



February 13, 2009

**The New Stimulus Package: Summary of The American Recovery and Reinvestment Act of 2009**

**INTRODUCTION**

Within the next few hours, the Senate is expected to pass the American Recovery and Reinvestment Act of 2009 (“the Act”), which the House passed this afternoon. Totalling approximately \$787 billion, the Act contains a vast array of tax breaks and spending projects aimed at swiftly reviving the economy and maintaining and creating jobs. It offers companies a wide range of opportunities to increase business, obtain tax relief and reduce costs. A summary of the Act and a detailed chart of the appropriations provisions follow. Should there be any revisions, Thompson Hine will provide updated information and analysis.

**SUMMARY**

The table below summarizes the appropriations provisions of the Act. The Act specifies that in using funds made available for infrastructure investment, preference will be given to projects that can be started and completed expeditiously. This includes a goal of using at least 50 percent of the funds for activities that can be initiated within 120 days after the enactment of this Act. Preference will also be given to projects that maximize job creation and economic benefit.

APPROPRIATIONS PROVISIONS	
INFRASTRUCTURE	
Transportation Infrastructure	
Highway and Bridge Infrastructure <ul style="list-style-type: none"> <li>• Mostly distributed as grants using a formula set in current highway authorization law</li> <li>• Funding can be used on activities eligible under Federal-aid Highway Program’s Surface Transportation Program</li> <li>• Eligible activities also include rail and port infrastructure activities at the discretion of the states</li> <li>• \$320M is set aside for grants to Indian tribes for transportation investments</li> <li>• \$180M is set aside for transportation improvements at national parks, forests, and wildlife refuges</li> </ul>	\$27.5B
Mass Transit <ul style="list-style-type: none"> <li>• Funding to be distributed as grants using a formula set in current highway authorization law</li> <li>• \$6.9B in transit capital assistance grants</li> </ul>	\$8.4B

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<ul style="list-style-type: none"> <li>• \$750M for fixed guideway infrastructure investments</li> <li>• \$750M in Capital Investment Grants</li> </ul>	
<p>Competitive Grants for Transportation – to state and local governments for transportation investments</p> <ul style="list-style-type: none"> <li>• highway, rail, transit, or port infrastructure</li> <li>• Act requires that projects must have a significant impact on the nation, a region, or a metropolitan area</li> </ul>	\$1.5B
<p>Airport improvement grants</p> <ul style="list-style-type: none"> <li>• for airport improvement projects that will improve safety and reduce congestion</li> <li>• to install Aviation Explosive Detection Systems in airports – funds competitively awarded based on security risk</li> <li>• for replacing or repairing FAA facilities and equipment.</li> </ul>	\$1.3B
<p>Rail Transportation</p> <ul style="list-style-type: none"> <li>• \$8B for investment in high speed rail and Intercity Rail projects.</li> <li>• \$1.3B for capital grants to Amtrak</li> </ul>	\$9.3B
<p>Maritime Transportation</p> <ul style="list-style-type: none"> <li>• \$100M in supplemental grants to small shipyards</li> </ul>	\$0.1B
<b>Environmental Clean-up/Clean Water Infrastructure</b>	
<p>Nuclear Waste Cleanup and Closed Military Bases</p> <ul style="list-style-type: none"> <li>• \$500M for nuclear waste cleanup at sites contaminated as a result of past nuclear activities</li> <li>• \$300M for cleanup activities at closed military installations allowing local communities to redevelop these properties for productive use</li> </ul>	\$6B
<p>Clean Water</p> <ul style="list-style-type: none"> <li>• Clean Water State Revolving Fund – \$4B</li> <li>• Drinking Water State Revolving Fund – \$2B</li> <li>• The Act includes provisions to allow broad eligibility for both Funds, including the authority for states to offer negative interest loans and principal forgiveness for up to 100% of the cost of projects.</li> </ul>	\$6B
<p>EPA environmental cleanup programs</p> <ul style="list-style-type: none"> <li>• \$800M Superfund to clean up hazardous and toxic waste sites that threaten health and the environment</li> <li>• \$100M in Brownfields funds for competitive grants for evaluation and cleanup of former industrial and commercial sites – turning them from problem properties to productive community use.</li> </ul>	\$1.2B
<p>Rural Water and Waste Disposal – to support \$3.8B in loans and grants for projects in rural communities.</p>	\$1.3B
<p>Leaking Underground Storage Tank Trust Fund Program</p> <ul style="list-style-type: none"> <li>• for enforcement and cleanup of petroleum leaks from underground storage tanks</li> </ul>	\$0.2B



