air National Guard, shall submit to the Committees on Appropriations of both Houses of Congress within 30 days of enactment, an expenditure plan for the funds

Homeowners Assistance Fund

- **Purpose:** To provide homeowners assistance for members of the armed service and their families
- **Funding Level:** $555 million
- **Allocation Method:** Discretionary
- **Decision-Maker:** U.S. Army Corps of Engineers
- **Eligible Applicants:** Owners of one or two family dwellings located at or near military installations ordered to be closed in whole or in part

- **Special Criteria:**
  - Funds will remain available for obligation until expended provided that the Secretary of Defense submits quarterly reports to the Committees on Appropriations of both Houses of Congress on the expenditure of funds made available under this heading

DEPARTMENT OF VETERANS AFFAIRS

Medical Facilities

- **Purpose:** To provide funding for non-recurring maintenance, including energy projects at Department of Veterans Affairs medical facilities
- **Funding Level:** $1 billion
- **Allocation Method:** Discretionary
- **Decision-Maker:** Veterans Health Administration
- **Eligible Applicants:** Department of Veterans Affairs medical facilities
- **Special Criteria:**
  - Funds will remain available for obligation until September 30, 2010, provided that within 30 days of enactment, the Secretary of Veterans Affairs submits to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading

National Cemetery Administration

- **Purpose:** To provide funding for monument and memorial repairs, including energy projects
- **Funding Level:** $50 million
- **Allocation Method:** Discretionary
- **Decision-Maker:** National Cemetery Administration
- **Eligible Applicants:** Any State may apply
- **Special Criteria:**
  - Cemeteries must be State-owned and operated solely for eligible veterans and their dependents and/or spouses
  - Funds will remain available for obligation until September 30, 2010, provided that within 30 days of enactment, the Secretary of Veterans Affairs submits to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading

Departmental Administration

- **Purpose:** To provide funding for additional expenses related to hiring and training processors to handle the surge in disability claims
- **Funding Level:** $150 million
- **Allocation Method:** Discretionary
- **Decision-Maker:** Veterans Benefits Administration
- **Eligible Applicant:** Companies with employment placement and training expertise
- **Special Criteria:**
  - Funds will remain available for obligation until September 30, 2010

Information Technology Systems

- **Purpose:** To provide funding for information technology systems
- **Funding Level:** $50 million
- **Allocation Method:** Discretionary
- **Decision-Maker:** Veterans Benefits Administration
- **Eligible Applicant:** Information Technology companies
- **Special Criteria:**
    - Funds will remain available for obligation until September 30, 2010, provided that within 30 days of enactment, the Secretary of Veterans Affairs shall submit to the Committees on Appropriations of both Houses of Congress an expenditure plan for funds provided under this heading

Grants for Construction of State Extended Care Facilities

- **Purpose:** To provide funding for grants to assist States in acquiring or constructing State nursing home and domiciliary facilities and to remodel, modify or alter existing hospital, nursing home and domiciliary facilities in State homes, for furnishing care to veterans
- **Funding Level:** $150 million
- **Allocation Method:** Discretionary
- **Decision-Maker:** Veterans Health Administration
- **Eligible Applicants:** Any State may apply after assuring that the assisted facility will be owned by the State; and will be used primarily for veterans
- **Special Criteria:**
    - Funds will remain available for obligation until September 30, 2010

DEPARTMENT OF TRANSPORTATION

General Provisions

- Appropriates $20 million to the Office of Inspector General, to remain available through September 30, 2013, to conduct audits and investigations of projects and activities carried out with funds made available in this Act
- Maintenance of Effort
    - Not later than 30 days after enactment each Governor shall certify that the State will maintain its State funding effort and submit a statement to the Secretary identifying the amount of funds the State planned to expend as of the date of enactment through September 30, 2010 for the types of projects funded by this appropriation
    - If a State is unable to maintain the certified level of effort it will be prohibited from receiving additional obligation limitation from the post August 1 Fiscal Year 2011 redistribution for Federal-aid highway and highway safety construction programs
- Periodic reports
    - Each grant recipient shall submit periodic reports to the Federal funding agency on the use of appropriated funds. The agency shall collect and compile the reports and submit them to Congress
    - Reports shall include information tracking:
        - Amount of Federal funds appropriated, allocated, obligated and outlayed
        - Number of projects bid and amount of associated Federal funds

        - Number of projects with awarded contracts and associated Federal funds
        - Number of projects for which work has begun and associated Federal funds
        - Number of projects for which work has been completed and Federal funds
        - Number of direct on-project jobs created or sustained and, to the extent possible, estimated indirect jobs in associated supply industries, including the job years and the total increase in employment since date of enactment
        - For each program, annual aggregate expenditures from State sources beginning on the date of enactment through September 30, 2010 compared to the level of expenditures that were planned to occur during such period as of the date of enactment
    - First reports are due 90 days after date of enactment. Updated reports due 180 days, 1 year, 2 years and 3 years after the date of enactment

Office of the Secretary

<u>Supplemental Discretionary Grants for a National Surface Transportation System</u>

- **Purpose:** To provide funding for projects of national or regional significance
- **Funding Level:** $1.5 billion
- **Allocation Method:** Discretionary competitive grants
- **Decision-Maker:** Secretary of Transportation
- **Eligible Recipients:** States, local governments, transit agencies
- **Special Criteria:**
    - Funds remain available through September 30, 2011
    - Federal share up to 100 percent
    - Eligible projects include:
        - Highway or bridge projects under Title 23 USC
        - Public Transportation Projects under Title 49 USC
            - Includes New Starts or Small Starts projects that can be expedited towards entry into revenue service
        - Passenger and freight rail projects
        - Port infrastructure investments, including projects that connect ports to other modes of transportation and improve efficiency of freight movement
    - Up to $200 million can be spent to pay the subsidy and administrative costs of projects eligible for Federal credit assistance (TIFIA)
        - Through TIFIA, DOT provides Federal credit assistance to eligible highway, transit, rail, and intermodal freight projects
        - TIFIA credit assistance is intended to facilitate the financing of projects that would otherwise have been significantly delayed because of funding limitations or difficulties accessing the capital markets
    - Secretary shall ensure equitable geographic distribution and an appropriate balance in addressing the needs of urban and rural communities
    - Grant minimum of $20 million and maximum of $300 million (Secretary can waive the minimum for significant projects in smaller cities, regions or States)
    - No more than 20 percent of the funds can be awarded to a single State
    - Secretary shall give priority to projects that require Federal funds to complete financing and to projects that are expected to be completed in 3 years

- Secretary shall publish criteria on which to base the competitive grants within 90 days of enactment, require submittal of applications within 180 days after the publication of criteria and announce selections within 1 year of enactment

Federal Aviation Administration (FAA)

Facilities and Equipment

- **Purpose:** To provide supplemental funding for facilities and equipment
- **Funding Level:** $200 million
- **Allocation Method:** Competitive awards and grants
- **Decision-Maker:** FAA
- **Eligible Recipients:** Airports and private entities
- **Special Criteria**:
  - Funds remain available through September 30, 2010
  - Priority to projects or activities that will be completed within 2 years of enactment
  - Federal share 100 percent
  - FAA Administrator shall establish grant award procedures within 60 days
  - $50 million to upgrade FAA power systems
  - $50 million to modernize en route air traffic control centers
  - $80 million to replace air traffic control towers and TRACONs
  - $20 million to install airport lighting, navigation and landing equipment
  - Includes a "Buy-American" provision

Grants-in-Aid for Airports

- **Purpose:** To provide funding for eligible airport improvements and procurement, installation and commissioning of runway incursion devices and systems
- **Funding Level:** $1.1 billion
- **Allocation Method:** Discretionary Grants
- **Decision-Maker:** FAA
- **Eligible Recipients:** Airports
- **Special Criteria:**
  - Funds remain available through September 30, 2010
  - Priority to projects that can be completed within 2 years of enactment and serve to supplement, not supplant planned expenditures from airport-generated revenues or from other State and local sources
  - Federal share shall be 100 percent
  - 50 percent of the grants must be awarded within 120 days and 100 percent within one year of enactment

Federal Highway Administration (FHWA)

Highway Infrastructure Investment States and MPOs

- **Purpose:** To provide funding for restoration, repair, construction, other activities eligible under the Surface Transportation Program (STP), passenger and freight rail and port infrastructure projects eligible for innovative financing
- **Funding Level:** $27.5 billion
- **Allocation Method:** 50 percent apportioned to States under STP formula; 50 percent apportioned using Fiscal Year 2008 obligation ratio
- **Decision-Maker:** State DOTs, MPOs, U.S. DOT/FHWA
- **Eligible Recipients:** State Departments of Transportation (DOTs) and Metropolitan Planning Organizations (MPOs)
- **Special Criteria:**
  - Funds remain available through September 30, 2010
  - Up to $840 million in funding set aside:
    - $105 million for Puerto Rico highways
    - $45 million for territorial highways
    - $60 million for construction of ferry boats and ferry terminal facilities*
    - $550 million for Indian reservations and Federal lands including $310 million for the Indian Reservation Roads program*
    - $20 million for On the Job Training programs
    - $20 million for Disadvantaged Business Enterprise Bonding Assistance.
    - Up to $40 million for Administrative oversight
  - Federal share up to 100 percent
  - Funds must be apportioned by FHWA within 21 days of enactment
  - Recipients shall give priority to projects projected for completion within 3 years and in economically distressed areas
  - States must obligate 50 percent of funds within 120 days or they will be reapportioned
  - States must obligate all funds within 1 year or they will be reapportioned. Secretary may grant an extension, after justifying it to the Appropriations Committees, if a State has encountered extreme conditions that create an unworkable bidding environment or other extenuating circumstances
  - 30 percent of the funds are suballocated to urbanized areas over 200,000 and areas under 5,000 using the STP formula. Funds are not subject to the 120 day redistribution
  - States must set aside 3 percent for transportation enhancement activities
  - Funds are not subject to obligation limitations
  - Funds cannot be used for advance construction
  - Disadvantaged Business Enterprise requirements apply for apportioned funds
  - FHWA provides additional guidance at http://www.fhwa.dot.gov/economicrecovery/expedite.htm

* These programs are described in more detail in the following two sections of this document

Highway Infrastructure Investment: Ferry Boats and Ferry Terminal Facilities

- **Purpose:** To provide funding for capital expenditures for ferry boats and terminal facilities
- **Funding Level:** $60 million
- **Allocation Method:** Competitive discretionary grants
- **Decision-Maker:** DOT/FHWA
- **Eligible Recipients:** State DOTs
- **Special Criteria:**
  - Priority given to projects that can be completed within 2 years of enactment.
  - Federal up to 100 percent

Highway Infrastructure Investment: Federal Lands Highways

- **Purpose:** To provide funding for transportation investments on Indian Reservations and Federal Lands
- **Funding Level:** $550 million
- **Allocation Method:** Formula and direct Federal
- **Decision-Maker:** Tribes; Federal agencies
- **Eligible Recipients:** Tribes, direct Federal
- **Special Criteria:**
  - $310 million for Indian Reservation Roads (formula program administered by FHWA and BIA)
  - $170 million for Park Roads and Parkways (administered by FHWA and National Park Service)
  - $60 million for Forest Highways (jointly administered by FHWA and U.S. Forest Service)
  - $10 million for Refuge Roads (jointly administered by FHWA and U.S. Fish and Wildlife Service)
  - Priority shall be given to capital investments and projects and activities that can be completed within 2 years of enactment
  - Secretary may redistribute funds not obligated within 1 year within each program

Federal Railroad Administration (FRA)

Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service

- **Purpose:** To provide funding for intercity and high speed passenger rail capital projects
- **Funding Level:** $8 billion
- **Allocation Method:** Discretionary grants
- **Decision-Maker:** DOT/FRA
- **Eligible Recipients:** States
- **Special Criteria:**
  - Funds remain available through September 30, 2012
  - Federal share can be up to 100 percent
  - Funds intercity passenger service capital projects and congestion grants
  - Gives priority to projects that support high speed passenger rail service

- Requires the Secretary to submit a strategic plan to the House and Senate Appropriations Committees within 60 days of enactment describing how the funds will be used to improve and deploy high speed passenger rail systems
- Within 120 days of enactment the Secretary shall issue interim guidance to applicants (until a final regulation is issued) with separate instructions for the high speed rail corridor program, capital assistance for intercity passenger rail service grants and congestion grants
- Waives the requirement that projects be in a State rail plan
- Congestion grants are for capital costs of facilities, infrastructure and equipment for projects: identified by Amtrak to reduce congestion or facilitate ridership growth along heavily traveled corridors; identified by the Surface Transportation Board as necessary to improve on time performance and reliability of intercity passenger transportation; and sufficiently advanced to achieve these goals
- Intercity Passenger rail Capital Assistance to States grants are for capital costs of facilities, infrastructure and equipment
- Requires compliance with Davis-Bacon wage laws
- Buy American Provisions apply for steel, iron, and manufactured goods used in the project

