EXHIBIT 16

National Railroad Passenger Corporation
Office of Inspector General
Office of Investigations

MEMORANDUM

10 G Street, N.E., Suite 3E-400
Washington, D.C. 20002

July 22, 2009

TO: Honorable Thomas Carper
Chairman, Amtrak Board of Directors
National Railroad Passenger Corporation
60 Massachusetts Avenue NE
Washington DC 20002

FR: Amtrak Office of the Inspector General
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Re: Defeased Leases
Amtrak OIG Case No. 08-102

I. EXECUTIVE SUMMARY

In 1999 and 2000, Amtrak entered into twelve separate financed sale and lease-back transactions known as "SILOs" or "defeased leases" (explained below) involving 624 in-service passenger coach cars. The SILO transactions were entered into between Amtrak and various lessors and were secured through Guaranteed Investment Contracts ("GIC") with insurance companies. The potential debt associated with these twelve defeased leases was about $900 million.

At the time of the SILO negotiations, Babcock & Brown represented two of the lessor banks, Sumitomo Bank Capital Markets ("Sumitomo") and ICX Corporation, now part of Royal Bank of Scotland ("ICX"). Capstar Partners ("Capstar") advised and represented Amtrak in the SILO transaction negotiations.

In late 2007, Amtrak became aware that two of its guarantors, Ambac and AIG, were in financial trouble, putting Amtrak in jeopardy of default under the terms of its SILO agreements.

In early 2008, Dale Stein ("Stein"), Amtrak's Treasurer, decided to engage Babcock & Brown to provide financial advice to Amtrak on replacement of the two troubled guarantors for the SILO agreements, along with providing strategic advice and

participating in potential transaction restructuring negotiations with Amtrak's lessors. Stein chose Babcock & Brown because he wanted the advice of Keith McWalter ("McWalter"). During negotiations for the engagement, McWalter refused to agree to Amtrak's standard contract terms. As a result, Stein and Amtrak's Law Department decided that instead of going through Amtrak's procurement process, they would engage Babcock & Brown through an outside law firm, Vedder Price, and that Amtrak would separately indemnify Babcock & Brown for its services. When they later became aware of the potential conflict of interest stemming from Babcock & Brown's representation of lessors in the original transactions, Stein and Amtrak's Chief Financial Officer ("CFO"), William Campbell ("Campbell") determined that Babcock's previous representation of two lessors would not adversely affect the advice McWalter provided to Amtrak.

Subsequently, other Amtrak managers, and eventually Board members, learned of the potential conflict and engaged two law firms to generate reports on the issue. OIG also initiated an investigation regarding the defeased leases.

OIG found that McWalter's advising Amtrak in connection with the replacement of guarantors for SILO leases, when Babcock had previously advised two lessor banks on the same transactions put Amtrak at a greater business risk, which should not have been treated cavalierly by Amtrak management and should have been fully vetted prior to continuing with the engagement of Babcock & Brown. Babcock & Brown's financial advice regarding the SILO transactions heavily favored one course of action: replacement of the two troubled guarantors with Berkshire Hathaway.

In response to a direct question from an official of the Department of Transportation ("DOT") concerning whether Amtrak was getting "clean independent" advice free from any potential conflict of interest in connection with Babcock & Brown's advisory services to Amtrak, Stein assured the DOT official that all was well. OIG's investigation concluded that Stein's representation at that time may have been less than fully candid, based on incomplete fact validation and insufficient expertise to determine whether a conflict or other risk to Amtrak existed.

While certain Amtrak managers should be commended for realizing the potential problem with the SILO transactions in 2007 and for taking immediate action to evaluate and obtain advice to rectify the problems, other Amtrak managers appear to have hastily predetermined a course of action that was not fully thought through. Amtrak's actions in replacing the guarantors were not wholly inconsistent with the remedies which other transit agencies have employed. However, Amtrak spent a significant amount of money on both legal and financial advice, in addition to the $96.1 million spent in connection with replacing the guarantors or "unraveling" the original SILO transactions.

Also troubling is Amtrak's failure to review invoices from Babcock & Brown for substantiation of expenses claimed, some of which far exceeded the norms that Amtrak pays to other contractors or advisors. For example, Amtrak reimbursed Babcock & Brown for expenses that OIG believes were unreasonable, including business class air travel in excess of $3,000 for one round-trip flight and hotel charges of $916 per night.

McWalter admitted to OIG that he refused to agree to Amtrak's standard expense reimbursement provisions when negotiating the engagement of Babcock & Brown.

OIG's investigation prompted several recommendations, which are set forth in Section VII of this Memorandum, regarding Amtrak's policies and procedures.

II. EXPLANATION AND HISTORY OF SILOs

A. SILOs as a Method of Financing

A SILO is an acronym for a sale-in-lease-out transaction.[1] It generally includes several parties – a tax-indifferent entity, financial lenders and a taxpayer/for-profit entity (which usually is an equity lender or investor), a grantor trust (an entity set up for the benefit of the investor), equity lenders and payment undertakers.[2] As a congressional report regarding SILOs discusses, the primary reason for their creation is to transfer tax benefits from tax-indifferent entities (such as tax-exempt municipalities, transportation entities, or a foreign business) to a U.S. taxpayer, which is usually a bank or financial institution.[3] Because such indifferent entities do not pay U.S. taxes, and consequently cannot claim the federal income tax benefits associated with property ownership, those benefits are allegedly transferred in the SILO transaction to an entity which can utilize the tax benefits.

In a typical SILO transaction, a tax-indifferent owner of property or equipment (in this instance, Amtrak) sells the property or equipment to an alleged "purchaser" or investor who simultaneously leases it back to the original owner / lessee. It is a form of leveraged lease wherein the financing or loan is asset-based and referred to as a "loop debt," because the loan proceeds are used solely for the purpose of paying the purported debt.[4] Because the tax-indifferent entity's tax position is not affected by the transaction and the for-profit's is influenced favorably these deals are often promoted as being financially beneficial to all parties with little financial risk.[5] The promoters usually offer up-front cash benefits and/or loans to the tax-indifferent entity to enter into a sale and long-term lease of its equipment or infrastructure.