<b>Public Housing Infrastructure</b>	
Public Housing Capital Fund <ul style="list-style-type: none"> <li>to enable local public housing agencies to address backlogs in capital needs</li> <li>\$3B distributed by formula</li> <li>\$1B distributed competitively to incentivize innovative and large-scale projects</li> </ul>	\$4B
Project-Based Stability <ul style="list-style-type: none"> <li>for full year payments to owners receiving Section 8 project-based rental assistance</li> </ul>	\$2B
Neighborhood Stabilization <ul style="list-style-type: none"> <li>to help communities purchase and rehabilitate foreclosed, vacant properties in order to create more affordable housing and reduce neighborhood blight.</li> </ul>	\$2B
Homelessness Prevention Assistance <ul style="list-style-type: none"> <li>for the Emergency Shelter Grand program to provide short term rental assistance, housing relocation, stabilization services for families during the economic crisis.</li> <li>Funds are distributed by formula.</li> </ul>	\$1.5B
Redevelopment <ul style="list-style-type: none"> <li>for the redevelopment of abandoned or foreclosed homes</li> </ul>	\$2B
Native American Housing Block Grants <ul style="list-style-type: none"> <li>to rehabilitate and improve energy efficiency at housing units maintained by Native American housing programs.</li> </ul>	\$0.5B
<b>Science Infrastructure</b>	
National Science Foundation <ul style="list-style-type: none"> <li>\$2B for research and related activities</li> <li>\$100M for scholarship programs in math and science</li> <li>\$400M for major research equipment and facilities construction</li> </ul>	\$3B
NASA <ul style="list-style-type: none"> <li>\$400M to put scientists to work doing climate change research</li> <li>\$150M for research, development, and demonstration to improve aviation safety and Next Generation air traffic control (NextGen)</li> <li>\$50M to repair NASA centers damaged by hurricanes and floods</li> </ul>	\$1B
National Oceanic and Atmospheric Administration <ul style="list-style-type: none"> <li>to construct and repair NOAA facilities, equipment and vessels to reduce the coastal charting backlog, upgrade supercomputer infrastructure for climate research, and restore critical habitat.</li> <li>for satellite development and acquisitions, including climate sensors and climate modeling</li> </ul>	\$0.83B
National Institute of Standards & Technology <ul style="list-style-type: none"> <li>\$220M for research, competitive grants, additional research fellowships and advanced research and measurement equipment and supplies.</li> </ul>	\$0.58B



<ul style="list-style-type: none"> <li>• \$360M for renovation of NIST facilities and new laboratories using green technologies, of which \$180M shall be for the competitive construction grant program for research science buildings.</li> </ul>	
<p>Department of Energy – Office of Science</p> <ul style="list-style-type: none"> <li>• for basic research into areas such as climate science, biofuels, high-energy physics, nuclear physics, and fusion energy sciences and improvements to DOE laboratories and scientific facilities</li> <li>• \$400M is for the Advanced Research Project Agency – Energy to support high-risk, high-payoff research into energy sources and energy efficiency</li> </ul>	\$2B
<b>Other Infrastructure</b>	
<p>School construction</p> <ul style="list-style-type: none"> <li>• for renovation, modernization, energy efficiency, and technology improvements <ul style="list-style-type: none"> <li>○ includes \$100M for school construction in communities that lack a local property tax base because they contain non-taxable federal lands</li> <li>○ \$25M to help charter schools build, obtain, and repair schools</li> <li>○ includes \$6B for higher education institutions</li> </ul> </li> </ul>	\$21B
<p>Wireless and Broadband</p> <ul style="list-style-type: none"> <li>• To improve access to wireless and broadband services in unserved and underserved areas.</li> <li>• Grant and loan funding <ul style="list-style-type: none"> <li>○ \$4.7B to be administered by National Telecommunications and Infrastructure Administration (“NTIA”) as grants, all to be awarded by 9/30/10;</li> <li>○ \$2.5B to be administered by Rural Utilities Service (“RUS”) branch of Department of Agriculture</li> <li>○ No broadband-specific tax credits or other tax incentives (eliminated in conference)</li> </ul> </li> <li>• All grants and loans will be subject to various mandates and conditions to be developed – for example, “unserved” and “underserved” are yet to be defined, as are applicable data speeds.</li> <li>• Additionally, “net neutrality” provisions associated with grants are to be developed by NTIA and the Federal Communications Commission.</li> <li>• NTIA grants will not be limited to public-private partnerships (eliminated in conference).</li> <li>• RUS loan/grants will be more directed to rural areas.</li> </ul>	\$7.2B
<p>Public Lands and Parks – improvements to facilities, road and trail restoration, environmental cleanup projects.</p> <ul style="list-style-type: none"> <li>• \$1.8B for the National Park Service</li> <li>• \$325M for the Bureau of Land Management</li> <li>• \$280M for the National Wildlife Refuges and National Fish Hatcheries</li> <li>• \$650M for the Forest Service</li> </ul>	\$3.1B