Amtrak

- **Purpose:** To provide capital grants to Amtrak
- **Funding Level:** $1.3 billion
- **Allocation Method:** Grants to Amtrak
- **Decision-Maker:** DOT/FRA
- **Eligible Recipients:** Amtrak
- **Special Criteria:**
  - Funds remain available through September 30, 2010
  - $450 million shall be used for capital security grants
  - Priority given to repair, rehabilitation, or upgrade of railroad assets or infrastructure, and for capital projects that expand passenger rail capacity including the rehabilitation of rolling stock
  - None of the funding shall be used to subsidize operating losses of Amtrak
  - Funds shall be awarded within 30 days of enactment
  - Secretary shall take measures to ensure that projects shall be completed within 2 years of enactment and shall serve to supplement, not supplant, planned expenditures for such activities from other Federal, State, local and corporate sources and shall certify compliance to the House and Senate Appropriations Committees
  - Not more than 60 percent of the non-security funds may be used along the Northeast Corridor
  - $5 million set aside for the Amtrak Office of Inspector General

Federal Transit Administration (FTA)

Capital Assistance for Transit

- **Purpose:** To provide capital assistance for transit
- **Funding Level:** $6.9 billion
- **Allocation Method:** Formula apportionments
- **Decision-Maker:** Designated recipients, DOT/FTA
- **Eligible Recipients:** Designated recipients – generally transit agencies, State DOTs
- **Special Criteria:**
  - Funds remain available through September 30, 2010
  - Federal share up to 100 percent
  - $100 million set-aside for discretionary grants to public transit agencies for capital improvements to assist in reducing energy consumption or greenhouse gas emissions of public transportation systems. Priority shall be given to projects based on total energy savings projected to result from the investment and projected energy savings as a percentage of the total energy usage of the public transit agency
  - 80 percent apportioned to urbanized areas;10 percent to growing States and high density States, 10 percent to rural and non urban areas of which 2.5 percent of which is for tribes
  - Funds must be apportioned by FTA within 21 days of enactment
  - Recipients have 180 days to obligate 50 percent of funds or they will be redistributed by whatever method DOT deems appropriate to ensure they are utilized promptly
  - Recipients have 1 year to obligate all funds or they will be redistributed by whatever method DOT deems appropriate to ensure they are utilized promptly. Secretary may grant an extension, after justifying it to the Appropriations Committees, if a recipient has encountered an unworkable bidding environment or other extenuating circumstances
  - Funds are not subject to obligation limitations
  - Disadvantaged Business Enterprise requirements apply for apportioned funds
  - FTA provides additional guidance at. http://www.fta.dot.gov/index_9118.html

Fixed Guideway Infrastructure Investment

- **Purpose:** To provide funding to modernize or improve existing fixed guideway systems
- **Funding Level:** $750 million
- **Allocation Method:** Apportioned under fixed guideway formula
- **Decision-Maker:** Recipients
- **Eligible Recipients:** Public bodies, generally transit authorities or State DOTs
- **Special Criteria:**
  - Funds remain available through September 30, 2010
  - Federal share up to 100 percent
  - Funds must be apportioned by FTA within 21 days of enactment
  - Recipients have 180 days to obligate 50 percent of funds or they will be redistributed by whatever method DOT deems appropriate to ensure they are utilized promptly
  - Recipients have 1 year to obligate all funds or they will be redistributed by whatever method DOT deems appropriate to ensure they are utilized promptly. Secretary may grant an extension, after justifying it to the Appropriations Committees, if a recipient

has encountered an unworkable bidding environment or other extenuating circumstances
  - Disadvantaged Business Enterprise requirements apply for apportioned funds

Capital Investment Grants

- **Purpose:** To provide supplemental grants for New Starts and Small Starts
- **Funding Level:** $750 million
- **Allocation Method:** Discretionary grants
- **Decision-Maker:** DOT/FTA
- **Eligible Recipients:** Public bodies, generally transit authorities or State DOTs
- **Special Criteria:**
  - Funds remain available through September 30, 2010
  - Funds are for construction of new fixed guideway systems or extensions to existing systems
  - Priority shall be given to projects that are already in construction or able to obligate funds within 150 days of enactment
  - Disadvantaged Business Enterprise requirements apply

Maritime Administration

Assistance to Small Shipyards

- **Purpose:** To provide supplemental grants for assistance to qualified shipyards
- **Funding Level:** $100 million
- **Allocation Method:** Grants
- **Decision-Maker:** Maritime Administration (MarAd)
- **Eligible Applicants:** Qualified shipyards
- **Special Criteria:**
  - Funds remain available through September 30, 2010
  - Secretary shall institute measures to ensure that funds are obligated within 180 days of distribution

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

General Legislative Provisions Impacting Key Housing Programs

- Federal Housing Administration (FHA) – raises loan limits for calendar year 2009 to the level set in calendar year 2008, and includes discretionary authority for sub-areas

- Government Sponsored Enterprise (GSE) – raises the conforming loan limit for calendar year 2009 to the level set in calendar year 2008, including discretionary authority for sub-areas

- Home Equity Conversion Mortgage – raises the loan limit for 2009

Public Housing Capital Fund

- **Purpose:** To provide funding for development, financing, modernization of public housing
- **Funding Level:** $4 billion
- **Allocation Method:** Formula -- $3 billion (Fiscal Year 2008 inputs)
  Competitive -- $1 billion
- **Decision-Maker:** Public and Indian Housing / Office of Capital Improvements
- **Eligible Applicants:** Public Housing Agencies (PHAs)
- **Special Criteria:**
  - HUD may determine not to allocate funds to troubled PHAs or those electing not to accept funding
  - No supplantation of expenditures from other sources
  - Timing
    - Formula funds must be allocated within 30 days of enactment
    - Competitive funds must be allocated by September 30, 2009
    - PHAs must obligate 100 percent of funds within 1 year of availability; expend 60 percent within 2 years, and 100 percent within 3 years – failure to comply with 1-year (or other) obligation requirement will result in recapturing all remaining unobligated funds for reallocation
  - Project Selection Criteria
    - For PHA formula grant receipts –
      - Capital projects that can award bid-based contracts within 120 days from receipt of funds
      - Capital projects that are already underway or included in their 5-year capital fund plans
      - Rehabilitation of vacant rental units
    - For HUD competitive funding decisions, priorities include leverage of private sector funding for renovations and energy conservation retrofits
  - Eligible Use Modifications
    - No operating costs or rental assistance
    - Replacement housing restrictions waived
  - HUD may waive or specify alternative requirements to expedite or facilitate use of funds (*except fair housing, labor standards, environmental standards, Uniform Relocation Act*)
  - HUD allowed up to 0.5 percent set-aside for administrative, technical assistance, and evaluation expenses through September 30, 2012

Native American Housing Block Grants

- **Purpose:** To develop or support rental or ownership housing or provide housing services to benefit low-income Indian families on Indian reservations and other Indian areas
- **Funding Level:** $510 million
- **Allocation Method:** Formula -- $255 million (Fiscal Year 2008 inputs)
  Competitive -- $255 million
- **Decision-Maker:** HUD Office of Public and Indian Housing
- **Eligible Applicants:** Recognized Indian tribes and Alaska Native villages; Native Hawaiian discretionary set-aside allowed for up to 2 percent of funds

- **Special Criteria:**
  - Timing
    - Formula funds must be allocated within 30 days of enactment
    - Competitive funds must be obligated by September 30, 2009
    - Recipients must obligate 100 percent of funds within 1 year of receipt – expend 50 percent within 2 years of receipt and 100 percent within 3 years; failure to comply with 2-year (or other) expenditure requirement will result in recapturing all remaining unobligated funds for reallocation through the funding formula
  - Project Selection Criteria
    - For formula grant recipients, prioritize projects where contracts can be awarded within 180 days
    - For HUD competitive funding decisions, prioritize projects that will spur construction and rehab and will create employment opportunities for low-income and the unemployed
  - Eligible Use Modifications
    - Formula funds must be used for new construction, acquisition, rehab including energy efficiency and conservation, and infrastructure development
  - HUD may waive or specify alternative requirements to expedite or facilitate use of funds (*except fair housing, labor standards, environmental standards, Uniform Relocation Act*)
  - HUD allowed up to 0.5 percent set-aside for administrative, technical assistance, and evaluation expenses through September 30, 2012

<u>Community Development Block Grant (CDBG)</u>

- **Purpose:** To provide funding for standard allowable CDBG activities meeting low-income benefit requirements, including but not limited to – property acquisition; code enforcement; clearance/rehab/reconstruction/construction of buildings; public and social services (15 percent limit); planning and capacity building; development activities through nonprofits; economic development assistance; relocation; technical assistance; housing services and homeownership assistance
- **Funding Level:** $1 billion
- **Allocation Method:** Formula
- **Decision-Maker:** HUD Office of Community Planning and Development
- **Eligible Applicants:** Entitlement Communities having received funding in Fiscal Year 2008
- **Special Criteria:**
  - Recipients must prioritize use for projects that can award bid-based contracts within 120 days from funding availability
  - HUD must establish requirements to expedite use of funds
  - HUD may waive or specify alternative requirements to expedite or facilitate use of funds (*except fair housing, labor standards, environmental standards, Uniform Relocation Act*)

Neighborhood Stabilization Program (NSP)

- **Purpose:** To provide funding to for purchase, rehabilitation, and re-occupancy of foreclosed homes, including financing mechanisms, and allowing land banking and demolition.
  Note: Changed from locals and States only in first NSP round
- **Funding Level:** $2 billion
- **Allocation Method:** Competitive
  Note: Changed from formula allocation in first NSP round.
- **Decision-Maker:** HUD Office of Community Planning and Development
- **Eligible Applicants:** Local governments, States, and non-profits (or consortia of nonprofits, which may partner with for-profit entities)
- **Special Criteria:**
  - HUD may set-aside up to 10 percent of funds for "capacity development" and support of local communities receiving grants
  - Timing
    - Grant solicitations released within 75 days of enactment
    - Applications due within 75 days after grant solicitation
    - HUD must obligate all funding within 1 year of enactment
    - Recipients must expend at least 50 percent of funds within 2 years; 100 percent within 3 years
  - Project Selection Criteria
    - Foreclosure rates, targeting areas with the greatest number and percentage of foreclosures
    - Ability to fully expend within the allowed period
    - Grantee capacity demonstrated to execute projects
    - Leveraging potential and concentration of investment to achieve neighborhood stabilization
  - HUD may establish a minimum grant size
  - Eligible Use Modifications
    - Allows for establishment and operation of land banks for foreclosed homes and residential properties
    - Redevelopment of demolished or vacant properties may only be for housing.
    - No demolition of public housing
    - No more than 10 percent of aggregate grant may be used for demolition activities or establishing land banks or demolition, unless HUD determines it is an appropriate response to local market conditions
  - HUD may waive or specify alternative requirements to expedite or facilitate use of funds (*except fair housing, labor standards, environmental standards, Uniform Relocation Act*)
  - HUD allowed up to 1 percent set-aside for administrative, technical assistance, and evaluation expenses through September 30, 2012
  - NSP Authorization Amendments (applies to new and prior funding)
    - Adds lease eligibility protections for Section 8 participants
    - Adds tenancy protections for renters in acquired foreclosed property
    - Repeals profit reinvestment / purchaser equity benefit restrictions in Section 2301(d)(4) of the Housing and Economic Recovery Act of 2008 (P.L. 110-289)

HOME Investment Partnerships – Modified for Low-Income Housing Tax Credit

- **Purpose:** To provide capital investments in low-income housing tax credit projects
- **Funding Level:** $2.25 billion
- **Allocation Method:** Competitive (after initial formula allocation to States, based on Fiscal Year 2008 HOME apportionment)
- **Decision-Maker:** State housing credit agencies
- **Eligible Applicants:** Affordable housing developers of qualified projects that, within a certain timeframe, received or simultaneously receive a Low Income Housing Tax Credit (LIHTC)
- **Special Criteria:**
  - Timing
    - Housing credit agencies must commit at least 75 percent of funds within 1 year of enactment, and demonstrate that project owners have expended 75 percent of funds within 2 years of enactment and 100 percent within 3 years – failure by an owner to do so will result in redistribution of funds within the State
    - Available until September 30, 2011
  - Project Selection Criteria
    - For housing credit agencies decisions, prioritize projects that will be completed within 3 years
    - Eligible projects must be awarded LIHTC in Fiscal Years 2007, 2008, or 2009
  - Housing credit agencies shall assure asset management functions comply with LIHTC requirements
  - Eligible basis of a qualified LIHTC building receiving assistance cannot be reduced by the amount of any stimulus grant
  - Environmental compliance remains subject to HOME requirements
  - HUD may waive or specify alternative requirements to expedite or facilitate use of funds (*except fair housing, labor standards, environmental standards, Uniform Relocation Act*)