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[1] A LILO is an acronym for a lease-in-lease-out transaction. It has elements similar to a SILO, without the change in ownership.

[2] It also generally includes financial advisors/arrangers (promoters) and lawyers on all sides which assist the investors, tax-indifferent entity, bankers, guarantors and undertakers.

[3] Shvedov, *CRS Report for Congress: Tax Implications of SILOs, QTEs, and Other Leasing Transactions with Tax-Exempt Entities 2* (Nov. 30, 2004) ("CRS Report").

[4] *AWG Leasing Trust v. United States*, slip op. Case 1:07-CV-00857-JG (N.D.Ohio, May 28, 2008) at 36.

[5] As described below, this promotion is fallacious and most, if not all, of the risk is borne by the tax-indifferent party.

As the federal district court in *AWG Leasing*, 2008 WL 2230744 (N.D. Ohio, May 28, 2008), aptly described a SILO:

> Under some SILO transactions, a party acquires assets from a tax-exempt party under a "head lease." A SILO head lease typically involves a lease term sufficiently long to qualify as a sale under United States tax law. The acquiring party then simultaneously leases the assets back to the original owner under a long term triple-net "sublease" with lease and option payments that exhaust almost all of the sale proceeds. The original owner also receives an option to repurchase the asset. Depending upon the transaction provisions, the exercise of the repurchase option may be nearly certain. In practical terms, the tax-exempt property owner continues to use the property as it did before the transaction and has no risk of losing control of the property. Meanwhile, the taxpayer receives tax benefits, sometimes significant tax benefits, by depreciating the assets, amortizing certain transaction costs, and deducting interest payments.

Slip op. at 2.

It is essentially a paper transaction without economic substance for tax purposes. The equipment never changes hands and the tax-indifferent entity operates the equipment as it did before the transaction, and retains all incidences of ownership normally associated with the property, under the guise of a lease.

The deal is generally financed with funds from the taxpayer (as an equity investor) and debt lenders (other banks or financial institutions). The financing ratio is generally 15-25 % equity participation to 75-85 % debt lending. However, the majority of the funds are not actually transferred to the tax-indifferent selling entity, except on paper. The lease rental payment is purportedly financed primarily with proceeds of a loan from the lending bank, but the actual funds generally never even leave the bank (or its affiliate) for the duration of the SILO. See CRS Report at 9. Instead, most of the borrowed funds remain at the bank (or its affiliate) in an escrowed account dedicated to paying the debt, rendering the leases "defeased".[6] A portion of the prepayment is provided to the tax-exempt party as its loan or "fee for participation in this deal." Id.

Although most SILOs are formed for the same reason and under the same concept, each has its own unique defeasance structure and potential default triggers. However,

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[6] A defeased lease is a lease transaction in which all of the rent and purchase option (if exercised) obligations of the lessee have been fully economically (and sometimes legally) defeased by the lessee, or one of its affiliates, depositing funds with one or more other parties who agree to make when due the lessee's rental and/or purchase option payments. See, Ian Shrank, Arnold G. Gough, Arnold G. Gough, Jr., *Equipment Leasing--leveraged Leasing: Leveraged Leasing, Practicing Law Institute* (1999) at 2-30.

traditionally, debt and equity accounts are established simultaneously with the sale and lease. Most of the equity portion of funds is unconditionally and irrevocably deposited with a highly accredited bank or "payment undertaker". The payment undertaker's obligations are guaranteed by another firm, that is related financially or a subsidiary of the undertaker.[7] Pursuant to terms and conditions in the transaction documents, the funds are to be used for identified investments which are subject to conditions to protect the investors' funds.[8] Some transactions require the posting of equity collateral upon a credit downgrade (or similar event) of the equity payment undertaker, after the closing of the transaction.[9] In most SILOs if the tax-indifferent entity elects to end the deal by purchasing the taxpayer's interest under the lease ("early buyout"), the holding bank must pay the principal and earnings generated by the investments to the taxpayer as part of the tax-indifferent's purchase price and the lender or tax-indifferent entity must account for the balance.

SILOs and LILOs are usually structured so that there is no risk, other than the tax law risk, to the taxpayer, equity owners and lenders, yet some risk to payment undertakers and much greater risk to the tax-indifferent party.[10] The former are protected because the funds invested are automatically placed in an account to repay them, with the added incentive of accrued funds from investments. Moreover, the tax-indifferent party usually enters into the agreements believing it is not at risk of losing control of its property, but it can suffer the risk of downgrades or defaults by guarantors or payment undertakers as described above. At the end of the lease period the tax-exempt party has the option to purchase the taxpayer's remaining ownership interest. This purchase option is (like the tax-exempt entity's purported rent obligations under the lease) "completely covered by [the taxpayer's] prepayment" of rent. See CRS Report at 9.

The SILO is disguised to resemble traditional leveraged leases, but differs from such leases in essential respects. First, traditional leveraged leases separate ownership from use whereas in SILOs, the original owner continues to use and essentially own the property. Second, in traditional leveraged leases, the taxpayer-lessor assumes "the lessee's default or asset ownership risk," See CRS Report at 6, whereas in SILOs and LILOs, the taxpayer has immunized itself from the lessee's default and risk related to any diminution in the property's value.

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[7] The fund in which these funds are held is often refereed to as the "GIC", guaranteed investment contract.

[8] The payment undertaker must maintain these investments at a certain value throughout the SILO to protect the equity investors from any shortfall. In the event that the value of the investments or securities falls below an identified level, the undertaker would be required to post additional collateral to the GIC.

[9] See, Philip H. Spector, *Court Finds Compelled Purchase Option in Silo Case*, 27 NO. 8LJN's Equipment Leasing Newsletter (September, 2008). The collateral to be posted is dependent upon the accreted value, which is a predetermined amount which is based upon the balance in the account which is configured considering what the investment would have made from interest, minus lease payments over time.