<p>Department of Defense</p> <ul style="list-style-type: none"> <li>• \$4.24B for facility infrastructure investments – health and medical facilities, military housing, military training facilities, community-based readiness centers, energy upgrades, etc.</li> <li>• \$75M for research, development, testing, and evaluation of alternative energy (fuel cells, wind, solar, etc.) generation and transmission for use on military installations and within operational forces.</li> <li>• \$400M Defense Health Program facilities – sustainment, restoration, and modernization.</li> </ul>	\$6.53B
<p>Veterans Affairs</p> <ul style="list-style-type: none"> <li>• Medical facilities – new construction, repair and maintenance of existing facilities</li> <li>• Cemetery construction</li> <li>• Grants for State and Extended Care Facilities – for the repair and construction of state long-term care veterans’ homes</li> </ul>	\$1.2B
<p>Improvements for a more efficient and secure government:</p> <ul style="list-style-type: none"> <li>• Coast Guard – \$240M for construction and repair of shoreline facilities, bridges that are a danger to navigation, and other critical assets</li> <li>• Social Security Administration modernization – \$500M to replace 30 year-old Social Security Administration’s National Computer Center</li> <li>• Farm Service Agency – \$50M for critical IT improvements to systems that have been unable to handle workload increases</li> <li>• Department of Agriculture – \$24M for repairs and security improvements at USDA headquarters</li> <li>• Watershed Infrastructure – \$290M for the Natural Resources Conservation Service watershed improvement programs to design and build flood protection and water quality projects, repair aging dams, and purchase and restore conservation easements in river flood zones.</li> <li>• International Boundary and Water Commission – \$220M to repair flood control systems along the international segment of the Rio Grande damaged by hurricane Katrina and other serious storms</li> <li>• TSA – \$1B for procurement and installation of baggage screening and checkpoint security equipment at airports</li> <li>• Border Points of Entry – \$430M to reduce construction backlog on points of entry on our borders</li> <li>• Fire stations – \$210M in competitive grants to build fire stations</li> <li>• Technology to help secure our borders – \$280M</li> <li>• State and local emergency operations centers and fusion centers construction – \$300M in competitive grants</li> </ul>	\$3.5B
<p>Federal buildings and courthouses</p> <ul style="list-style-type: none"> <li>• for construction and repairs to existing federal buildings and courthouses</li> </ul>	\$0.75B



<ul style="list-style-type: none"> <li>Projects to be selected based upon ability to be awarded within 120 days so that construction can begin as soon as possible</li> </ul>	
<p>Corp of Engineers</p> <ul style="list-style-type: none"> <li>\$2B for a nationwide program of construction of major rehabilitation of inland waterway locks and dams; dam safety/scour repair/seepage stability correction measures; deep draft and coastal navigation projects; flood control and storm damage reduction projects; rehabilitation of Corps owned and operated hydropower facilities; environmental restoration projects; environmental infrastructure projects, etc.</li> <li>\$1.9B for dredging harbors and waterways, flood control maintenance, inventory of the nation's flood control infrastructure</li> <li>\$500M for studies, construction, and maintenance of projects along the mainstem and tributaries of the Mississippi River and Tributaries Project.</li> <li>\$100M to accelerate clean-up activities at early atomic energy facilities</li> <li>\$50M to pre-place materials and equipment for emergency operations in preparation for natural disaster response.</li> <li>\$25M to accelerate high priority flood control, navigation and storm damage reduction studies.</li> <li>\$25M to address additional regulatory permitting issues generated by additional work funded in the Act.</li> </ul>	\$4.6B
<p>Bureau of Reclamation</p> <ul style="list-style-type: none"> <li>inventory and analysis of existing infrastructure</li> <li>maintenance or replacement of Reclamation owned and operated infrastructure and hydropower facilities</li> <li>drought preparation and emergency response activities</li> <li>tribal and nontribal rural water projects, water reclamation and reuse projects, construction of water delivery projects</li> </ul>	\$1B
<p>HOME Investment Partnerships Program</p> <ul style="list-style-type: none"> <li>block grant to enable state and local governments and community-based organizations to acquire, construct, and rehabilitate affordable housing and provide rental assistance to poor families</li> <li>Competitive grant funding</li> <li>Funds distributed by formula</li> </ul>	\$2.25B
<p>Agricultural Research Service</p> <ul style="list-style-type: none"> <li>to address critical deferred maintenance of USDA laboratory and research infrastructure</li> </ul>	\$0.18B
<p>Bureau of Indian Affairs</p> <ul style="list-style-type: none"> <li>to address maintenance backlogs at schools, dams, detention and law enforcement facilities, and over 24,000 miles of roads</li> <li>for workforce training programs</li> </ul>	\$0.5B