Emergency Shelter Grants (ESG)

- **Purpose:** To provide funding for foreclosure prevention and re-housing; case management and social services; renovation, major rehabilitation, or conversion of buildings for use as emergency shelters or transitional housing; shelter operating costs; and related activities
- **Funding Level:** $1.5 billion
- **Allocation Method:** Formula
- **Decision-Maker:** HUD Office of Community Planning and Development
- **Eligible Applicants:** States, large cities, urban counties, and territories as regularly designated ESG recipients pursuant to the McKinney-Vento Act
- **Special Criteria:**
  - Timing
    - Grantees must expend at least 60 percent of funds within 2 years of fund availability, and 100 percent within 3 years – HUD may recapture unexpended funds if 2-year expenditure requirement is not met and reallocate to others in compliance

        - HUD must publish a notice establishing requirements within 30 days of enactment
    - HUD may set a minimum formula grant result for localities to receive funds that ensures critical mass of resources to have impact
    - Eligible Use Modifications
        - Specifies additional uses, including short- and medium-term rental assistance and prevention activities, housing relocation, and stabilization services including: housing search, mediation or outreach to property owners, credit repair, security or utility deposits, utility payments, rental assistance for a final month at a location, moving cost assistance, and case management, or other activities for homelessness prevention and rapid re-housing of persons who have become homeless
    - Grantee Administration
        - Administrative cost allowance of up to 5 percent
        - Data collection in HUD's Homeless Management Information System
    - HUD may waive or specify alternative requirements to expedite or facilitate use of funds (*except fair housing, labor standards, environmental standards, Uniform Relocation Act*)
    - HUD allowed up to 0.5 percent set-aside for administrative, technical assistance, and evaluation expenses through September 30, 2012

<u>Energy Retrofits and Greening Projects for Federally-Assisted Housing</u>

- **Purpose:** To provide funding for energy improvements to housing assisted under the Section 8, Section 202 (Elderly), and Section 811 (Disabled) programs
  <u>Note</u>: Section 8 regular project-based assistance program supplemented with $2 billion in same account, to provide full-year payments to participating landlords
- **Funding Level:** $250 million
- **Allocation Method:** Competitive grants and loans
- **Decision-Maker:** HUD Office of Affordable Housing Preservation
- **Eligible Applicants:** Private and non-profit organizations participating in Section 8, Section 202, and Section 811 programs
- **Special Criteria:**
    - Recipients shall expend funds within 2 years of receipt
    - HUD Authority to Establish Special Terms
        - Financial agreements for HUD to share in savings from reduced utility costs.
        - Incentives to recipients that encourage job creation for low-income and very-low income individuals
        - Supplemental financial incentives to property owners, such as fees for project management
        - Requirements for ongoing maintenance and preservation of the property and energy technologies
        - Timely expenditures
    - Recipient Requirements
        - Financial assessment and physical inspection of property
        - Satisfactory management review rating, and substantial compliance with performance / legal requirements

        - Commitment to an additional affordability period of at least 15 years
    - HUD must establish grant and loan underwriting and oversight, and may utilize up to 5 percent of total funding for that purpose
    - HUD may waive or specify alternative requirements to expedite or facilitate use of funds (*except fair housing, labor standards, environmental standards, Uniform Relocation Act*)
    - HUD allowed up to 1 percent set-aside for administrative, technical assistance, and evaluation expenses through September 30, 2012

Lead Hazard Reduction Program – Healthy Homes Initiative, Lead-Based Paint Hazard Control Grant, Lead Hazard Reduction Demonstration, Operation Lead Elimination Action Program, etc.

- **Purpose:** To provide funding to abate lead-based hazards in eligible privately-owned rental or owner-occupied housing, with various targeting factors by program
- **Funding Level:** $100 million
- **Allocation Method:** Competitive grants and cooperative agreements
- **Decision-Maker:** HUD Office of Healthy Homes and Lead Hazard Control
- **Eligible Applicants:** Local governments, States, housing authorities, Tribes, institutions of higher education, for-profit firms (not allowed to profit from activity), depending on program
- **Special Criteria:**
    - Selection Process
        - Awards made to all applicants that qualified for a grant under the Fiscal Year 2008 Lead Hazard Reduction Program NOFA, but did not receive one due to insufficient overall program funding
        - Remaining amounts to be awarded under regular Fiscal Year 2009 grant solicitation, including a detailed plan and strategy demonstrating capacity to carry out purposes
    - Recipients must expend at least 50 percent of funds within 2 years of funding award, and 100 percent within 3 years – unobligated funds subject to reallocation or recapture
    - Expedited environmental process allowed through delegation of NEPA review and approval to State or local governments, for grants under Healthy Homes Initiative, Operation Lead Elimination Action Plan, or Lead Technical Studies
    - HUD may waive or specify alternative requirements to expedite or facilitate use of funds (*except fair housing, labor standards, environmental standards, Uniform Relocation Act*).
    - HUD allowed up to 0.5 percent set-aside for administrative, technical assistance, and evaluation expenses through September 30, 2012

HEALTH INFORMATION TECHNOLOGY

Office of the National Coordinator for Health Information Technology (ONCHIT)

- **Purpose:** To oversee the development and implementation of a nationwide health information technology (HIT) infrastructure
- **Funding Level:** $2 billion
- **Allocation Method:** Various competitive grants (however $2 billion is not exclusively for grants)
- **Decision-Maker:** Office of the National Coordinator for Health Information Technology
- **Eligible Applicants:** Varies by specific grants, see below
- **Special Criteria:**
  - ONCHIT to review and determine whether to endorse standards, implementation specifications, and certification criterion for the electronic exchange and use of health information recommended by the HIT Standards Committee, support the development, routine updating and provision of qualified EHR technology and ensure that qualified EHR technology is certified
  - ONCHIT will oversee the HIT Policy Committee and the HIT Standards Committee
  - Directs each agency to require, in their contracts or agreements with health care providers, health plans, or health insurance issuers, that as each entity acquires, or upgrades HIT systems and products, it will utilize, where available, HIT systems and products that meet these newly developed standards and implementation specifications
  - ONCHIT can provide financial assistance to consumer advocacy groups and nonprofits that work in the public interest on the Federal adoption of privately developed standards
- Policy context:
  - Funding and policy development for nationwide interoperable EHRs and integration of HIT into clinical practice has stalled in the past over issues related to standards development and privacy
  - Standards development is significantly accelerated with this funding and major changes in privacy protections must be implemented by Federal agencies, hospitals, and certain health care providers
  - Although many types of providers were added in the course of bill negotiations, other provider groups are likely to advocate for inclusion
  - Providers and patient advocates are likely to press for greater public input into standards development and implementation

HIT Policy Committee

- **Purpose:** To make policy recommendations to ONCHIT relating to implementation of a nationwide health information technology infrastructure
- **Funding Level:** Funded through the ONCHIT
- **Allocation Method:** Policy Committee does not make specific allocations
- **Decision-Maker:** Membership of the HIT Policy Committee
- **Eligible Applicants:** N/A

- **Special Criteria:**
  - The HIT Policy Committee will play a critical role in developing the requirements for HIT infrastructure. Its duties include recommending: (1) a policy framework for development and adoption of a nationwide HIT infrastructure that permits electronic exchange and use of health information consistent with the Strategic Plan; (2) areas in which standards, implementation specifications, and certification criteria are needed for electronic exchange and use of health information; and (3) priorities for the development, harmonization, and recognition of such standards, specification, and certification criteria

HIT Standards Committee

- **Purpose:** To recommend standards, implementation specifications, and certification criteria for the electronic exchange and use of health IT
- **Funding Level:** Funded through ONCHIT
- **Allocation Method:** HIT Standards Committee does not make specific allocations
- **Decision-Maker:** Membership of the HIT Standards Committee
- **Eligible Applicants:** N/A
- **Special Criteria:**
  - The HIT Standards Committee will play a critical role in developing the specific requirements for HIT systems and software. Its duties include: (1) developing, harmonizing, and recognizing standards, implementation specifications, and certification criteria consistent with the HIT Policy Committee's recommendations; (2) recommending these standards, specifications, and criteria to ONCHIT; and (3) providing for pilot tests of these standards and implementation specifications by the National Institute for Standards and Technology, as well as developing a schedule for the assessment of policy recommendations developed by the HIT Policy Committee

Pilot Testing Through the National Institute for Standards and Technology NIST

- **Purpose:** To coordinate with the HIT Standards Committee to test standards and support the establishment of a voluntary testing program by accredited testing laboratories
- **Funding Level:** Funded through the ONCHIT
- **Allocation Method:** (None specified)
- **Decision-Maker:** Director of the NIST and the HIT Standards Committee
- **Eligible Applicants:** Non-Federal laboratories

Health Care Information Enterprise Integration Research Centers

- **Purpose:** To establish multidisciplinary Centers for Health Care Information Enterprise Integration to generate innovative approaches to health care information enterprise integration by conducting cutting-edge, multidisciplinary research on the system challenges to health care delivery, and develop and use of health information technologies and other complementary fields
- **Funding Level:** Funded through ONCHIT
- **Allocation Method:** Competitive grants
- **Decision-Maker:** Director of NIST

- **Eligible Applicants:** Higher education institutions or consortiums
- **Special Criteria:**
  - Research areas may include: (1) human information and communications technology systems, voice-recognition systems, software that improves interoperability and connectivity among health information systems; (2) software dependability in systems critical to health care delivery; (3) measurement of the impact of information technologies on the quality and productivity of health care; (4) health information enterprise management; (5) health information technology security and integrity; and (6) relevant health information technology to reduce medical errors

Immediate Funding to Strengthen HIT Infrastructure

- **Purpose:** To invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States
- **Funding Level:** To be determined, appropriation of such sums as is necessary
- **Allocation Method:** Specific Allocation Method to be determined. The Secretary shall invest funds through the different HHS agencies with relevant expertise
- **Decision-Maker:** ONCHIT, HRSA, AHRQ, CMS, CDC, HIS
- **Eligible Applicants:** To be determined by the specific agencies
- **Special Criteria:**
  - These funds shall be used to support: (1) HIT architecture for nationwide electronic exchange and use of health information; (2) development and adoption of appropriate certified EHRs; (3) training and dissemination of information on best practices to integrate HIT, including EHR, into providers' delivery of care; (4) infrastructure and tools for the promotion of telemedicine; (5) promotion of interoperability of clinical data repositories or registries; (6) promotion of technologies and best practices to enhance the protection of health information; and (7) improvement and expansion public health departments' use of HIT

HIT Implementation Assistance- HIT Regional Extension Centers

- **Purpose:** To provide regional technical assistance and disseminate best practices to support and accelerate efforts to adopt, implement, and effectively utilize HIT
- **Funding Level:** To be determined
- **Allocation Method:** HHS Secretary to publish a draft description of the program and the procedures for application
- **Decision-Maker:** HHS Secretary
- **Eligible Applicants:** U.S.-based nonprofit institution or organization
- **Special Criteria:**
  - After the second year of assistance, a regional center may receive additional support if it has received positive evaluations and the Secretary has found that continuation of Federal funding to the center is in the best interest of the provision of HIT extension services
  - Financial support may be provided for no more than 4 years

State Planning and Implementation Grants to Promote HIT

- **Purpose:** To facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards
- **Funding Level:** To be determined
- **Allocation Method:** Competitive grants
- **Decision-Maker:** HHS Secretary acting through ONCHIT
- **Eligible Applicants:** States and qualified State-designated entities
- **Special Criteria:**
  - Requires match that increases over 3-year period
  - Funds received through these grants must be used to conduct activities to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards
  - Eligible States and State-designated entities must submit a plan describing the activities to be carried out to facilitate and expand electronic health information exchange

Competitive Grants to State and Indian Tribes for the Development of Loan Programs to Facilitate Widespread Adoption of Certified EHR Technology

- **Purpose:** To facilitate and expand electronic health information exchange through loan programs for health care providers to purchase certified EHR technology, train personnel in using such technology, and improve the secure electronic exchange of health information
- **Funding Level:** To be determined
- **Allocation Method:** Competitive grants
- **Decision-Maker:** ONCHIT
- **Eligible Applicants:** States and Indian Tribes

- **Special Criteria:**
  - Awards are not permitted before January 1, 2010
  - Requires match
  - To be eligible, grantees must establish a qualified HIT loan fund and submit a strategic plan, updated annually, describing the intended uses of the funds
  - Loan recipients will have to submit reports on quality measures

Demonstration Program to Integrate Information Technology into Clinical Education