[10] See, Gergen, *The Logic of Deterrence: Corporate Tax Shelters*, 55 Tax L. Rev. 255, 258 & n.19 (2002); see also Miller, Jr., *Corporate Tax Shelters and Economic Substance*, 34 Tex. Tech L. Rev. 1015, 1026-1027 (2003) (describing SILOs and LILOs as "lack[ing] of any economic risk").

"Throughout the Lease Term, [the taxpayer] has several remedies in the event of a default by [the tax exempt party], including a right to (1) take possession of the property or (2) cause [the tax exempt party] to pay [the taxpayer] X specified damages ("Termination Value"). Likewise, throughout the Service Contract Term, [the taxpayer] has similar remedies in the event of a default by the Service Recipient. On the Closing Date, the amount of the Termination Value is slightly greater than the purchase price of the property. The Termination Value fluctuates over the Lease Term and Service Contract Term, but at all times is sufficient to repay [the taxpayer]'s entire loan balances and [the taxpayer]'s initial equity investment plus a predetermined after-tax rate of return."[11]

B. Tax Effect

Most SILOs exist for tax purposes, shifting deductions from tax-indifferent or exempt entities to taxpayers. During the course of the SILO, the taxpayer claims depreciation and interest deductions associated with the sale and reports income based upon the rental payments under the lease. The tax-indifferent entity receives an amount considered a loan and/or accommodation fee, most of which are paid back in the form of rental fees. The tax deductions are usually substantial and far exceed the rental payments.

C. IRS' Position

The Internal Revenue Service initially addressed the form and substance of LILO transactions, and more recently addressed SILOs. In 1996 the IRS moved to deny tax benefits to LILOs. In 1999, the IRS further advised taxpayers that based upon "the economic-substance doctrine" it would disallow rent and interest-expense deductions claimed in LILOs. Rev. Rul. 99-14, 1999-1 C.B. 835, modified and superseded by Rev. Rul. 2002-69, 2002-2 C.B. 760. The IRS later ruled that it also would deny those tax benefits under the "substance-over-form" doctrine. Rev. Rul. 2002-69, 2002-2 C.B. 760.

In 2004 Congress passed the American Jobs Creation Act which eliminated all tax advantages of SILO transactions. American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 848, 118 Stat. 1418 (2004). Additionally, in 2005, the IRS issued a notice concerning tax-exempt leasing involving defeasance in which it declared that it would contest claimed tax deductions for any SILO transactions which it determined had no economic purpose apart from tax benefits. IRS Notice 2005-12, 2005-1 C.B. 630. Then, in Notice 2005-13 the IRS notified taxpayers that SILOs were considered tax avoidance measures and considered "listed transactions" under the IRS Code.

On August 6, 2008, IRS Commissioner Doug Shulman announced settlement initiatives for more than 45 corporate taxpayers which had entered into LILO and SILO transactions. Under the settlement initiative taxpayers whom the IRS determined were eligible to participate received a letter informing them that they had 30 days to accept the offer to participate in the resolution program. Taxpayers who elected to participate in the program were required to use their "best efforts" to terminate their transactions by

[11] See, IRS Notice 2005-13 - Tax-Exempt Leasing Involving Defeasance.

December 31, 2008 or they would be deemed terminated by that date. Taxpayers who participated were allowed to maintain 20 percent of the claimed tax benefits. The gain was to be calculated as either (1) the taxpayer's net proceeds (for actual terminations) or (2) the value of the equity defeasance account (for deemed terminations), less the taxpayer's basis.[12] In the event that a taxpayer elected to participate it to provide the IRS with certain documents:

1. A list of all of the taxpayer's LILO and/or SILO transactions (and transactions the same as or substantially similar to LILO and SILO transactions) for which the taxpayer claimed losses or deductions in any taxable year.
2. Computations in electronic (Excel) format reflecting the settlement terms.
3. Interest/ABC Reports up through and including the EBO date showing annual cash flow analysis, annual tax presentation, and accretion of equity collateral balance.
4. Equity collateral schedules (schedules detailing beginning equity collateral and equity portion of rent, and/or EBO payments).
5. Documents evidencing EBO purchase price.
6. Documents evidencing amount of equity investment and transaction costs; and
7. Detailed breakdown of transaction costs by amount, nature and recipient.[13]

D. Relevant Court Decisions

Critically, there have been several decisions which have addressed the merits of whether these types of transactions have economic substance under the tax laws. This has included actions which the IRS defended as well as those brought by lenders similar to those who are participants with Amtrak. All of the decisions to date addressing these types of transactions have found them to be lacking in economic substance and merely paper transactions, abusive tax devices or loop debt. See, *BB&T Corp. v. United States*, 523 F.3d 461, 465 (4th Cir. 2008) (court of appeals rejected tax deductions for a LILO, finding a lack of a genuine lease or genuine indebtedness); *AWG Leasing v. United States, supra* (SILO transaction where district court denied tax benefits to a U.S. partnership related to its alleged purchase of a German waste-to-energy facility);[14] *Fifth Third Bancorp v. United States,* case No. 1:05-cv-350-TSH (S.D. Ohio, April 2008) (jury

[12] The IRS later extended the election period from 30 days to 60 days and provided clarity to what was meant by the term "best efforts" to resolve the SILO transactions. See http://www.irs.gov/businesses/article/0,,id=186294,00.html

[13] See, IRS, *IRS Sees Strong Response to LILO / SILO Settlement Offer*, (IR-2008-121, Oct. 21, 2008).