U.S. Geological Survey <ul style="list-style-type: none"> <li>to modernize facilities and equipment, including improvements to laboratories, earthquake monitoring systems, and computing capacity</li> </ul>	\$0.14B
Job Corps Facilities <ul style="list-style-type: none"> <li>to upgrade training facilities serving at-risk youth while improving energy efficiency</li> </ul>	\$0.25B
National Treasures <ul style="list-style-type: none"> <li>\$25M for the Smithsonian Institution</li> <li>\$50M for the National Endowment for the Arts</li> </ul>	\$0.075B
<b>ENERGY</b>	
Smart Grid Investment Program <ul style="list-style-type: none"> <li>for research and development, pilot projects, and federal matching funds to modernize the electricity grid and make it more efficient, secure, and reliable and build new power lines to transmit clean, renewable energy from sources throughout the nation</li> </ul>	\$11B
Renewable Energy and Transmission <ul style="list-style-type: none"> <li>new loan guarantees for solar projects and electricity transmission</li> </ul>	\$6B
Advanced batteries systems and components and vehicle batteries <ul style="list-style-type: none"> <li>grant funding for manufacturing of lithium ion batteries, hybrid electrical systems, component manufacturers, and software designers</li> </ul>	\$2B
Energy Efficiency and Renewable Energy Research <ul style="list-style-type: none"> <li>Funds are awarded on a competitive basis to universities, companies, and national laboratories.</li> <li>Biofuels, geothermal, water, wind, solar, and efficiency projects</li> </ul>	\$2.5B
State Energy Program	\$3.1B
Other Energy Efficiency Programs <ul style="list-style-type: none"> <li>\$300M Alternative Fueled Vehicles Pilot Grant Program <ul style="list-style-type: none"> <li>grants administered through the Department of Energy's Clean Cities program for acquisition and alternative fuel or fuel-cell vehicles</li> </ul> </li> <li>\$400M Transport Electrification – grants to States to plan and deploy electrical infrastructure projects that encourage the use of plug-in electric drive vehicles and near-term large-scale electrification projects</li> <li>\$300M for the Energy Efficient Appliance Rebate program</li> <li>\$150M for Rural Business Programs – to support \$3B in loans and grants to support income and employment expansion through improved business opportunities in rural areas.</li> </ul>	\$1.15B
Energy Efficiency and Conservation Block Grants	\$3.2B
Weatherization Assistance Program– to help low-income families weatherize their homes	\$5B
Fossil Energy <ul style="list-style-type: none"> <li>\$1B for the Department of Energy's Clean Coal Power Initiative Round III Funding Opportunity Announcement.</li> </ul>	\$3.4B