- **Purpose:** To develop academic curricula integrating certified EHR technology in the clinical education of health professionals
- **Funding Level:** To be determined
- **Allocation Method:** Competitive grants
- **Decision-Maker:** HHS Secretary
- **Eligible Applicants:** Schools of medicine, osteopathic medicine, dentistry, or pharmacy, graduate programs in behavioral or mental health, or any other graduate health professions school, a graduate school of nursing or physician assistant studies, a consortium of schools, or an institute with a graduate medical education program in medicine, osteopathic medicine, dentistry, pharmacy, nursing, or physician assistance studies

- **Special Criteria:**
  - The entity must submit a strategic plan for integrating certified EHR technology in the clinical education of health
  - The entity also must provide for the collection of data regarding the demonstration project's effectiveness in improving the safety of patients, the efficiency of health care delivery, and increasing the likelihood that graduates will adopt and incorporate certified EHR technology in the delivery of health services
  - Entities must use grant funds in collaboration with two or more disciplines and integrate certified EHR technology into community-based clinical education
  - An eligible entity shall not use amounts received under a grant to purchase hardware, software, or services

Information Technology Professionals in Health Care

- **Purpose:** To provide assistance to higher education institutions or consortia to establish or expand medical health information education programs to ensure rapid and effective utilization and development of HIT
- **Funding Level:** To be determined
- **Allocation Method:** Grants
- **Decision-Maker:** HHS Secretary in consultation with Director of the National Science Foundation
- **Eligible Applicants:** Higher education institutions and consortia
- **Special Criteria:**
  - Preference to existing educational and training programs and programs designed to be completed in less than six months

Electronic Health Records Incentives for Eligible Professionals

- **Purpose:** To encourage adoption and meaningful continued use of EHRs
- **Funding Level:** While new funds are not appropriated, CBO estimates the total cost of all EHR incentives (under Medicare and Medicaid) at $17 billion for hospitals and physicians
- **Allocation Method:** Additional payments made through physician fee schedule
- **Decision-Maker:** HHS Secretary
- **Eligible Applicants:** Eligible professionals who meet the definition of "meaningful use" of EHRs
- **Special Criteria:**
  - Eligible professionals who qualify may receive incentive payments from 2011 through 2015
  - No incentive payments will be made after 2015
  - Beginning in 2015, and subject to a significant hardship exception, health professional who have not adopted or are not "meaningfully users" of EHRs will have their fee schedule payments reduced
  - In order to qualify for the financial assistance, a physician must meet all of the following requirements:
    - Must use certified EHR technology in a meaningful manner, including the use of electronic prescribing;

        - Must demonstrate that the certified EHR technology is connected in a manner that provides for the electronic exchange of health information; and
        - Must submit information on clinical quality measures and other measures, as required by the Secretary
    - There is a hardship exception to the incentive payment adjustments to the fee schedule, but it may not be granted for more than 5 years
    - Hospital based physicians do not qualify for payment under this provision

Electronic Health Records Incentives for Eligible Acute Care Hospitals

- **Purpose:** To encourage adoption and meaningful continued use of EHRs
- **Funding Level:** While new funds are not appropriated, CBO estimates the total cost of all EHR incentives (under Medicare and Medicaid) at $17 billion for hospitals and physicians
- **Allocation Method:** Additional payments made through the hospital prospective payment schedule
- **Decision-Maker:** HHS Secretary
- **Eligible Applicants:** Eligible Hospitals that meet the standard for "meaningful use"
- **Special Criteria:**
    - Eligible hospitals to receive payments based on discharge numbers
    - Definition of "meaningful EHR user" in the hospital context: In order to qualify for the financial assistance, a hospital must meet all of the following requirements to the satisfaction of the Secretary
        - Must demonstrate that the hospital used EHR technology in a meaningful manner during the relevant period;
        - Must demonstrate that the EHR technology is connected in a manner that provides for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination; and
        - Must use the certified EHR technology to submit information on certain measures as required by the Secretary
    - Market Basket Adjustment: Hospitals that are not meaningful EHR users by Fiscal Year 2016 and after will be subject to an additional reduction in their market basket update
    - The Secretary may exempt a hospital from the market basket update reduction on a case-by-case basis due to hardship. The hardship exemption is subject to annual renewal and may be granted for no more than five years

TAX PROVISIONS

I. Executive Summary

The American Recovery and Reinvestment Act of 2009 (the "Act") includes approximately $287 billion of tax relief for individuals, businesses, and State and local governments.[4]

This memorandum includes a summary of tax provisions in the Act with a focus on the measures of most interest to our clients, including those dealing with business tax incentives, bond provisions and energy tax credits. We have included very short summaries of the individual income tax provisions that together account for over 82 percent of the cost of the tax title and $250 economic recovery payments/credits in the Act.

II. General Business Tax Provisions

A. Net Operating Losses[5]

Under current law, net operating losses may be carried back to the two years before the year (the "loss year") in which the loss arises (the "carryback period") and forward to each of the twenty years after the loss year. The Act extends the carryback period for net operating losses for a taxable year ending in 2008 (or at the taxpayer's election, a taxable year beginning in 2008) from two years to five years, but only for businesses that have $15 million or less in gross receipts. Unlike earlier proposed versions of the legislation, there are no restrictions in the Act against use of the extended carryback period by a business that granted an equity interest (or a warrant to acquire an equity interest) to the U.S. Government in connection with the Troubled Asset Relief Program ("TARP") of the Emergency Economic Stabilization Act of 2008 ("EESA"). There is also no requirement in the Act that a company electing to utilize the extended carryback period reduce the value of the relevant net operating losses by 10 percent.

The provisions in the Act are much more limited than the provisions in the House and Senate bills. Both bills would have extended the maximum carryback period for NOLs arising in tax years ending in 2008 and 2009 to five years for all taxpayers other than those that granted an equity interest (or a warrant to acquire an equity interest) to the U.S. Government in connection with TARP.

B. Bonus Depreciation[6]

In general, businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Last year, Congress temporarily allowed businesses to recover the costs of capital expenditures made in 2008 faster than ordinary tax depreciation rules would allow by permitting these businesses to immediately write off 50 percent of the cost of depreciable property acquired in 2008 for use in the United States.

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[4] This figure does not include the $14.4 billion cost of the $250 economic recovery credits/payments or the cost of certain other provisions not included in the Title I of Division B of the Act. See Joint Committee on Taxation, JCX-19-09, February 12, 2009.

[5] Act Section 1211.

[6] Act Sections 1201(a) and 1202.

The Act extends this temporary benefit for one year, generally through 2009 (through 2010 for certain long-lived and transportation property).

The Act also extends through 2009 the temporary increase to $250,000 of the amount of depreciable property that small and medium size businesses can expense (i.e., deduct immediately). This benefit is phased out if expenditures on depreciable property exceed $800,000.

C. Monetization of Accumulated AMT and R&D Credits in Lieu of Bonus Depreciation[7]

The Act extends through 2009 (2010 for certain aircraft and long-production-period property) a provision included in the Housing and Economic Recovery Act that allows taxpayers to elect to forgo bonus depreciation and instead claim additional alternative minimum tax ("AMT") and research credits that they may not otherwise be able to use because of limitations on the use of such credits.

Under this provision, the research or AMT credit limitation for electing corporate taxpayers is increased by 20 percent of the bonus depreciation that could otherwise be claimed. The amount is capped at the lesser of 6 percent of (i) outstanding and unused AMT and R&D credits and (ii) $30 million.

A taxpayer that made the election under the prior act for the first tax year ending after March 31, 2008, may elect to not have the election apply to extension property, i.e., property eligible for the election solely by reason of the amendments made by the Act.

D. Government Contractor Withholding[8]

For payments made after December 31, 2010, current law requires withholding at a 3 percent rate on certain payments made by Federal, State and local governments to contractors providing property or services to the government. The withholding is required regardless of whether the government entity making the payment is the recipient of the property or services, although those with less than $100 million in annual expenditures for property or services are exempt. Numerous government entities and taxpayers have raised concerns about the application of this provision.

The Act delays for one year (through December 31, 2011) the application of the 3 percent withholding requirement on government payments for goods and services to allow the Treasury Department to study the impact of the provision on government entities and taxpayers. The Act follows the Senate version of the bill; the House version would have repealed the withholding requirement permanently.

E. Deferral of Income from Discharge of Indebtedness[9]

Under present law, a taxpayer generally recognizes income when the taxpayer cancels or repurchases a debt for an amount less than its adjusted issue price or when debt is forgiven. Various exceptions apply to the general rule. The Act allows certain businesses to elect to defer recognition of

[7] Act Section 1201(b).
[8] Act Section 1511.
[9] Act Section 1231.

cancellation of indebtedness income ("CODI") on the "reacquisition" of business debt instruments during 2009 or 2010. The business would defer the CODI for five years in the case of 2009 reacquisition or four years in the case of 2010 reacquisition and then recognize the CODI ratably in income over the following five years.

The new provision applies to debt instruments issued by a C corporation or by any other person in connection with the conduct of a trade or business. A debt instrument is defined as a bond, debenture, note certificate, or any other instrument or contractual arrangement constituting indebtedness.

A "reacquisition" is an acquisition of a debt instrument by the debtor that issued (or is otherwise the obligor under) the debt instrument or a related person to such debtor. The term "acquisition" includes an acquisition for cash, the exchange of the debt instrument or another debt instrument, the exchange of a debt instrument or corporate stock or a partnership interest, and the contribution of the debt instrument to capital. "Acquisition" also includes complete forgiveness of the indebtedness.

This provision contains a poison pill: If the taxpayer elects to apply the deferral provisions to an applicable debt instrument, the taxpayer may not apply any of the major exceptions to CODI for the taxable year of the election or any subsequent year. Thus, if the taxpayer elects deferral, the taxpayer may not apply the insolvency exception, the bankruptcy exception, the qualified farm indebtedness exception or qualified real property business indebtedness exception for the taxable year of the reacquisition or the following year.

Certain events, such as death, liquidation or sale of substantially all of the assets of a taxpayer, the cessation of business by the taxpayer, or a bankruptcy liquidation will result in the acceleration of the deferred income. Special rules apply to limit deductions for original issue discount on debt instruments issued in exchange for debt instrument with respect to which a deferral election is made.

F. Modification of Rules for OID on High Yield Obligations[10]

The Act suspends special rules for original issue discount ("OID") contained in Section 163(e)(5) of the Code in the case of any "applicable high yield discount obligation" ("AHYDO") issued during the period beginning September 1, 2008 and ending on December 31, 2009 in exchange for an obligation which was not an AHYDO and the issuer of which is the same as the issuer of the AHYDO. Section 163(e)(5) ordinarily denies a deduction for a portion of the OID on an AHYDO instrument.

The Act gives the Treasury the authority beginning in 2010 to use a higher rate than prescribed by the Code for purposes of determining whether a debt instrument has a yield that will subject it to the AHYDO rules.

III. Refundable First-Time Home Buyer Credit[11]

Last year, Congress provided taxpayers with a refundable tax credit that was equivalent to an interest-free loan equal to 10 percent of the purchase of a principal residence (up to $7,500) by first-

[10] Act Section 1232.
[11] Act Section 1006.

time home buyers. The provision applies to homes purchased on or after April 9, 2008 and before July 1, 2009. Taxpayers receiving this tax credit are currently required to repay any amount received under this provision back to the government over 15 years in equal installments, or earlier under certain circumstances (for example, when the home is sold). The credit phases out for taxpayers with adjusted gross income in excess of $75,000 ($150,000 in the case of a joint return).

The Act eliminates the repayment obligation for taxpayers that purchase homes on or after January 1, 2009, increases the maximum value of the credit to $8,000, allows financing of the home purchase by mortgage revenue bonds (which was prohibited under the prior credit requirements) and extends the period for which home purchases are eligible through November 30, 2009. Like the pre-Act provision, the Act permits a taxpayer to claim the credit on the taxpayer's 2008 tax return for an eligible purchase in 2009. The Act requires a taxpayer to pay back the amount of the credit if the house is sold within three years of purchase. The Act does not eliminate the requirement that a homebuyer must be a "first time" homebuyer to qualify for the credit.

IV. Bond Provisions

A. Recovery Zone Bonds[12]

The Act creates two new categories of bonds for investment in national recovery zones - recovery zone economic development bonds and recovery zone facility bonds.

Recovery zone economic development bonds are a new type of tax credit bond that may be issued for qualified economic development purposes, i.e., promoting development or other economic activity in a recovery zone. Recovery zone facility bonds are a new type of tax-exempt private activity bond for capital investments in national recovery zones.

The Act authorizes a $10 billion total allocation for recovery zone economic development bonds and a $15 billion total allocation for recovery zone facility bonds. These bonds could be issued during 2009 and 2010. Each State would receive a share of the national allocation based on that State's job losses in 2008 as a percentage of national job losses in 2008. The State allocation would be sub-allocated to local municipalities.