[14] The funding and cash-flow in *AWG* was structured as follows:

Source of Funds	Receivers of Funds
German Banks $367.9 million	German Banks (for Debt PUAs) $ 367.9 million
Plaintiffs $59.9 million	AIG (for Equity PUA) $ 26.5 million
	AWG $ 28.6 million
	Professional Service Fees $ 4.8 million
Total: $427.8 million	*Total: $427.8 million*

verdict on behalf of United States but court has not entered a judgment). Applying the economic substance doctrine, the *Fifth Third* jury denied tax benefits related to a bank's leasing arrangement for passenger rail cars as an abusive LILO transaction. In *Hoosier Energy Rural Electric Cooperative, Inc. v. John Hancock Life Ins. Co.*, 588 F. Supp. 2d 919 (S.D. Ind., Nov. 25, 2008) the court issued a preliminary injunction to block defendant Ambac and its affiliates from making a payment of approximately $120 million to defendant John Hancock Life Insurance Company and its affiliates pursuant to a credit default swap agreement involving petitioner energy company).[15] One of the compelling decisions in the *Hoosier* case was Judge Hamilton's finding that commercial impracticability could be used as a basis for noncompliance with the contract. It found:

> If the nature and scope of the credit crisis were more limited or a mere economic downturn, John Hancock's argument that the crisis was foreseeable or that Hoosier Energy should have protected itself better might be more persuasive. However, the credit crisis facing the world's economies in recent months is unprecedented and was not foretold by the world's pre-eminent economic experts. The crisis certainly was not anticipated in 2002, when the deal between Hoosier Energy, Ambac, and John Hancock was being finalized. Retrospect will not assist John Hancock here, nor will an assertion that it was Hoosier Energy's responsibility to prepare for and guard against any imaginable commercial calamity....Hoosier Energy has come forward with evidence indicating that the obstacles it faced were not specific to Ambac but were the product of the credit crisis that effectively but temporarily froze the market for comparable credit products at any price. Those effects were not anticipated and could not have been guarded against.

588 F.Supp.2d at 932.

In another case, Washington Metropolitan Area Transit Authority ("WMATA") brought a complaint in federal district court in the District of Columbia for declaratory and injunctive relief involving a SILO transaction. There the Belgian bank (KBC) declared a default and a $43 million forfeiture against WMATA. AIG was a party to the financing plan. Under the financing documents WMATA was responsible for $43 million termination payment based upon a default which was grounded in AIG's financial downgrade. Similar to Amtrak, WMATA obtained a new source of funding through

[15] In response to John Hancock subsequently arguing that the security which Hoosier posted to protect it from damage from an improvident injunction was insufficient, the district court required Hoosier to file with the court no later than its own bond undertaking to pay the John Hancock defendants up to $130 million for costs and damages sustained by the defendants if they are found to have been wrongfully enjoined. Case 1:08-cv-01560-DFH-DML (Dec.11, 2008).

Berkshire Hathaway; but the defendants rejected the Berkshire Hathaway guarantee claiming a technical default under the Participation Agreement and Sublease.

The district court judge strongly urged KBC to unwind the transaction in exchange for payment of $17 million which one of the trust accounts held for WMATA that was kept for future lease payments. This trust account held what is considered the accreted value and not the full termination value. On November 14, 2008, the parties settled for an undisclosed amount, which has been speculated by one observer to be the $17 million which WMATA offered, and by another observer to be between $17 million and $43 million.[16] In addition, WMATA, along with other entities, have unwound other lease deals for much less than termination value.

Therefore, under several differing contexts courts have, without much hesitation, resolved these issues on terms which are favorable to the borrowers. Whether the fact finder is a judge or jury, and whether the decision is based on a summary judgment, trial, or appeals, all have been successful to borrowers.[17]

One of the arguments which taxpayers have advanced in these cases is that the Department of Transportation ("DOT") encouraged or approved these types of deals. That argument has been rejected on every front: the Internal Revenue Service ("IRS"), Department of Justice ("DOJ") and most importantly, the courts. As noted above, the IRS has stated unequivocally that these transactions lack tax substance and without justification.

In responding to such a contention by the taxpayer in *BB&T*, in its appellate brief DOJ argued that relying upon the DOT is faulty because even DOT's view does not mean that the government endorsed the potential tax benefits and additionally DOT does not enforce the tax laws. Furthermore, it posited that DOT changed its view regarding these transactions.[18] The courts opinions or decisions either do not credit such arguments or reject them outright.

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[16] A financial adviser testifying for Metro said that the $43 million sought by KBC "would amount to an 11 percent annualized return on the bank's initial investment of $23 million six years ago." *Metro, Bank Make A Deal, Catoe Proclaims Victory; Capital Budget Protected,* November 15, 2008; Page B01

[17] Most recently, on July 9, a jury in the federal district court for the Southern District of New York rejected Altria Group's claim against the IRS for a refund of tax payments and associated interest in connection with leveraged lease transactions which it had entered into with MTA and others. See, e.g., *Altria Group, Inc, v. United States*, Case Number: 1:2008cv03144, (S.D. N.Y., July 9, 2009) (similar to the other cited decisions, the jury found that Altria never acquired the benefits and burdens of ownership and that the transactions lacked economic substance).

[18] See Brief for the Appellee United States, *BB&T v. United States, 2007* WL 2945202 (4th Cir. August 2007) at 37 (referring to Letter dated November 17, 2003, from Senate Finance Committee Chairman to Secretary of Transportation, available at 2003 Tax Notes Today 223-33 (Nov. 19, 2003) and Letter dated November 26, 2003, from Assistant Treasury Secretary for Tax Policy to Secretary of Transportation, available at 2005 Tax Notes Today 40-49 (Mar. 2, 2005). The Los Angeles Times reported: "'FTA was not a cheerleader for these transit lease-back agreements' agency spokesman Dave Longo wrote in an e-mail. 'We reviewed lease-back agreements submitted to us by transit agencies in terms of their compliance with federal transit law requirements. When we determined those agreements met the requirements, we

III. OIG's INVESTIGATION

A. Areas of Inquiry

1. Did a potential "conflict of interest"[19] exist with respect to Babcock & Brown's advising Amtrak in 2008 in connection with the replacement of guarantors for SILO leases, when Babcock & Brown had previously represented two lessors, and had other financial dealings with a third lessor, on the same transactions with Amtrak?
2. Was Amtrak at risk of not receiving the full benefit of Babcock & Brown's expertise and advice due to Babcock & Brown's representation of equity investors in connection with either (1) the same transactions on which Babcock & Brown was now advising Amtrak or (2) any other matters not involving Amtrak but for which Babcock & Brown's concern over its ongoing business relationship with the equity investors would otherwise taint the advice Babcock & Brown gave to Amtrak?
3. Did any Amtrak managers or advisors mislead or misinform Amtrak's Board of Directors or Department of Transportation officials in informing them concerning the defeased leases or potential conflict?
4. Did Amtrak managers take prudent, proper and appropriate action in Amtrak's best business and financial interests in their decisions concerning resolving the issues related to the defeased leases; (including any potential conflicts)?
5. Were Amtrak's procurement regulations circumvented in order to hire Babcock & Brown?
6. Did Amtrak properly review and approve Babcock & Brown's expenses prior to payment of invoices?