<ul style="list-style-type: none"> <li>\$1.6B for competitive solicitation projects that demonstrate carbon capture from industrial sources.</li> </ul>	
<b>Green Buildings</b> <ul style="list-style-type: none"> <li>for renovations and repairs to federal buildings, with at least \$6B focused on increasing energy efficiency and conservation.</li> <li>projects are selected based on GSA's ready-to-go priority list</li> </ul>	\$4.5B
<b>Energy Efficient Federal Motor Vehicle Fleet Procurement</b> <ul style="list-style-type: none"> <li>to replace GSA vehicles with hybrid plug-in electric vehicles</li> </ul>	\$300M
<b>Energy Efficiency Housing Retrofits</b> <ul style="list-style-type: none"> <li>to upgrade HUD sponsored low-income housing to increase energy efficiency</li> <li>Funds will be competitively awarded</li> </ul>	\$0.25B
<b>EDUCATION &amp; TRAINING</b>	
<b>State Fiscal Stabilization Fund</b> <ul style="list-style-type: none"> <li>\$39.5B to local school districts, public colleges and universities – distributed through existing State and local formulas</li> <li>\$5B to States as bonus grants for meeting key education performance measures</li> <li>\$8.8B to States for other high-priority needs such as public safety and other critical services</li> </ul>	\$53.6B
<b>Education (K-12)</b> <ul style="list-style-type: none"> <li>Title I – to help close the achievement gap and enable disadvantaged students</li> <li>Special Education/IDEA – formula grants to increase the federal share of special education costs</li> </ul>	\$25.2B
<b>Higher Education</b> <ul style="list-style-type: none"> <li>Pell Grants – to increase the maximum by \$500, for a maximum of \$5,350 in 2009 and \$5,550 in 2010.</li> <li>\$200M for College Work-Study program - to support undergraduate and graduate students who work</li> </ul>	\$15.8B
<b>Student Aid Administration – to help the Dept. of Education administer student aid programs</b>	\$0.06B
<b>PROTECTING THE VULNERABLE</b>	
<b>Nutrition</b> <ul style="list-style-type: none"> <li>\$20B to the Supplemental Nutrition Assistance Program (SNAP) for modest-income families and to lift restrictions that limit the amount of time individuals can receive food stamps</li> <li>\$100M for Senior Nutrition Programs – formula grants to states for elderly nutrition services including Meals on Wheels and Congregate Meals.</li> <li>\$150M for Emergency Food Assistance Program – to purchase commodities for food banks.</li> <li>\$100M for Emergency Food and Shelter to help local community organizations provide food and shelter.</li> </ul>	\$21B



<ul style="list-style-type: none"> <li>• \$500M for Supplemental Nutrition Program Information Systems – to improve state management information systems for the Women, Infants, and Children (WIC) program.</li> </ul>	
<p>Helping Children</p> <ul style="list-style-type: none"> <li>• \$2B to Child Care Development Block Grant – provide quality child care services for children in low-income families</li> <li>• \$2.1B for Head Start &amp; Early Head Start – to provide comprehensive developmental services to low-income infants and preschool children</li> </ul>	\$4.6B
<p>Other</p> <ul style="list-style-type: none"> <li>• \$200M for the Rural Housing Insurance Fund             <ul style="list-style-type: none"> <li>○ to support \$1B in direct single family housing loans and \$10.4B for guaranteed single family housing loans.</li> </ul> </li> <li>• \$130M for Rural Community Facilities             <ul style="list-style-type: none"> <li>○ for grants and loans to rural areas for critical community facilities, such as healthcare, education, fire and rescue, day care, community centers, and libraries.</li> </ul> </li> <li>• \$1B for Community Development Block Grant             <ul style="list-style-type: none"> <li>○ for community and economic development projects including housing and services for those hard hit by tough economic times.</li> </ul> </li> <li>• \$100M for Emergency Food and Shelter             <ul style="list-style-type: none"> <li>○ to help local community organizations provide food, shelter, and support services including one-month utility payments to prevent service cut-off and one-month rent or mortgage assistance to prevent evictions or help people leave shelters.</li> <li>○ Funds are distributed by formula based on unemployment and poverty rates.</li> </ul> </li> <li>• \$500M for Social Security Administration Disability Backlog and Claims Processing – to help the SSA process a steep rise in claims and prevent existing backlogs from getting worse.</li> <li>• \$140M for Centers for Independent Living – for state formula grants to help individuals with disabilities to live in their communities.</li> <li>• \$89M for AmeriCorps – to put approximately 16,000 additional members to work doing national service,</li> </ul>	\$10.3B
<b>HEALTH</b>	
<p>COBRA Healthcare for the Unemployed</p> <ul style="list-style-type: none"> <li>• 65% premium subsidy for 9 months</li> <li>• Subsidy limited to persons with income under \$145,000 (single) or \$290,000 (married)</li> <li>• Employer payroll tax credit</li> <li>• New election period and notice requirements</li> <li>• Employer reporting requirements</li> <li>• Permits employer to offer option for lower-cost coverage</li> </ul>	\$21B