B. Modification to Tax-exempt Interest Expense Rules for Financial Institutions[13]

Financial institutions are not allowed to take a deduction for the portion of their interest expense that is allocable to the institution's investments in tax-exempt municipal bonds. For purposes of this interest disallowance rule, bonds that are issued by "qualified small issuers" are not taken into account as investments in tax-exempt municipal bonds. Under current law, a "qualified small issuer" is defined as any issuer that reasonably anticipates that the amount of its tax-exempt obligations (other than certain private activity bonds) will not exceed $10 million. The Act increases this dollar threshold to $30 million when determining whether a tax-exempt obligation issued in 2009 and 2010 qualifies for this small issuer exception. The small issuer exception would also apply to an issue if all of the ultimate borrowers in such issue would separately qualify for the exception.

[12] Act Section 1401.
[13] Act Sections 1501 and 1502..

Under the Act, for purposes of determining whether an issuer meets the requirements of the small issuer exception, qualified 501(c)(3) bonds issued in 2009 or 2010 are treated as if they were issued by the 501(c)(3) organization for whose benefit they were issued (and not by the actual issuer of such bonds).

The Act provides a new 2 percent safe harbor for the interest disallowance rule for financial institutions. Under the safe harbor, tax-exempt obligations issued during 2009 and 2010 that do not exceed 2 percent of the adjusted basis of the financial institution's assets are not taken into account for purposes of the interest disallowance rule.

C. Qualified School Construction Bonds[14]

The Act creates a new category of tax credit bonds for the construction, rehabilitation, or repair of public school facilities or for the acquisition of land on which a public school facility will be constructed. There is a national limitation on the amount of qualified school construction bonds that may be issued by State and local governments of $22 billion ($11 billion allocated initially in 2009 and the remainder in 2010).

Allocations of the national limitation of qualified school construction bonds are divided between the States and certain large school districts. The States receive 60 percent of the national limitation for a calendar year and the remaining 40 percent of the national limitation for a calendar year is allocated to certain large local educational agencies.[15]

Qualified school construction bonds must meet the following three requirements:

1. 100 percent of the available project proceeds of the bond issue is used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a bond-financed facility is to be constructed;
2. the bond is issued by a State or local government within which such school is located; and
3. the issuer designates such bonds as a qualified school construction bond.

The Act also provides a specific allocation of $400 million for Indian school bonds ($200 million for each of 2009 and 2010).

D. Qualified Zone Academy Bonds[16]

The Act allows an additional $1.4 billion of Qualified Zone Academy Bonds ("QZAB") issuing authority to State and local governments in 2009 and 2010, which can be used to finance renovations, equipment purchases, developing course material, and training teachers and personnel at a qualified zone academy.

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[14] Act Section 1521.

[15] The term large local educational agency means: any local educational agency if such agency is: (1) among the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, or (2) one of not more than 25 local educational agencies (other than in 1, immediately above) that the Secretary of Education determines are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or other such factors as the Secretary of Education deems appropriate.

[16] Act Section 1522.

In general, a qualified zone academy is any public school (or academic program within a public school) below the college level that is located in an empowerment zone or enterprise community and is designed to cooperate with businesses to enhance the academic curriculum and increase graduation and employment rates. QZABs are a form of tax credit bonds which offer the holder a Federal tax credit instead of tax-free interest.

E. Industrial Development Bonds[17]

The Act, for purposes of industrial development bonds, expands the definition of "manufacturing facility" to include any facility used to create, produce or manufacture intangible property, including any patent, copyright, formula, process, design, knowhow, format, or other similar item. The provision would also treat any functionally related and subordinate manufacturing facility that is located on the same site as the manufacturing facility as a "manufacturing facility" for these purposes.

The Act also describes those physical components of a manufacturing facility that are "ancillary" and subject to a 25 percent limitation in the amount of bond issuance used to build or reconstruct such components.

F. Tribal Economic Development Bonds[18]

The Act allows tribal governments to issue up to $2 billion of tax-exempt "tribal economic development bonds" to spur economic development on tribal lands. The Act requires the Secretary of Treasury to study whether this restriction should be repealed on a permanent basis. Such bonds cannot be used to finance any portion of a building where certain gaming activities are conducted or housed, or where property used to conduct gaming activities is housed.

G. Alternative Minimum Tax[19]

Interest on private activity bonds is generally treated as an item of tax preference under the minimum tax and included in income for purposes of calculating alternative minimum taxable income. Under the Act, interest on private activity bonds issued during 2009 and 2010 will not be treated as a preference item for purposes of calculating alternative minimum taxable income.

H. Tax Credit Bonds

Tax credit bonds and tax-exempt bonds provide a subsidy to State and local governments by reducing the cash interest payments that a State or local government must make on its debt. Tax credit bonds differ from tax-exempt bonds in that interest paid on tax credit bonds is taxable, and a portion of such interest takes the form of a tax credit. The tax credit offsets a portion of the cash interest payment that a State and local government would otherwise need to make on the borrowing.

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[17] Act Section 1301.
[18] Act Section 1402.
[19] Act Section 1503.

The Act, for 2009 and 2010, provides State and local governments with the option of issuing a tax credit bond instead of a tax-exempt bond. Bonds issued under this provision are known as Build America Bonds. [20]

The Act also permits State and local governments to elect to receive a direct payment from the Federal government equal to the subsidy that would have otherwise been delivered through the tax credit for bonds.[21] The Act provides transitional rules for coordination with State law. The Act provides that until a State provides otherwise, the interest on any taxable governmental bond and the amount of any credit under such bond is treated as exempt from Federal income tax for State income tax law purposes.

The Act adds a new Code section that permits regulated investment companies to pass through to their shareholders credits from tax credit bonds. The new provision also allows the tax credits from tax credit bonds to pass through to beneficiaries of real estate investment trusts (REITS).[22]

I. Labor Standards[23]

The Act requires the labor standards described in chapter 31 of title 40 of the U.S. Code to apply to projects financed with the proceeds of clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, qualified school construction bonds, and recovery zone economic development bonds.

V. Energy Incentives

A. Advanced Energy Credit[24]

The Act establishes a new 30 percent investment tax credit for qualified investment in a "qualifying advanced energy project." A qualifying advanced energy project is a project that re-equips, expands or establishes a manufacturing facility for the production of (i) property designed to be used to produce energy from renewable resources, (ii) fuel cells, microturbines, or energy storage systems for use with electric or hybrid electric motor vehicles, (iii) electric grids to support the transmission of intermittent sources of renewable energy, (iv) property designed to capture and sequester carbon dioxide emissions, (v) property designed to refine or blend renewable fuels or to produce energy conservation technologies, (vi) new qualified plug-in electric drive motor vehicles, qualified plug-in electric vehicles or components designed to for use with such vehicles, or (vii) other advanced energy property designed to reduce greenhouse gas emissions.

These generous credits are available only for projects certified by the Secretary of the Treasury under a program established in consultation with the Secretary of Energy. A competitive bidding process applies. Up to $2.3 billion of credits can be certified.

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[20] Act Section 1531(a).
[21] Act Section 1531(b).
[22] Act Section 1541.
[23] Act Section 1601
[24] Act Section 1302.

B. Extension of Energy Credit for Electricity Produced from Renewable Resources[25]

The Act includes a three-year extension of the renewable energy production tax credit for wind facilities (through December 31, 2012) and for closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, waste-to-energy, and marine renewable facilities (through December 31, 2013).

C. Investment Credit in Lieu of Production Credit;[26] Grants from Treasury[27]

Facilities that produce electricity from wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, waste-to-energy, and marine renewable facilities are eligible for a production credit. The credit is spread over ten years and is dependent on the price for electricity. The Act permits owners of such facilities to claim a 30 percent investment tax credit when the property is placed in service in lieu of the production tax credit.

The Act permits taxpayers to receive grants from Treasury in lieu of production tax credits for certain renewable energy facilities and certain renewable energy property. The Treasury Department will issue a grant equal to 30 percent of the cost of the renewable energy facility within sixty days of the facility being placed in service (or, if later, within sixty days of receiving an application for the grant).

D. Repeal of Subsidized Energy Financing Limitation on the ITC[28]

The Act repeals the provision that required the investment credit to be reduced if the property qualifying for the credit was financed with tax-exempt industrial development bonds or through any other Federal, State or local government subsidized financing program.

E. Dollar Limitation on Certain Energy Credits[29]

The Act removes the dollar limitations on certain energy credits for which individuals are eligible, including the credits for solar water heating property, small wind energy property, geothermal heat pumps.

F. Clean Renewable Energy Bonds ("CREBs")[30]

The Act authorizes an additional $1.6 billion of clean renewable energy bonds to finance facilities that generate electricity from the following sources: wind, closed-loop biomass open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, marine renewables and trash combustion facilities. This authorization will be subdivided into thirds: 1/3 will be available for qualifying projects of State/local/tribal governments; 1/3 for qualifying projects of public power providers; and 1/3 for qualifying projects of electric cooperatives.

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[25] Act Section 1101.
[26] Act Section 1102.
[27] Act Sections 1104 and 1603.
[28] Act Sections 1103(b) and 1122.
[29] Act Section 1103(a).
[30] Act Section 1111.

G. Qualified Energy Conservation Bonds[31]

The Act authorizes an additional $2.4 billion of qualified energy conservation bonds to finance State, municipal and tribal government programs and initiatives designed to reduce greenhouse gas emissions and other qualified conservation purposes.[32] The Act clarifies that qualified energy conservation bonds may be issued to make loans and grants for capital expenditures to implement green community projects and that for programs in which utilities provide ratepayers with energy-efficient property and recoup the costs of the property over an extended period of time.

H. Tax Credits for Energy-Efficient Improvements to Existing Homes[33]

The Act extends through 2010 tax credits for improvements to energy-efficient existing homes. The Act increases the amount of the credit to 30 percent of the amount paid or incurred for qualified energy efficiency improvements. The Act eliminates the property-by-property dollar caps on the credits and provides an aggregate cap of $1,500 on all property qualifying for the credit in a taxable year. The Act also updates the energy-efficiency standards for property qualifying for the credit.

I. Credits for Alternative Fueling Property[34]

The Act increases for 2009 and 2010 the 30 percent alternative refueling property credit for businesses to a 50 percent credit and increases the cap from $30,000 to $50,000. The credit for hydrogen refueling pumps remains at 30 percent, but the cap is raised to $200,000. The Act also increases the 30 percent alternative refueling property credit for individuals to 50 percent and the cap from $1,000 to $2,000 for 2009 and 2010.

J. Plug-in Electric Drive Vehicle Credit[35]

The Act expands and modifies tax credits for plug-in vehicles and accessories. First, the Act modifies the credit for plug-in vehicles. The base amount of the credit is $2,500 and is increased if

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[31] Act Section 1112.

[32] The term "qualified conservation purpose" means: 1. Capital expenditures incurred for purposes of reducing energy consumption in publicly owned buildings by at least 20 percent; implementing green community programs; rural development involving the production of electricity from renewable energy resources; or any facility eligible for the production tax credit under I.R.C. § 45 (other than Indian coal and refined coal production facilities); 2. Expenditures with respect to facilities or grants that support research in: (A) development of cellulosic ethanol or other nonfossil fuels; (B) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels; (C) increasing the efficiency of existing technologies for producing nonfossil fuels; (D) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation; and (E) technologies to reduce energy use in buildings; 3. Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting; 4. Demonstration projects designed to promote the commercialization of: (A) green building technology; (B) conversion of agricultural waste for use in the production of fuel or otherwise; (C) advanced battery manufacturing technologies; (D) technologies to reduce peak-use of electricity; and (D) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity; and 5. Public education campaigns to promote energy efficiency (other than movies, concerts, and other events held primarily for entertainment purposes). Joint Committee on Taxation, JCX-10-09, pg. 29 (Jan. 23, 2009).

[33] Act Section 1121.

[34] Act Section 1123.

[35] Act Sections 1141 and 1143.

the vehicle draws propulsion from a battery with at least 5 kilowatt-hours capacity. This revised credit applies to vehicle purchases made after December 31, 2009.[36] Second, the Act allows a new credit of 10 percent of the cost of low-speed vehicles, motorcycles and 3-wheeled vehicles that would otherwise meet the criteria for qualified plug-in vehicle but for the fact that they are low speed or do not have four wheels, for purchases made after the date of enactment of the Act until December 31, 2011. The credit is capped at $2,500. Third, the Act provides a credit for conversion of a vehicle into a plug-in vehicle through a conversion kit, in an amount equal to 10 percent of so much of the cost of converting that does not exceed $40,000. The basis in a vehicle used in a trade or business will be reduced by any credit amount that is claimed with respect to that vehicle. In the case of a vehicle used by a tax-exempt entity or a governmental entity, the credit may be claimed by the seller of the vehicle.

K. Sequestration Requirement for Carbon Dioxide Capture Tax Credit[37]

The Act modifies the carbon dioxide capture tax credit by requiring any taxpayer claiming the credit to ensure that the carbon dioxide is permanently stored in a geologic formation.