B. Methods of Investigation

During the course of this investigation, Amtrak interviewed current and former Amtrak employees, as well as representatives from Babcock & Brown, BW Realty Advisers ("BWRA"), the Department of Transportation, Capstar, Wachovia, Vedder Price, Thelen Reid, Sumitomo and KPMG. An interview with Alex Kummant ("Kummant"), former Amtrak President, is pending.

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approved them from that perspective.'" "MTA May Have To Cut Commuter Service," Los Angeles Times, October 18, 2008.

[19] This report often refers to the term "conflict of interest" rather liberally. Because the term does not have a universal definition, is elusive, and appears to be used most often with respect to the conduct of lawyers, it may be somewhat confusing in this context, *i.e.,* with respect to the conduct of a financial or lease advisor. As depicted more fully in the text, the more appropriate question is whether Amtrak exposed itself to an unnecessary business risk.

In addition, OIG requested documents from Amtrak and others and, in December 2008, served a subpoena on Babcock & Brown for documents relating to the investigation.

C. Delays to and Interference with OIG's Investigation

1. Difficulty Obtaining Interviews and Amtrak Documents

Amtrak OIG opened this investigation in August 2008[20]. OIG contacted witnesses in an attempt to schedule interviews. Amtrak employees Stein, Campbell, Eleanor Acheson ("Acheson"), and Jad Roberts ("Roberts") were contacted in October of 2008. All were advised that they were not the target or subject of the investigation. All advised OIG that that they would be seeking indemnification. Due to the indemnification process, Acheson was not interviewed until November 14, 2008. Campbell was not interviewed until December 4, 2008, and was continued on December 23, 2008. Roberts was interviewed on December 27, 2008. Stein switched attorneys and sought to postpone the interview. Stein repeatedly claimed he was not available and was not interviewed until January 12, 2009.

Other members of the Law Department, who were also advised that they were not targets or subjects of the investigation, sought to bring Amtrak outside counsel and/or another attorney from the Law Department with them to witness the interview. When that was not allowed, they subsequently agreed to be interviewed without a witness present.

Keith McWalter of Babcock & Brown initially declined to be interviewed in October 2008, but finally agreed to an interview in July 2009.

As a result of some of these interviews, documents were requested from Amtrak employees. When Campbell brought the requested documents to his second interview, his attorney advised that prior to providing the documents to OIG, the documents were given to Amtrak's Law Department for a review for privilege. At the time of the document production, December 23, 2008, OIG was advised by Campbell's counsel, Sam Rosenthal, that Byl Herrmann ("Herrmann") of the Law Department had not yet authorized him to release one document to OIG. Rosenthal indicated that once he received the approval from Herrmann he would release the document to OIG. Rosenthal could not say whether all documents he provided to the Law Department were returned to him, claiming he did not keep a copy or list of what he provided to the Law Department. The document that was withheld finally was produced on December 29, 2008. On January 9, 2009 the OIG requested additional documents from Campbell.

Rosenthal stated that he needed to send the documents to Amtrak's Law Department for review before turning them over to OIG. Rosenthal was asked to provide the documents directly to the OIG without prior Law Department review, but he sent the documents to the Law Department. The documents were finally provided to OIG on March 3, 2009.

[20] The OIG initially kept the investigation confidential so as not to interfere with Amtrak's negotiations with lessor banks or other entities.

As a result of the interview of Stein on January 12, 2009, certain documents were requested. Andy Lourie (Lourie), Stein's attorney, advised that they were instructed to send all documents to the Law Department for review for privilege before turning them over to OIG. Lourie was asked to turn documents directly over to OIG without review by anyone other than themselves. Both attorneys (Rosenthal and Lourie) were concerned due to their directive from the Law Department. On February 3, 2009, Lourie turned over all but two documents to OIG without review by the Law Department. Lourie explained that the two documents he withheld "should be sent to the Law Department" based on their privilege assertions. OIG suggested that Lourie mark the documents "Privileged/Confidential/Proprietary to Amtrak" as the law department would do. Lourie advised that "to avoid any unintended employment consequences for Dale" he wanted the okay from the Law Department. On March 31, 2009, the final two documents were provided to OIG.

The Law Department maintains that they are concerned about protecting Amtrak's privilege. OIG's position is that OIG is not a third party and privilege is not a factor when documents are being provided to another Amtrak division. Additionally, by withholding a document it appears that the Law Department, is deciding which documents OIG is to receive. Since several attorneys from the Law Department are witnesses in this matter and have obtained counsel through indemnification, it gives a definite appearance of a conflict of interest, when those same attorneys are deciding which documents are released to OIG.

An interview with Alex Kummant ("Kummant"), former Amtrak President, is pending. Kummant has received indemnification from Amtrak and is consulting with counsel. Additionally, an attempt was made to interview Jean Godier ("Godier") of ICX. Godier is no longer with ICX and advised OIG that he signed a nondisclosure agreement with ICX. Godier declined to be interviewed in light of the terms of the nondisclosure agreement.

2. Subpoena of Babcock & Brown

On December 19, 2008, the OIG issued subpoena No 08-47 for 1) All documents which refer or relate to agreements, contracts, bids and proposals between Babcock & Brown and Amtrak, concerning defeased leases or lease transactions; 2) All internal documents, memorandum and communications which refer or relate to agreements, contracts, understandings, bids, or proposals between Babcock & Brown and any other entity including Vedder Price, concerning Amtrak transactions or leases; 3) All documents and/or records which discuss, relate or pertain to Babcock & Brown's representation and relationship with Sumitomo and ICX, for transactions that also involved Amtrak; and 4) Babcock's document retention policy. The subpoena listed a compliance deadline of January 19, 2009.