<ul style="list-style-type: none"> <li>Provides for refunds to qualified beneficiaries who pay the full premium amount for March or April</li> </ul>	
<p>National Institutes of Health</p> <ul style="list-style-type: none"> <li>\$8.5B for biomedical research in areas such as cancer, Alzheimer's, heart disease, stem cells; and to improve NIH facilities.</li> <li>\$1.5B for NIH to renovate university research facilities and help them compete for biomedical research grants</li> </ul>	\$10B
<p>Prevention and Comparative Effectiveness Research</p> <ul style="list-style-type: none"> <li>\$1B for the Prevention and Wellness Fund - to fight preventable chronic diseases, and infectious diseases <ul style="list-style-type: none"> <li>includes hospital infection prevention, Preventive Health and Health Services Block Grants for state and local public health departments, immunization programs, and evidence-based disease prevention.</li> </ul> </li> <li>\$1.1B to the Agency for Healthcare Research and Quality, NIH, and HHS to evaluate the relative effectiveness of different health care services and treatment options.</li> </ul>	\$2.1B
<p>Health Information Technology</p> <ul style="list-style-type: none"> <li>\$2B in discretionary funds</li> <li>\$17B for investments and incentives through Medicare and Medicaid to ensure widespread adoption and use of interoperable health information technology</li> </ul>	\$19B
<p>Indian Health Service Facilities</p> <ul style="list-style-type: none"> <li>to modernize hospitals and health clinics, and make healthcare technology upgrades to improve healthcare for underserved rural populations.</li> </ul>	\$0.42B
<b>SMALL BUSINESS</b>	
<p>Small Business Credit</p> <ul style="list-style-type: none"> <li>to stimulate lending to small businesses and to support \$20B in zero-fee or reduced-fee loans to small businesses; and</li> <li>for loans and critical technical assistance to "micro" borrowers.</li> </ul>	\$0.64B
<p>Rural Business-Cooperative Service</p> <ul style="list-style-type: none"> <li>for rural business grants and loans, and to guarantee \$2B in loans for rural businesses</li> </ul>	\$0.15B
<p>Economic Development Assistance</p> <ul style="list-style-type: none"> <li>to address long-term economic distress in urban industrial cores and rural areas distributed based on need and ability to create jobs and attract private investment.</li> </ul>	\$0.15B
<b>LAW ENFORCEMENT</b>	
<p>State and Local law enforcement</p> <ul style="list-style-type: none"> <li>\$2B for Byrne Justice Assistance formula grants, and \$225M in competitive Byrne grants</li> <li>\$1B for the COPS hiring grant program</li> <li>\$125M for competitive grants to fight drug-related crime</li> <li>\$225M for Violence Against Women Prevention and Prosecution Programs</li> </ul>	\$4B



<b>OTHER</b>	
DTV Conversion <ul style="list-style-type: none"> <li>• for implementation and administration of the digital-to-analog converter box coupon program</li> <li>• to match unemployed individuals to job openings through state employment service agencies and allow states to provide customized services.</li> <li>• for education and outreach to vulnerable populations, including assistance for converter box installation.</li> </ul>	\$0.65B
Training and Employment Service <ul style="list-style-type: none"> <li>• for job training including formula grants for adult, dislocated worker, and youth services</li> <li>• YouthBuild program and summer jobs for youth</li> <li>• “green” jobs and healthcare</li> </ul>	\$4B
Vocational Rehabilitation State Grants <ul style="list-style-type: none"> <li>• for state formula grants to help persons with disabilities prepare for gainful employment</li> </ul>	\$0.7B
Periodic Census and Programs, Communications <ul style="list-style-type: none"> <li>• to ensure a successful 2010 census, including funds for expanded communications and outreach programs to minimize undercounting of minority groups.</li> </ul>	\$1B

Source: Staff summaries by House and Senate Appropriations Committees.

As we continue to analyze the components of the Act, the latest version of our analysis can be found on our web site: <http://www.thompsonhine.com/practices/infrastructure/>

## **TAX IMPLICATIONS**

### ***Business Tax Provisions***

*Extenders.* The Act extends enhanced Section 179 expensing, bonus depreciation and the election to claim refundable credits in lieu of bonus depreciation.

*NOL carryback.* The Act temporarily increases the net operating loss (NOL) carryback period from two years to up to five years for NOLs generated in tax years beginning or ending in 2008 for businesses with gross receipts of \$15 million or less.

*Discharge of indebtedness income.* Under the Act, certain cancellation of debt income realized on account of a taxpayer’s or a related person’s reacquisition of debt instruments during 2009 or 2010 would be, at the taxpayer’s election, deferred until 2014 and then included in income ratably over five years. This relief provision applies to debt repurchases for cash, debt-for-debt exchanges (including modifications), debt-for-equity exchanges, contributions to capital, and complete forgiveness by the holder of the instrument.