L. Parity for Transit Benefits[38]

The Act equalizes the tax-free benefit employers can provide for transit and parking from March 2011 through December 2010. The benefits are set at $230 per month for 2009 and indexed for 2010.

VI. Other Credits

A. Expansion of Work Opportunity Tax Credit[39]

The Act expands the work opportunity tax credit to include credits for hiring two new targeted groups of employees -- unemployed veterans and disconnected youth – who begin work for the employer in 2009 or 2010. An individual qualifies as an unemployed veteran if he or she was released from active duty in the Armed Forces during the five-year period before hiring and he or she received unemployment compensation for more than four weeks during the year before being hired. A "disconnected youth" is an individual between the ages of 16 and 25 who has not been regularly employed or attended school in the six months preceding hiring and who is "not readily employable by reason of lacking a sufficient number of basic skills."

B. New Markets Tax Credit[40]

The Act enhances the new markets tax credit by authorizing an additional $1.5 billion for the "2008" allocations and $1.5 billion for the "2009" allocations. This increases the available credits each year to $5 billion.

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[36] Once the plug-in vehicle manufacturer has sold 200,000 units of the vehicle, the credit begins to decline in value.

[37] Act Section 1131.

[38] Act Section 1151.

[39] Act Section 1221.

[40] Act Section 1403.

C. Low-Income Housing Grants in Lieu of Tax Credits[41]

The Act allows taxpayers to receive a grant from the Treasury Department in lieu of low-income housing tax credits. State housing agencies would receive a grant in an amount up to 85 percent of 40 percent of the State's low-income housing tax credit allocation in lieu of credits. The grants would apply to each State's 2009 low-income housing tax credit allocation.

VII. S Corporations and Small Business Tax Relief

A. S Corporation Built-in Gains[42]

The Act includes a temporary reduction in the built-in gains tax period for S corporations. Under present law, an S corporation that sells assets within ten years of converting from C corporation to S corporation status is subject to the built-in gains tax, a corporate tax on the built-in gain that existed at the time of the S election. The Act reduces the 10-year period to 7 years for sales occurring in tax years beginning in 2009 and 2010.

B. Qualified Small Business Stock[43]

The Act increases the exclusion from income for gain on the sale of certain small business stock held by individuals for more than five years from 50 percent to 75 percent. The benefit would apply to stock issued after enactment and before 2011.

C. Estimated Taxes for Small Businesses[44]

The Act reduces the required estimated tax payments for 2009 for individuals receiving income from small businesses. The provision applies to an individual if the adjusted gross income shown on the individual's return for 2008 was less than $500,000 and the individual certifies that more than half of the gross income shown on the individual's return for 2008 was income from a small business with average employment of less than 500.

VIII. Losses for Ownership Changes

A. Repeal of Treasury 382 Notice[45]

The Act includes a provision that would prospectively repeal Treasury Notice 2008-83, which provided banks with an exception that allowed them to take greater advantage of the losses of the banks they acquire.[46] The Act would allow banks to use the losses if (i) an "ownership change" in

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[41] Act Sections 1404 and 1602.

[42] Act Section 1251.

[43] Act Section 1241.

[44] Act Section 1212.

[45] Act Section 1261.

[46] Internal Revenue Service Notice 2008-83, released on October 1, 2008, provides that "[f]or purposes of Section 382(h), any deduction properly allowed after an ownership change (as defined in Section 382(g)) to a bank with respect to losses on loans or bad debts (including any deduction for a reasonable addition to a reserve for bad debts) shall not be treated as a built-in loss or a deduction that is attributable to periods before the change date." The Notice further states that the IRS and Treasury are examining the proper treatment under Section 382(h) of certain items of

the target bank occurred on or before January 16, 2009, (ii) there was a binding written agreement for such a change entered into on or before such date, or (iii) there was a written agreement and a public announcement of a plan for such change on or before such date.

B. Section 382 Relief[47]

Section 382 of the Code limits the use of loss and credit carryovers after certain events resulting in a change in ownership of a corporation. The Act clarifies the application of Section 382 to certain companies restructured pursuant to the EESA. Under the Act, the Section 382 limitation will not apply in the case of an ownership change which is pursuant to a restructuring plan which (i) is required under a loan agreement or commitment for a line of credit entered into with the Department of the Treasury under EESA and (ii) "is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer and its subsidiaries." The provision does not apply if immediately after the ownership change any person, other than a Voluntary Employment Benefit Association ("VEBA"), owns stock of the corporation possessing 50 percent or more of the combined voting power of all classes of stock entitled to vote.

IX. Provisions Indirectly Benefiting Businesses

A. Computers as Qualified Education Expenses in Section 529 Plans[48]

The Act expands the definition of "qualified higher expenses" under Section 529 of the Code to include expenses paid or incurred in 2009 or 2010 for the purchase of any computer technology or equipment or Internet access and related services if such technology, equipment or services are to be used by the beneficiary of the Section 529 account and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible institution. That means that funds can be withdrawn tax-free from Section 529 accounts for such use in 2009 or 2010.

B. Sales Tax Deduction for Vehicle Purchases[49]

The Act provides taxpayers who itemize deductions (and do not deduct sales taxes in lieu of income taxes) with an itemized deduction for State and local sales and excise taxes paid on the purchase of new cars, light trucks, recreational vehicles, and motorcycles in 2009. Taxpayers who do not itemize also may claim the deduction as an increased standard deduction. The deduction is phased out for taxpayers with adjusted gross income in excess of $125,000 ($250,000 for a joint return). Only taxes attributable to the portion of the purchase price that does not exceed $49,500 may be deducted.

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deduction or loss allowed after an ownership change to a corporation that is a bank (as defined in Section 581) both immediately before and after the change date, and that any such corporation may rely on the treatment set forth in Notice 2008-83 unless and until there is additional guidance.

[47] Act Section 1262.

[48] Act Section 1005.

[49] Act Section 1008.

X. Other Provisions of Interest to Individuals

A. Extension of AMT Relief for 2009[50]

The Act extends tax relief from the individual alternative minimum tax for 2009 by allowing nonrefundable credits to be claimed against the tax and by increasing the AMT exemption amount to $70,950 for joint filers and $46,700 for individuals.

B. Making Work Pay Credit[51]

For 2009 and 2010, qualifying taxpayers (i.e., anyone that is not a nonresident alien, a dependent on another taxpayer's return, or an estate or trust) are eligible for the "making work pay credit," in an amount equal to the lesser of 6.2 percent of the taxpayer's earned income or $400 ($800 for taxpayers filing jointly). This credit begins to phase out for individual taxpayers with adjusted gross income of $75,000 and joint filers with adjusted gross income of $150,000.

C. One Time Economic Recovery Payment[52]

The Act provides a one-time $250 payment to persons who were eligible for the following government benefits within the three months prior to enactment of the new law: social security benefits; railroad retirement benefits; veterans' compensation or pension benefits; and supplemental security income benefits. This one-time payment reduces any allowable Making Work Pay credit.

D. Refundable Credit for Certain Government Retirees[53]

For 2009, the Act provides a refundable $250 credit ($500 for taxpayers filing jointly who are both eligible for the credit) for retirees who receive a government pension or annuity from work not covered by Social Security and who weren't eligible to receive the One Time Economic Recovery Payment.

E. Exclusion of Unemployment Income[54]

For 2009, the Act provides that a taxpayer's gross income does not include the taxpayer's first $2,400 of unemployment compensation.

F. American Opportunity Tax Credit[55]

For 2009 and 2010, the Act provides taxpayers a new "American Opportunity tax credit" of up to $2,500 per year for qualified higher education expenses. The law makes 40 percent of the credit refundable. The credit may be applied against alternative minimum tax liability. The credit will be subject to phase out for individual taxpayers with modified adjusted gross income greater than $80,000 ($160,000 for taxpayers filing jointly)

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[50] Act Sections 1011 and 1012.
[51] Act Section 1001.
[52] Act Section 2201.
[53] Act Section 2202.
[54] Act Section 1007.
[55] Act Section 1004.

G. Modified Child Tax Credit[56]

The Act increases the portion of the child care tax credit that is refundable for 2009 and 2010 to 15 percent of the taxpayer's adjusted gross income up to $3,000.

H. Changes in the Earned Income Tax Credit[57]

For 2009 and 2010, the Act increases the credit percentage amount for the Earned Income Credit for families with three or more qualifying children from 40 percent to 45 percent of the taxpayer's first $12,570 of earned income. The Act also adjusts upward the phase-out range of the credit for 2009 and 2010 to eliminate any marriage penalty.

I. Cost of Individual Provisions

The provisions listed under this heading as "Other Provisions of Interest to Individual Taxpayers," the provisions listed above under the heading "Provisions Indirectly Affecting Businesses," and the first-time homebuyer credit changes were estimated to cost $247 billion over 10 years or approximately 82 percent of the total cost of the tax provisions in the tax title of the Act and the $250 payments/credits in the Economic Recovery Payments to Individuals subtitle.[58]

XI. Tax Provisions in Other Titles of the Act

A. Modification to Health Coverage Tax Credit

The Act increases the health coverage tax credit to 80 percent for 2009 and 2010.

B. Basis for Low Income Housing Tax Credit

The Act provides that certain Federal grant monies will not reduce tax basis for purposes of determining the low-income housing tax credits.

C. Premium Assistance for COBRA Continuation

The Act provides premium assistance for COBRA continuation coverage for unemployed workers and their families. The assistance is a subsidy of up to 65 percent of cost for up to 9 months. The benefit is phased out for taxpayers with an adjusted gross income above $125,000 ($250,000 for joint filers).[59]

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[56] Act Section 1003.
[57] Act Section 1002.
[58] Joint Committee on Taxation, JCX-19-09, February 12, 2009.
[59] Title III of Division B of the Act.

XII. Provisions Not Included in the Act

The Act **does not include** certain important business-related provisions that were included in the House bill, the Senate bill or both bills. These include:

- Special five-year net operating loss carryback period for all taxpayers.
- Extension of business credit carryback period.
- Allowance of business credits claimed during 2008 and 2009 to offset entire net tax liability (including minimum tax liability).
- Provision allowing alternative minimum tax NOL carrybacks and carryforwards from 2008 and 2009 to reduce alternative minimum taxable income to zero.
- Investment tax credit for qualified broadband expenditures.

PREMIUM ASSISTANCE FOR COBRA BENEFITS

Premium Assistance for COBRA Benefits

- **Purpose:** To provide a 65 percent subsidy for COBRA premiums to help the unemployed and their families maintain COBRA coverage
- **Funding Level:** Estimated cost is $24.7 billion
- **Allocation Method:** Individual must elect to enroll in COBRA within 90 days after the date of notice of the plan enrollment option described in the stimulus
- **Eligible Applicants:** Individuals who have been involuntarily terminated between September 1, 2008 and December 31, 2009 and elect COBRA coverage
- **Special Criteria:**
  - Income must not exceed $125,000 for individuals and $250,000 for families
  - Subsidy will be terminated for individuals who obtain employer-sponsored health care insurance or are Medicare-eligible; otherwise, the subsidy will be terminated after 9 months
  - DOL Secretary to conduct outreach to employers, group health plan administrators, public assistance programs, States, and insurers to educate the public and provide enrollment assistance
  - Treasury Secretary required to submit an interim and final report to Congress detailing the number of individuals to which the subsidy was provided and the total cost of providing such assistance

- **Policy Context:**
  - COBRA subsidy provides significant relief to individuals electing to participate; however, the out-of-pocket costs of even providing 35 percent of COBRA premiums may be a bar to participation by unemployed individuals and their families
  - Nine-month subsidy period was a compromise, given costs, and Congress may need to revisit this issue if unemployment rates continue to rise

MEDICARE AND MEDICAID HEALTH INFORMATION TECHNOLOGY; MISCELLANEOUS MEDICARE PROVISIONS

Electronic Health Records Incentives for Professionals Affiliated with Medicare Advantage (MA) Plans

- **Purpose:** To encourage adoption and meaningful continued use of EHRs
- **Funding Level:** While new funds are not appropriated, CBO estimates the total cost of all EHR incentives (under Medicare and Medicaid) at $17 billion for hospitals and physicians
- **Allocation Method:** Additional MA payments
- **Decision-Maker:** HHS Secretary
- **Eligible Applicants:** Eligible professionals in qualifying MA organizations who meet the definition of "meaningful use" of EHRs
- **Special Criteria:**
  - Definition of "eligible professionals" in the MA context includes:
    - Employed by the MA organization, or
    - Employed by, or is a partner of, an entity that through contract with the organization furnishes at least 80 percent of the entity's patient care services; and
    - Furnishes, on average, at least 20 hours per week of patient care service.
  - Definition of "qualifying MA organization:" a MA organization that is organized as Health Maintenance Organization (HMO)
  - Medicare Advantage physicians who receive payment under this provision may not also receive payments through the EHR incentives to eligible physicians