OIG did not receive any communication from Babcock by the original due date. After receiving a letter of inquiry from OIG counsel dated February 4, 2009, Babcock & Brown's attorney, George Riley (Riley) of O'Melveny & Myers, advised on February 11,

2009, that due to an oversight the subpoena did not come to the attention of the proper personnel and requested additional time to respond to the subpoena. Riley also indicated in his letter that he would send the documents to Acheson for review to identify privileged documents before sending them to OIG.

On February 13, 2009, Amtrak General Counsel sent a letter to Babcock & Brown's attorney reaffirming her demand that certain documents be sent to her office for review before being produced to OIG. Acheson stated in her letter that her office would neither "withhold nor redact a single document or item of text but will simply mark those that contain confidential and/or privileged material."

Coincidentally, also on February 13, 2009, OIG granted Babcock's request, extending the time for compliance to February 20, 2009. On February 20, 2009, OIG received some responsive documents from Babcock in both electronic and paper format. Review of the electronic documents received from Babcock & Brown revealed that they had been converted from their native format to TIFF format, making review of the documents very difficult. Spreadsheets provided were not readable in TIFF format. OIG then contacted counsel for Babcock & Brown who stated that the electronic documents were provided in native format to Amtrak's General Counsel, who then converted the documents to TIFF format before they were provided to OIG. After several weeks, Babcock & Brown provided a disk of electronic documents in their native format directly to OIG.

Babcock & Brown also provided a Privilege Log. Upon inspection of the Privilege Log, the OIG found many of Babcock's asserted claims of privilege to be inadequate because they lacked sufficient supporting information to justify application of the privilege. Many of the entries on the Privilege Log merely asserted attorney client and work product privileges with little or no factual support for claiming the privileges.

Between March 10, 2009 and May 29, 2009 OIG counsel further attempted to resolve the issues concerning the inadequate Privilege Log through correspondence and telephone conferences with Babcock counsel. OIG stressed the importance of production of relevant documents.

OIG repeatedly gave Babcock additional time to comply with the subpoena and to justify the withholding of documents for which it claimed privileges, and OIG even proposed alternative methods of obtaining the information which would have satisfied Babcock's obligations, including arranging for an informal interview with Keith McWalter, and providing a certified letter that indicated the dates on which Babcock terminated its relationship with Sumitomo and ICX. Nevertheless, Babcock failed to provide any additional substantive information to satisfy its obligations in connection with responding to the subpoena.

When OIG asked Babcock counsel to review its previous production, Babcock identified several additional documents on May 28, 2009, that it had "inadvertently produced" in February, and for which it was now claiming privileges, but Babcock did not revise its

Privilege Log to justify, or even include, the additions. In effect, the OIG requested more information, and was given less.

OIG agents interviewed McWalter of Babcock & Brown on July 7, 2009. As of the date of this Memorandum, there is still an ongoing exchange between OIG and Babcock & Brown's counsel to attempt to obtain all of the documents subpoenaed.

IV. AMTRAK'S DEFEASED LEASING TRANSACTIONS

A. Overview and Background

In 1997, Congress mandated and set out in the Amtrak Reform and Accountability Act, ("ARAA") that Amtrak become operationally self-sufficient by 2003 or face liquidation. Amtrak developed a Strategic Business Plan for Fiscal Year (FY) 1999 thru FY2002 designed to meet that objective. This business plan was a "stake in the ground" by which Amtrak had to perform, in order to achieve its goal. This was known as the "Glide path" to operational self-sufficiency, or the weaning from federal operating funding. Through the ARAA, Congress also created the Amtrak Reform Council (ARC), to oversee Amtrak's fiscal status. If at any time during the five years the ARC found that Amtrak was unable to achieve operational self-sufficiency, the ARC was required to develop and submit to Congress an action plan for restructuring the intercity rail passenger system. Thus, during that timeframe (1997-2003), Amtrak management looked for several non-traditional ways to obtain cash for operating expenses.

In 1999 and 2000, Amtrak entered into twelve separate leveraged sale and lease back (SILO) transactions involving 624 in-service passenger coaches. The net book value of these cars was $334,690,000.[21] The nine lessors for the twelve transactions were:

First Union Commercial Corporation (Wachovia) – 3 Separate Transactions
Norwest Bank (Wells Fargo)
Pacific Century (Bank of Hawaii) – 2 Separate Transactions
U.S. Bankcorp Leasing and Financial
Sumitomo Bank Capital Markets
CIBC Capital Corporation
Fifth Third Leasing Company
Norlease (Northern Trust)
ICX Corporation (Royal Bank of Scotland)

The twelve SILO transactions were for a gross purchase price of $928,686,000. Similar to other SILO transactions, Amtrak leased back the train cars for lease terms ranging from 23-29 years. Of the sales proceeds, the Company received and retained $124,171,000 in cash, with transaction costs of $13,531,000. With the remaining funds Amtrak was required to purchase GICs or Equity Payment Undertaking Agreements ("EPUA"s) from

[21] The facts depicted in this subpart are derived principally from Amtrak's Annual Report 2008 (prepared by KPMG), with further confirmation by OIG during its investigation.

'AAA'-rated insurance companies and Debt Payment Undertaking Agreements ("DPUA") in order to secure and defease repayment of the equity portions and debt portions of future lease rents, respectively.

The Defeasance Instruments accrete value at fixed interest rates ranging from 6.77% to 7.22% per annum on the defeasance instruments intended to secure the future payment of the equity portion of lease rents (the "Equity Defeasance Instruments"); and from 8.4% to 8.75% per annum on the defeasance instruments securing the future payment of the debt portion of lease rents (the "Debt Defeasance Instruments"). In addition to Amtrak's assignment of the guaranteed payment streams from the Defeasance Instruments to satisfy Amtrak's lease payment obligations, the obligations of Amtrak to make any and all required lease payments are absolute and irrevocable.

Any failure by a GIC/EPUA or DPUA Provider to make an assigned payment when due would not free Amtrak of the ultimate obligation to make any and all required payments under the leases.