*Temporary relief from applicable high yield discount obligation (AHYDO) rules.* Under the Act, the AHYDO rules, which limit a corporation's deductions for original issue discount, will not apply to any debt instrument issued by a corporation between September 1, 2008 and December 31, 2009 in exchange (including an exchange resulting from a debt modification) for an outstanding non-AHYDO debt instrument of the corporation.

*S corporation built-in gains.* The Act temporarily reduces the S corporation built-in gain holding period from ten to seven years for C to S conversions occurring in 2009 or 2010.

*Executive compensation.* The Act prescribes various executive compensation limitations applicable to participants in the Troubled Asset Relief Program (TARP), and delegates authority to the Treasury to prescribe specific rules governing the executive compensation practices of companies participating in TARP.

### ***Tax Relief for Individuals and Families***

*Making Work Pay credit.* The Act creates a refundable tax credit of up to \$400 for working individuals and \$800 for working families for 2009 and 2010, subject to phase-out based on income level.

*AMT patch.* The Act includes a one-year patch of the alternative minimum tax (AMT), protecting 26 million families from the AMT.

*American Opportunity tax credit.* The Act expands the amount of the Hope Credit and includes textbooks within the definition of qualified tuition and expenses for 2009 and 2010.

*Section 529 plans.* The Act provides that expenses incurred for computer technology and equipment or Internet access qualify as qualified education expenses under Section 529 plans for tax years beginning in 2009 and 2010.

*Homebuyer credit.* The Act increases the first-time homebuyer credit to \$8,000 for homes purchased after December 31, 2008 and before December 1, 2009, and removes the repayment requirement for the credit for homes purchased during 2009, unless the home is resold within 36 months of purchase.

### ***Energy Incentives***

The Act includes several energy incentives, including enhanced credits for investment in advanced energy, improvements to energy-efficient homes, alternative refueling property and renewable energy production. The Act also removes limitations related to subsidized energy financing.

For a more detailed analysis of the tax provisions included in the Act, please visit our web site: <http://www.thompsonhine.com/publications/publication1711.html>.



## **EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION IMPLICATIONS**

Under the federal and state laws commonly referred to as “COBRA” laws, most employers are required to provide group health plan continuation coverage upon certain events. The Act affects how that coverage must be offered to certain individuals who lose group health plan coverage due to an involuntary termination of employment or reduction of hours during the period beginning September 1, 2008 and ending December 31, 2009.

Affected employees, their covered spouses and their covered dependents (“qualified beneficiaries”) will be entitled to a 65% COBRA subsidy for a certain period of time. The subsidy will apply beginning with the payment for the first period of COBRA coverage starting after the Act’s enactment and will continue for up to nine months of coverage. The subsidy will not apply for any months that begin after the qualified beneficiary becomes eligible for coverage another group health plan or Medicare, or for any year in which the qualified beneficiary’s income is above a certain level.

The Act also provides a number of requirements for employers and plan administrators:

- To pay the 65% subsidy amount and treat such payment as a payroll tax credit.
- To revise COBRA election notices to include information about the subsidy.
- To provide new notices and offer an additional COBRA election period to certain qualified beneficiaries who were not enrolled in COBRA coverage on the date of enactment.
- To file reports at the time payroll taxes are required to be deposited.

For a more detailed analysis of the COBRA provisions included in the Act, please visit our web site: <http://www.thompsonhine.com/publications/publication1712.html>.

## **LABOR & EMPLOYMENT IMPLICATIONS**

Employers who accept funds distributed under the Act should be aware that the Act provides specific protection for whistleblowers and carries potential penalties against employers who are found to have retaliated against employees who blow the whistle.

Specifically, Section 1518 of the Act gives employees of companies that subcontract with the government and receive funds under the Act the right to blow the whistle on their employer. An employee who reports gross mismanagement of the contract or grant, a specific danger to public health or safety, or a violation of law related to the contract or grant, may report such to the oversight board, the inspector general, the comptroller general, an agency head or a member of Congress. The provision permitting a complaint to be brought to a member of Congress is



unprecedented and does not appear in other federal whistleblower statutes. After a complaint is made the matter will be referred to the appropriate agency inspector general.

Regardless of whether the inspector general corroborates the complaint, the employer is prohibited from taking any retaliatory action including discharge, demotion or “otherwise discriminating” against the employee. Unfortunately, the Act does not define the phrase “otherwise discriminating,” leaving employers without specific guidance as to what conduct in addition to demotion and discharge is prohibited.