Electronic Health Records Incentives for Hospitals Affiliated with Medicare Advantage Plans

- **Purpose:** To encourage adoption and meaningful continued use of EHRs
- **Funding Level:** While new funds are not appropriated, CBO estimates the total cost of all EHR incentives (under Medicare and Medicaid) at $17 billion for hospitals and physicians
- **Allocation Method:** Additional MA payments
- **Decision-Maker:** HHS Secretary
- **Eligible Applicants:** Eligible hospitals in qualifying MA organizations whose organization attests to meeting the definition of "meaningful use" of EHRs
- **Special Criteria:**
  - "Eligible hospitals" are hospitals under common corporate governance and serving individuals enrolled under an MA plan offered by such organization
  - Eligible hospitals may not receive payment as both an eligible hospital and as an eligible Medicare Advantage hospital

Medicaid Provider HIT Adoption and Operation Payments

- **Purpose:** To encourage adoption and meaningful continued use of EHRs
- **Funding Level:** While new funds are not appropriated, CBO estimates the total cost of all EHR incentives (under Medicare and Medicaid) at $17 billion for hospitals and physicians
- **Allocation Method:** Federal Medicaid matching funds to States

- **Decision-Maker:** HHS Secretary
- **Eligible Applicants:** A physician, dentist, certified nurse mid-wife, nurse practitioner, and physician assistant (if the assistant is practicing in a rural clinic that is led by a physician assistant or is practicing in a Federally qualified health center that is so led). The following providers are also eligible for some level of incentive payment:
  - Eligible non-hospital based professionals who have at least 30 percent patient volume attributable to Medicaid patients
  - Non-hospital based pediatricians who have at least 20 percent of their patient volume attributable to Medicaid patients
  - A children's hospital
  - An acute-care hospital that has at least 10 percent patient volume attributable to Medicaid patients
  - A Federally qualified health center or rural health clinic that has at least 30 percent of the center or clinic's patient volume attributable to needy individuals

- **Special Criteria:**
  - Provides a 100 percent Federal match for eligible Medicaid providers who meet certain requirements
  - States must prove that the allowable costs are paid directly to the provider without any deduction or rebates
  - Medicaid hospital-based provider not eligible

Moratoria on Certain Medicare Regulations

- **Purpose:** To delay phase-out of hospice budget neutrality adjustment factor and indirect medical education (IME) adjustment factor for Fiscal Year 2009
- **Funding Level:** $2 million
- **Allocation Method:** Funding transferred from the Federal Hospital Insurance Trust Fund to the CMS Program Management Account
- **Policy Context:**
  - Phasing-out of hospice budget neutrality adjustment factor would have resulted in a significant decrease in funding for the hospice sector at a time when hospice use is expanding. MedPAC is currently reviewing hospice funding more broadly

STATE FISCAL RELIEF

Temporary Increase of Medicaid FMAP

- **Purpose:** To protect and maintain State Medicaid programs by temporarily increasing Medicaid Federal medical assistance percentage (FMAP)
- **Funding Level:** $86.6 billion
- **Allocation Method:** FMAP allocations to States
- **Eligible Applicants:** 50 States and the District of Columbia, with special one-time election provision for territories

- **Special Criteria:**
  - Specific FMAP maintenance provisions for Fiscal Years 2009, 2010, 2011
  - FMAP for calendar quarters, beginning October 1, 2008 and ending December 31, 2010, to increase by 6.2 percent
  - FMAP increases available for States with higher unemployment
  - If a State qualifies for additional relief for a calendar quarter, the State shall be deemed to have qualified for relief in each subsequent calendar quarter ending by July 1, 2010
  - Provides for 18-month hold harmless period beginning January 1, 2009
  - Provides FMAP for territories making a special one-time election
  - In no case shall an increase in FMAP result in an FMAP percentage increase that exceeds 100 percent
  - States receiving increased FMAP are subject to prompt pay requirements for claims received from practitioners and, by September 30, 2011, must submit a report to the Secretary describing how the additional funds were expended
  - By April 1, 2011, GAO to develop recommendations for addressing the needs of the States
- **Policy Context:**
  - Congress also increased FMAP during the 2003 economic downturn and States implemented cost containment policies (*i.e.* preferred drug list, supplemental rebates, etc.). States also increased cost-sharing requirements and cut reimbursement to providers. But, cost-sharing is not likely to yield improvements at a time when low income families are already struggling with housing, food, and transportation costs
  - States desperately needed this significant increase in FMAP to balance their budgets, but still struggle with providers leaving Medicaid programs
  - As long as unemployment rates are increasing, State and Federal Medicaid costs will increase

Temporary Increase in Medicare Disproportionate Share (DSH) Allotments During Recession

- **Purpose:** To provide 102.5 percent of the DSH allotment for Fiscal Years 2009 and 2010
- **Funding Level:** Estimated to cost $460 million
- **Allocation Method:** DSH allocations to States

Extension of Moratoria on Certain Medicaid Regulations

- **Purpose:** To extend the moratoria from April 1, 2009 to July 1, 2009 for final regulations related to optional case management services, allowable provider taxes, and school-based administration and school-based transportation. Requires that the HHS Secretary not implement the final regulation related to outpatient hospital services. Requests that the HHS Secretary not implement final regulations related to cost limits for certain providers, payments for Graduate Medical Education (GME), and rehabilitative services
- **Funding Level:** Estimated to cost $105 million
- **Allocation Method:** (None specified)
- **Decision-Maker:** HHS Secretary

- **Policy Context:**
  - Extending the moratoria on the Bush Administration's Final Rules was a major priority of the States, but Congress has only requested that the Secretary not implement the Final Regulations on cost limits, GME, and rehabilitative services. States and providers will continue to advocate for this relief

Extension of Transitional Medical Assistance (TMA)

- **Purpose:** To provide an 18-month extension of TMA
- **Funding Level:** Estimated to cost $1.3 billion
- **Allocation Method:** TMA allocations to States
- **Eligible Applicants:** States
- **Special Criteria:**
  - Effective July 1, 2009, States may waive the 3-month waiting period required before receiving medical assistance
  - HHS Secretary is required to submit an annual report to Congress on the adult and child enrollment and participation rates under TMA

Extension of the Qualifying Individual (QI) Program

- **Purpose:** To extend the QI Program through December 2010
- **Funding Level:** $412.5 million for January 1, 2010 – September 30, 2010 and $150 million for October 1, 2010 – December 31, 2010
- **Allocation Method:** (None specified)
- **Eligible Applicants:** Low-income individuals enrolled in Medicare Part A

Protection for Indians under Medicaid and CHIP

- **Purpose:** To establish a prohibition on cost-sharing for items or services through Indian Health Programs or through referral under Contract Health Services. Provides directive on treatment of property for determining Medicaid and CHIP eligibility
- **Funding Level:** Estimated to cost $134 million
- **Allocation Method:** (None specified)
- **Special Criteria:**
  - Effective July 1, 2009

Prompt Payment Requirements for Nursing Facilities and Hospitals

- **Purpose:** To temporarily apply Medicaid prompt pay requirements to nursing homes and hospitals
- **Funding Level:** Estimated to cost $134 million
- **Allocation Method:** Paid through submission of claims

BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

Broadband Technology Opportunities Program (TOP)

- **Purpose:** To accelerate broadband deployment in unserved and underserved areas
- **Funding Level:** $4.7 billion
- **Allocation Method:** Competitive grants
- **Decision-Maker:** National Telecommunications and Information Administration
- **Eligible Applicants:** There are no details in the conference report and NTIA still must determine applicant eligibility. Based upon previous versions of the House and Senate stimulus bills, applicants that NTIA may consider are wireless and wireline providers, backhaul providers, satellite carriers and perhaps public-private partnerships, states and municipalities. The conference report notes that funds will also go to "strategic institutions that are likely to create jobs or provide significant public benefits"
- **Special Criteria:**
  - Up to $200 million available for competitive grants for expanding public computer center capacity, including at community colleges and public libraries
  - Up to $250 million for competitive grants for innovative programs that encourage adoption of broadband service
  - $10 million transferred to Office of Inspector General at Commerce Department for audits and oversight of these funds, with funds available until expended
  - $350 million dedicated to developing and maintaining a broadband inventory map through the State Broadband Data and Development Grant program, authorized by the Broadband Data Services Improvement Act of 2008. The Secretary of Commerce, in consultation with the Federal Communications Commission, may transfer amounts deemed necessary for developing a national broadband plan or carrying out any other FCC responsibilities—only if the House and Senate Appropriations committees are notified at least 15 days in advance of the transfer of funds
    - State broadband data and development grants will be awarded on a competitive basis to eligible entities for development and implementation of statewide initiatives to identify and track the availability and adoption of broadband services within each state
  - No more than 3 percent of funds may be used for administrative costs, including funds transferred to the FCC
  - The Federal share of any project may not exceed 80% except with a waiver from the Assistant Secretary based on financial need
  - The FCC must work with the NTIA to publish "non-discrimination and interconnection obligations" for grantees, which will look to the FCC's four broadband principles from its 2005 Internet policy statement:
    - Consumers are entitled to access the lawful Internet content of their choice;
    - Consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement;
    - Consumers are entitled to connect their choice of legal devices that do not harm the network; and

- Consumers are entitled to competition among network providers, application and service providers, and content providers

There follows separate essays on government contracting; transparency and accountability; and "buy America" provisions. These are important parts of The Act accompanying the spending provisions and must be understood by every potential recipient of funds or a contract. This paper concludes with a discussion of the executive compensation limits imposed on TARP recipients.

GOVERNMENT CONTRACTING

The American Recovery and Reinvestment Act of 2009 is good news for government contractors, as it provides massive amounts of funding for Federal and State projects on an immediate basis. At the same time, the Act contains new reporting requirements and oversight authorities that are in addition to the ethics and compliance procedures already imposed by the Federal Acquisition Regulation ("FAR").

The Scope of the Contracting Opportunities is Vast

The dollars amounts appropriated by the Act are staggering and the projects encompass virtually every facet of government contracting. For example, the Act provides the Department of Defense with nearly $1.5 billion to improve, repair and modernize its building facilities, while the General Services Administration is receiving $5.5 billion for its Federal Buildings Fund. There is money for environmental remediation and resource protection: $600 million is being added to the Environmental Protection Agency's Superfund and the Corps of Engineers is receiving $2 billion for water-related environmental infrastructure. There are correspondingly large amounts for research and development. The Air Force, Army, Navy, and Department of Defense are each receiving $75 million for research, development and testing. Renewable energy and energy efficiency also play a large role: The Act appropriates $4.5 billion for development of the electric grid, and the General Services Administration is receiving $400 million for procurement of energy efficient cars. These are but a few examples of the spending authorized by the Act.

The spending is to be accomplished quickly. In most cases, the Act only makes the money available until September 30, 2010. Section 1602 of the Act requires agency recipients to "give preference" to projects that can be started and completed "expeditiously," with a goal of using at least 50 percent the funds on projects that can be started within 120 days of enactment of the legislation.

The Range of the Compliance Requirements is Correspondingly Comprehensive

With this unprecedented spending comes unprecedented levels of reporting and oversight. Section 1610 of the Act provides that, unless authorized by another statute, all contracts entered into by the Federal Government using funds made available by the Act are subject to the Federal Acquisition Regulation, including the provisions governing ethics, compliance, training, and internal audit and self-reporting. Section 1554 states that "to the maximum extent possible," contracts shall be fixed-price and awarded using competitive procedures. Any contracts that are not fixed-price and awarded competitively must be summarized and posted on the new Government website, recovery.com.

Importantly, the Act imposes new reporting obligations on government contractors. Under Section 1512, all contractors and grantees receiving funds directly from the Federal Government must file a quarterly report with their Federal contracting agency. The report must contain: (1) the total amount of recovery funds received by the contractor or grantee from the agency; (2) the amount of the money received that was expended or obligated by the contractor or grantee; (3) a detailed list of the projects or activities receiving the funds, which must include a description of the project or activity, an evaluation of its completion status, and an estimate of the number of jobs created and retained by the project or activity; and (4) detailed information on any subcontracts or subgrants awarded by the recipient. The information in the reports must be made public by the contracting agency.

The Oversight Authorities Are Similarly Significant

The Act specifically provides that compliance with the new reporting requirements will be a condition of receiving funds under the Act. This statutory language is significant because it seems intended to place the information in the contractor reports within the definition of a statement made in support of a claim for payment against the Government, and thus subject to the False Claims Act. Under that Act, which has both civil and criminal components, an entity that submits, or causes to be submitted, a false or fraudulent claim or statement in support of a claim for money to the Federal Government is liable for up to treble the damages caused by the false claim or statement, penalties for each false claim or statement, and the Government's costs of bringing suit.