Under the terms of these leases, Amtrak has an obligation to replace the Equity Defeasance instruments when a GIC/EPUA Provider ceases to be a qualified provider by falling below specified long-term credit ratings specified in the lease documents. Most of the providers under the Amtrak transactions have been downgraded. As of 2008, two of the GIC/EPUA Providers who independently provide the Equity Defeasance instruments for one or more of the twelve (12) leases have each been downgraded by Moody's Ratings Service ("Moody's") and Standard and Poor's ("S&P) from their initial "AAA" rating to levels where Amtrak has been obligated under the lease documents to secure replacement GIC/EPUA Providers.

As a result of these downgrades to comply with these terms of the lease documents, Amtrak secured the commitment of a replacement company, National Indemnity Company (NIC), a member of the Berkshire Hathaway group of insurance companies. Nine of the deals have replaced Ambac and AIG with NIC. Three deals were terminated. The cost of resolving the twelve leases was reportedly $96.9 million.

B. Babcock & Brown's Role in Negotiating SILOs in 1999-2000 and Subsequent Advisory Services in 2008-2009

Although Babcock & Brown, and McWalter in particular, had provided financial advice to Amtrak in connection with other lease transactions throughout the 1990's, in 1999 Amtrak competitively solicited financial advisory services and awarded the SILO transaction advisory services to Capstar Partners ("Capstar") instead of to Babcock & Brown.

Babcock & Brown then represented two other clients, Sumitomo and ICX, in negotiations with Amtrak on the SILO transactions.[22] The Ropes & Gray Report (described below) found that although McWalter claimed that the scope of Babcock & Brown's representation of Sumitomo and ICX was limited to "number crunching," his characterization is belied by objective evidence of his substantive representation of both banks, on the opposite side of the table from Amtrak, during the SILO transaction negotiations. In addition, at least one witness familiar with how SILO deals are structured stated that it would have been very unusual for Babcock & Brown only to have performed "number crunching." Moreover, as noted above, Amtrak counsel recalls McWalter being at one of the negotiations on behalf of one of the lender banks.

Interviews of individuals at Sumitomo revealed that Babcock & Brown worked deals with Sumitomo until 2007, their most recent transaction. These deals, however, did not involve Amtrak. It is unknown when, or even if, Babcock & Brown discontinued its representation of ICX / Royal Bank of Scotland. In his interview, McWalter told OIG that he did not represent them, and did not know whether Babcock & Brown represented ICX in any capacity, subsequent to the defeased lease transactions.

The first downgrading of Ambac triggered replacement requirements for three SILOs that Amtrak had with Wachovia. Thus, the first deals that Amtrak focused on were those with Wachovia.

An International Herald Tribune article on November 20, 2008, entitled "Babcock & Brown to sell half its assets," stated that "Wachovia may seize collateral on a $112 million loan, Babcock said this week, putting it at risk of losing as much as $41 million on a real estate venture with GPT Group." The article went on to state "they're trying to do everything they can to keep the banks on board, because without their acquiescence it's all over." http://www.iht.com/articles/2008/11/19/business/babcock.php. See also "Babcock Venture Faces Loss in Wachovia Deal," The Australian, http://www.theaustralian.news.com.au/business/story/0,28124,24666475-36418,00.html and "Babcock & Brown Selling Assets," Financial Chronicle, IHT World Business, http://www.mydigitalfc.com/news/babcock-brown-selling-assets-711.

During this time period Babcock & Brown was acting as Amtrak's financial advisor and advocate on three defeased leases with Wachovia. McWalter maintained that he was not aware of Wachovia's dealings with Babcock & Brown. It is questionable that Babcock & Brown could act aggressively on Amtrak's behalf with Wachovia, while Wachovia was threatening to seize collateral from Babcock & Brown. Babcock & Brown was placed into voluntary administration (Australia's version of bankruptcy) on March 13, 2009. On June 18, 2009, Babcock & Brown was "delisted" from the Australian stock exchange.

[22] The scope of OIG's investigation did not extend to whether Babcock & Brown's 1999-2000 representation of two lessors on the opposite side of the table from Babcock & Brown's long-term client, Amtrak, also could have been a conflict of interest at that time.

C. Discovery of the Potential Conflict

Reuben Vabner ("Vabner"), Amtrak's Senior Director, Corporate Finance, Stein, and Campbell, each claimed that they were the first one to realize there was a potential problem with the leases. Vabner advised that in November of 2007, there were warnings that Ambac and AIG were not in good shape. Vabner took his concerns to Stein who told him to have Thelen Reid, Amtrak's outside counsel, look at the leases and advise Amtrak of potential problems.

Stein claimed he was the first to realize there was a problem when Bear Sterns went into bankruptcy due to their involvement in sub prime mortgages. Stein thought there would be a "knock down" effect to Ambac and AIG as they insured sub prime mortgages. Stein stated that he told Vabner to contact Thelen Reid to have them look at the leases and advise Amtrak as to potential problems.

Campbell advised that shortly after he came to Amtrak he asked for a presentation on Amtrak's debt since Amtrak appeared to be "drowning in debt." Campbell learned that Amtrak had twelve defeased leases that involved Ambac. Campbell stated that he knew from the newspapers that Ambac was having troubles so he asked Stein what would happen if Ambac "went broke." Campbell advised that later in the fall he realized Amtrak could have a problem and decided to hire outside counsel to advise them. Campbell claimed that he told the Board of Directors about the problem in this same time frame, November 2007, when he discussed all of Amtrak's debt with the Board. Regardless of who first realized there was a problem, it is to Amtrak's credit that they realized the potential problem and took actions to understand Amtrak's liability.

In December 2007, Thelen Reid provided a draft memorandum to Vabner on Amtrak's defeased transactions. This memo outlined the transactions and what action items should be considered in case of a credit downgrade of Ambac. Stein advised that when this memo was presented, Thelen Reid partner, David Graybeal (Graybeal), told Amtrak that Thelen Reid was conflicted and could not represent Amtrak in litigation on these leases. Vabner stated that he and Dennis Moore (Moore) from Amtrak's Law Department interviewed several potential law firms and narrowed it down to Vedder Price. The Law Department hired Vedder Price to assist the finance department on the defeased leases.