However, it is likely that “otherwise discriminate” as used in the Act will be given the same interpretation the Supreme Court gave to language found in other antidiscrimination non-retaliation statutes. In other words, the employer will be prohibited from engaging in any conduct that would otherwise discourage a reasonable employee from making a whistleblower complaint.

The Act also sets forth procedures for processing and prosecuting retaliation complaints by whistleblowers. The employee must bring his or her complaint of retaliation to the inspector general of the appropriate agency. Unfortunately the Act does not include a statute of limitations or time limit in which the employee must bring the complaint of retaliation. The inspector general must then conduct an investigation into all but the most frivolous complaints.

If as a result of its investigation the inspector general corroborates the employee’s complaint of retaliation, it will refer its finding to the head of the affected agency. The agency head may then reject the inspector general’s findings and take no action or accept the finding of retaliation and order the employer to reinstate the employee with full back pay or, in lieu of reinstatement, to pay compensation to the employee. If the employer fails to comply with the agency head’s order, the government may pursue enforcement action against the employer in federal court.

If the inspector general does not corroborate the employee’s complaint of retaliation, or declines to investigate the complaint, the employee may still bring his or her own private action against the employer. The Act permits the employee to bring suit for retaliation in federal court before a jury. If the employee prevails in his or her suit against the employer, the Act permits the recovery of monetary damages; however, unlike other retaliation statutes, the Act does not cap those damages.

An employer accepting stimulus package funds under the Act should ensure that it has policies and procedures in place that will permit it to receive, investigate and resolve, if possible, complaints from employees regarding mismanagement or misuse of stimulus funds or similar complaints.

### **ENVIRONMENTAL IMPLICATIONS**

The Act provides considerable funding for a wide-range of environmental programs aimed at promoting redevelopment and infrastructure projects, including:



- \$5.127 billion for the Defense Environmental Cleanup Program, some of which will be designated for the remediation of closed military installations, which is intended to encourage local communities to redevelop these properties for productive use.
- \$6 billion for the Clean Water State Revolving Fund and capitalization grants under the Safe Drinking Water Act. The funds will be available to communities for the upgrade of wastewater and drinking water infrastructure. The Act sets a goal that not less than 20% of these funds are to be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.
- \$100 million for the brownfields remediation grants programs that are provided for under the Superfund Act.

Priority for the \$6 billion allocated to wastewater and drinking water infrastructure projects will 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 the Act. However, the Act requires the U.S. Environmental Protection Agency to reallocate the funds where projects are not under contract or construction within 12 months of enactment. The Agency is working with states to create a “stimulus task force” in order to rapidly disperse the funds. Nonetheless, the unused portion of the funds available for reallocation could be significant in light of difficulties some parties may face meeting the 12-month deadline. With this potential infusion of funds comes the risk that the U.S. Environmental Protection Agency could pursue a variety of other Agency priorities, such as increased enforcement or new regulatory policies, that it could not otherwise afford under its proposed budget of \$7.14 billion for 2009.

The Act increases the funds available to the U.S. Environmental Protection Agency’s Superfund Remedial Program (\$600 million) and for the enforcement and cleanup of petroleum releases from leaking underground storage tanks (\$200 million). Also included in the Act is funding for a variety of traditional, as well as “green”, infrastructure projects and energy projects that will have environmental components, including permitting requirements and the preparation of environmental reviews and impact statements required under the National Environmental Policy Act (“NEPA”). Initially it was proposed that the NEPA review and impact statement requirements be waived in order to avoid delaying the commencement of stimulus projects. The Act does not waive these requirements, but does require that adequate resources be devoted to ensuring that applicable environmental reviews under NEPA are completed on an expeditious basis and that the shortest applicable process allowed under NEPA be utilized.

## **CONCLUSION**

This economic stimulus package is designed to be implemented quickly. Companies seeking to fully enjoy its benefits need to position themselves promptly to identify and seize opportunities presented by the package. As this bulletin indicates, Thompson Hine is well-prepared to advise companies on how they can take full advantage of these opportunities.



## FOR MORE INFORMATION

Thompson Hine's Infrastructure Group is available to answer any questions you may have. For more information, please visit our web site: <http://www.thompsonhine.com/practices/infrastructure/>

If you do not wish to receive future communications by e-mail, please send an e-mail with the word "unsubscribe" as the subject line to [Cathy.Dougan@ThompsonHine.com](mailto:Cathy.Dougan@ThompsonHine.com).

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