Significantly, the False Claims Act contains a private plaintiff's provision. Any person, called a "relator," can bring an action under the False Claims Act if they have knowledge of fraud being perpetrated against the Government and the specifics of the fraud have not otherwise been publicly disclosed. The relator files the suit under seal in the name of the Government. The Government then evaluates whether to join in the action, or whether to let the relator pursue the case on his or her own. If the suit is successful, the relator shares in the recovery whether or not the Government intervened in the case. Thus, an employee of an entity receiving Recovery Act of 2009 funds could file an action against his or her employer under the False Claims Act if they believed the recipient's report concerning use of the funds is false—and share in any recovery. In 2008, the United States Government recovered over one billion dollars in judgments and settlements involving relator cases under the False Claims Act.

The Act also adds significant new levels of Government oversight and investigatory authority. It provides $84 million for the creation of a new Recovery Act Accountability and Transparency Board, which is provided the same powers – including subpoena power – as are the agency Inspectors General. Moreover, the Act expressly grants the new Board, the existing agency Inspectors General, and the General Accountability Office the authorization to examine the records of any contractor, subcontractor, grantee or subgrantee that pertain to and involve transactions relating to the contract or grant, <u>and</u> to interview "any officer or employee" of the contractor, subcontractor, grantee or subgrantee.

BUY AMERICA

On February 13, The House and Senate passed a compromise version of the American Recovery and Reinvestment Act (the "Recovery Act"). Despite the Senate's attempt to water down some of the strong "Buy America" requirements contained in the House version of the bill, the final version was closer to the House version. However, it is more compliant with international trade laws than the previous House version.

Section 1604(a) of the Recovery Act requires that:

> "None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States."

As applied, any contract, grant, or other expenditure made using money from the Recovery Act for a construction, alteration, maintenance, or repair of a public building or public work cannot be used to buy foreign iron, steel, or manufactured goods. This is a very broad provision as "public works" could incorporate a wide variety of projects funded under the Recovery Act, including, among others, new roads, clean energy projects, and the construction of broadband infrastructure. Furthermore, "manufactured goods" potentially covers all conceivable inputs into the project.

However, Section 1604(b) states that "subsection (a) shall not apply in any case in which the head of the Federal department or agency involved finds that—

> "(1) applying subsection (a) would be inconsistent with the public interest;
> (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
> (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent."

Importantly, no definition of "public interest" is included in the Act, so contractors, subcontractors, and other involved companies will be required to argue their position to the relevant Federal department or agency that they should be entitled to this exception.

Furthermore, subsection (d) states that "this section shall be applied in a manner consistent with United States obligations under international agreements." Business entities in Europe, Canada, and Mexico, a well as other countries party to the WTO Agreement on Government Procurement, NAFTA, or other agreements, may, as a consequence, have the right to bid on U.S. government contracts (or participate in some other way), so this section may not affect them to the same extent it might impair the purchase of products from China, India and other countries that do not participate in similar international government procurement agreements. These international agreements may also protect contractors and others from the domestic content requirements that could be applied under the Buy America provision.

The 2009 Recovery Act contains broad requirements that funds under the Act being used for new public buildings and projects cannot be used to purchase <u>any</u> foreign iron, steel, or manufactured

goods. Several exceptions exist related to international trade law and public policy. Expert advice will be needed to meet these broad requirements and navigate these complex exceptions.

ACCOUNTABILITY, TRANSPARENCY AND EXPOSURE TO CIVIL AND CRIMINAL LIABILITY

The U.S. economy is about to receive a massive cash transfusion, with hundreds of billions of Federal dollars being invested in many sectors. The recipients will be of broad scope – State and local governments; companies which are direct recipients, as well as subcontractors on road and other infrastructure projects.

At the outset, the primary focus will be on spending and putting people back to work. But, a word of caution: Any entity intending to participate in American Recovery and Reinvestment Act programs should focus from the very beginning on compliance and accountability. That has been true for every entity that seeks or receives Federal money, but it will be especially important now.

The enormous amount of money to be spent, the public demand that it accomplish its purpose, be spent free of corruption and not be wasted, plus the opposition of the Republicans to the Act, all guarantee that expenditure of the Act funds will be scrutinized for many years for waste and misuse. By whom? Congress, through Committee hearings and reports, the General Accountability Office, and the Department of Justice, its many U.S. Attorneys Offices, the individual agency Inspectors General, and a new Recovery Act Accountability and Transportation Board, to name a few. And, in many cases, their audits, investigations and findings are to be made public.

The Act reflects this. It has a separate title on transparency and accountability. With respect to funds received by State or local governments under the Act, either the governor, mayor or chief executive must certify that the project has received a full review and vetting required under the law and is an appropriate use of taxpayer dollars. Additionally, reporting requirements are imposed upon governments and organizations receiving funds from the Federal government under the Act. Further, the inspectors general shall review any concerns raised by the public regarding how the funds under this Act are being made available.

The Act also imposes compensation restrictions on recipients of TARP funds, and it applies the Federal Acquisition Regulation to all direct contracts entered into by the Federal Government using funds made available by the Act. It also requires all contractors and grantees receiving funds directly from the Federal Government to file a quarterly report with their Federal contracting agency, which is required to much make of the information in the report public. The Federal Acquisition Regulation has recently been expanded to require government contractors to report fraudulent conduct to the government when the contractor has a reasonable basis to believe that fraud might have been committed. And, the procurement and expenditure of Federal money are subject to Federal anti-fraud, anti-corruption statutes, particularly the civil and criminal sanctions of the False Claims Act.

Participants in the ARRA programs and contracts will be well served to conduct a comprehensive self audit before seeking and spending this money. That would entail a review of their financial accounting mechanisms, compliance with the tax laws, and steps to prevent the occurrence of

anything that could be viewed as a fraudulent or corrupt action in connection with a government contract.

LIMITS ON EXECUTIVE COMPENSATION

This review is divided into two parts, the first of which summarizes executive compensation language, which includes four new provisions included in the Act (some technical, but most notably a lengthy modification of the Dodd prohibition relating to bonuses, retention awards, and other incentive compensation) as discussed below; and second, a summary of provisions included in the Act, which were previously included in the prior Senator Dodd amendment language of the Senate stimulus.

All of the provisions in the Act apply to "TARP Recipients," which is defined as those institutions which have received or will receive TARP funds. Accordingly, the executive compensation restrictions which are discussed below will be retroactively applied to institutions that have already participated in the TARP Capital Purchase Program (CPP) prior to the date of enactment. The conference agreement bonus restrictions do not apply to preexisting employment contracts as defined by the Secretary of the Treasury.

I. Summary of New Executive Compensation Language Added to Conference Text

(1) Prohibition on Bonuses, Retention Awards, or Other Incentive Compensation

The Act includes a prohibition on TARP recipients from paying bonuses, retention awards or other incentive compensation during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding. ARRA includes an exception for the payment of long-term restricted stock by such TARP recipient, provided that such long term restricted stock: (1) does not fully vest during the period in which any obligation arising from financial assistance provided to that TARP recipient remains outstanding; (2) has a value in an amount that is not greater than 1 /3 of the total amount of annual compensation of the employee receiving the stock; and (3) is subject to such other terms and conditions as the Treasury Secretary may determine is in the public interest.

Further, the Act includes a sliding scale for the number of employees that the foregoing prohibition applies to, based on the level of TARP assistance. For example, for financial institutions: (1) receiving less than $25,000,000 of TARP funds, the prohibition applies to the most highly compensated employee of the financial institution; (2) for any financial institution receiving $25,000,000 to $250,000,000 in TARP assistance, the prohibition applies to at least the 5 most highly-compensated employees of the financial institution, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient; and (3) for financial institutions receiving TARP assistance of $250,000,000 to $500,000,000, the prohibition applies to the senior executive officers and at least the 10 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient; and (4) for financial institutions receiving $500,000,000 or more, the prohibition applies to the senior executive officers and at least the 20 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient. The following measures are NOT included in the Act: the prior Senate's pay cap for

TARP recipient employees at the President's annual salary ($400,000) and the requirement for paying back excess bonuses over $100,000 through redemptions of stock and warrants.

(2) Technical Clarification on Rule of Construction on Which TARP Recipients Are Included in the Compensation Restrictions

ARRA includes a technical change clarifying that the period in which any obligation arising from financial assistance provided under the TARP remains outstanding does not include any period during which the Federal Government only holds warrants to purchase common stock of the TARP recipient.

(3) Technical Clarification on Compliance by Non-SEC Registrants with Board Compensation Committee Requirements

The Act includes a measure requiring each TARP recipient to establish a Board Compensation Committee comprised of independent directors to review employee plans, provided that for non-SEC registrants receiving TARP assistance of $25,000,000 or less, the duties of the Board Compensation Committee shall be carried out by the entity's board of directors.

(4) Clarification Regarding Ability of TARP Recipients to Withdraw From Program

The Act includes a clarification regarding the ability of TARP recipients to withdraw from the program. Specifically, the Act states that the Treasury Secretary shall permit, subject to consultation with the appropriate Federal banking agency, a TARP recipient to repay any assistance previously provided under the TARP to such financial institution, without regard to whether the financial institution has replaced such funds from any other source or to any waiting period. The Act clarifies that when such assistance is repaid, the Secretary shall liquidate warrants associated with such assistance at the current market price.

II. Summary of Language Retained in Act from Previous Senate Version

(1) Limitation on Luxury Expenditures

ARRA includes a limitation on luxury expenditures such that the board of directors of any TARP recipient must implement a company-wide policy regarding excessive or luxury expenditures. These expenditures will be identified by the Secretary, and may include excessive expenditures on (1) entertainment or events; (2) office and facility renovations; (3) aviation or transportation services; or (4) other activities or events that are "not reasonable" expenditures for conferences, staff development, reasonable performance incentives, or other similar measures conducted in the normal course of business operations of a TARP recipient.

(2) Advisory Shareholder Approval of Executive Compensation

The Act requires TARP recipients to include in annual proxy statements a "say on pay" proposal - e.g. an advisory (non-binding) shareholder vote on the company's executive cash compensation program. The SEC has one year from enactment of the amendment to issue final rules and regulations to implement this requirement.

(3) Review of Prior Payments to Executives, Negotiations for Reimbursement

The Act requires the Treasury Secretary to review bonuses, retention awards, and other compensation paid to employees of TARP recipients before the date of enactment of the Act to determine whether any payments were "excessive, inconsistent with the purposes of the Act or the

TARP or otherwise contrary to public interest." If so, the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursement to the Government.

(4) Prohibition on Golden Parachutes to Senior Executives

ARRA directs the Treasury Secretary to establish standards to prohibit TARP recipients from making any golden parachute payment to a senior executive officer or any of the next 5 most highly-compensated employees of the TARP recipient while the obligation arising from TARP is still outstanding. The Act defines "senior executive officer" as an individual who is 1 of the top 5 most highly paid executives of a public company, or their non-public company counterparts. The Act defines "golden parachute payment" as ANY payment to a senior executive officer for departure from a company for any reason, except for services performed or benefits accrued.

(5) Prohibition on Plans that Encourage Manipulation of Earnings

The Act directs the Treasury Secretary establish standards that prohibit TARP recipients from engaging in any compensation plan that would encourage manipulation of the reported earnings of the TARP recipient to enhance compensation of any of its employees.

(6) Limits on Plans Incentivizing Employees to Take Unnecessary Risk

The Act directs the Treasury Secretary to establish standards to place limits on compensation plans of TARP recipients that has incentives for employees to take unnecessary and excessive risks that threaten the value of the company.

(7) Claw-Back. ARRA requires the Treasury Secretary to establish standards that would allow the government to claw back any bonus or incentive compensation paid to an executive based on reported earnings, revenues, gains, or other criteria later found to be materially inaccurate.

CONCLUSION

Now that President Obama has signed the American Recovery and Reinvestment Act of 2009 the hard work of implementation begins at a fast pace. Never before will so much have been spent, on so many, in so few days. The clear intent of the legislation is to provide federal funding on an expedited basis to create jobs and to jump start the economy. Most of the spending – 75 percent- is to be done by the third quarter of 2010. The decisions on how to make funding decisions and whom to fund will be made in the next few months if not weeks. We anticipate that the notification of grant availability to begin perhaps as early as April, with the award of grants beginning sometime by early Summer. The stimulus package provides a tremendous opportunity for those who are well organized and can link their objectives to the national interest of reversing the economic downturn, putting the money from the federal government back into the economy where it belongs. Given the speed with which implementation will occur, extra care must be taken to assure full compliance with all legal requirements, and for interested parties to understand the full implications of what will be expected by the government from those who receive stimulus funding. Please do not hesitate to contact Patton Boggs LLP to discuss your needs further, and to obtain further information. We will be constantly monitoring developments and updating information which is of importance to you.

We encourage you to regularly visit our website (www.pattonboggs.com) and our News & Views section (www.pattonboggs.com/News), where we will provide updates on the American Recovery and Reinvestment Act of 2009.