Stein wanted to hire a financial advisor to advise Amtrak on the leases. Stein in his interview claimed that he thought Amtrak needed the best advice available and Babcock & Brown knew the transactions, how they worked, brought "quantitative analysis" that Amtrak needed, and could compile large complicated models. Stein claimed that Amtrak did not have the in house knowledge on the deals and wanted to use Babcock & Brown, specifically Keith McWalter, to either lead or participate in negotiations with the lessors to enhance Amtrak's credibility. Stein felt that McWalter was the only one that had the experience with defeased leases and had creditability in the marketplace.

1. Engagement of Babcock & Brown

Stein stated that he contacted McWalter in February of 2008, to see if Babcock & Brown would be interested in advising Amtrak on the leases. Stein explained that McWalter told him that Babcock & Brown were no longer involved in financial advisory services but would check with the partners to see if they would be interested. McWalter called Stein back and said that Babcock & Brown would advise Amtrak for $500,000 plus expenses. During the same phone conversation, McWalter told Stein that there were no conflicts because Babcock & Brown had no business with the nine banks involved with the defeased leases. Stein advised that there was no negotiation between himself and McWalter. Stein felt the fee was reasonable, so he and McWalter worked on preparing an engagement letter. Stein stated that the statement of work for Babcock & Brown was predominately written by Amtrak. When everything was agreed to, Stein sent it to the Law Department for approval. The Law Department advised that the contract had to go through Amtrak's normal procurement process and sent it to Senior Associate General Counsel Nancy Sowa (Sowa) who asked Nick Troiano (Troiano), Director of Amtrak's procurement office, to handle the contract.

Troiano sent Babcock & Brown Amtrak's standard services procurement package. Babcock & Brown responded with a red lined version with numerous changes. McWalter would not sign Amtrak's standard contract, objecting to the provisions that Amtrak's Grant Agreement from the Federal Government mandates must be included in all Amtrak contracts. McWalter advised Troiano in an e-mail that things such as "Equal Opportunity, Patent Rights, Drug Free Workplace were probably all compliant by his firm, but he is not willing to have his legal team confirm if he is compliant." Troiano said McWalter would "not sign any contract with audit rights or that is required to comply with FAR regulations." After learning of McWalter's objections to Amtrak's standard contract provisions, Acheson made arrangements for the Board to approve the hiring of Babcock & Brown through Vedder Price. By letter dated May 2, 2008, Vedder Price hired Babcock & Brown. Additionally on the same date, and by letter dated May 2, 2008, Amtrak agreed to indemnify Babcock & Brown. Roberts advised that Jon Bogaard (Bogaard) of Vedder Price did not want to indemnify Babcock & Brown, so Amtrak agreed to do a separate indemnification agreement. Roberts stated that this was unusual. This was the first time Roberts had seen this done. Roberts did not think it was a problem however, as the Board had already agreed to hire Babcock & Brown and Roberts assumed that the standard contract would have included indemnification. Babcock & Brown was hired to provide "comprehensive strategy and tactics for mitigating the risk to Amtrak" and "attendance and participation by Babcock at a sequential series of meetings and/or negotiations with lessors, Financial Guaranty Companies, Commercial Banks, Foreign Government Financial Institutions, Ambac."

In May 2008, Amtrak was trying to locate the pricing runs from the original transactions so they could be sent to Babcock & Brown. Capstar advised that Babcock & Brown should already have possession of the information concerning Sumitomo and ICX. Vabner advised Babcock & Brown that they had the original files from Sumitomo and

ICX. McWalter stated that he would check internally, but told Vabner that "depending on what we did for whom, we could have an obvious conflict."

Stein advised investigators that he knew this posed a problem as a possible conflict of interest, or an appearance of a conflict of interest, and was a serious issue he needed to focus on. Stein could not recall how many conversations he had with McWalter on the topic but estimated it was more than one and less than five. Stein explained that McWalter told him that Babcock & Brown had competed for the role of financial advisor when Amtrak first entered into the leases, however the contract was awarded to Capstar. McWalter told Stein that Babcock & Brown had done some "quantitative analysis" for Sumitomo and ICX. McWalter told Stein that he had contacted the banks and the banks agreed that Babcock & Brown could work for Amtrak. Stein advised that McWalter offered to put the information in writing but Stein declined, stating it was not necessary. Stein explained that the overriding issue as he saw it was the question of, is this going to be detrimental to Amtrak regarding the advice McWalter would give Amtrak. Stein concluded that this "would not cause them to bias their advice to us in a detrimental way." Stein stated that he discussed it with Campbell and Campbell agreed that he did not think it was a conflict. Stein did not go to the Law Department for advice. Stein explained that he did not see this as a legal issue and therefore did not go to the Law Department for advice. Stein advised that Amtrak was in the "sky is falling" mode and he did not think of it again until he was contacted about the conflict issue by WilmerHale (See section IV. G below).

Babcock & Brown's engagement through Vedder Price was for $500,000 plus expenses for services during the calendar year 2008. The engagement letter stated that "Babcock & Brown will be reimbursed for its actual, verifiable, reasonable out-of-pocket expenses incurred in connection with providing the Services." The same day Vedder Price signed the engagement letter with Babcock & Brown, Acheson signed a separate indemnification letter with Babcock & Brown.

2. Engagement of BW Realty Advisors

By letter dated June 1, 2008, BWRA was hired for a "potential legislative solution that could eliminate some of the defeased sale and lease backs that contain the Ambac guarantees." The agreement was signed by Richard Gross. Stein advised that when Amtrak hired BWRA the initial thought was that BWRA would prepare a piece of legislation that could be brought to a Congressional committee to help resolve the problem. Sometime after the contract was signed there was a meeting with BWRA. At this meeting BWRA suggested that Amtrak meet with Treasury and convince Treasury to instruct the IRS to compel the lessors to terminate the transactions for the equity in the GIC. Stein stated that he expressed his reservations to this method, believing that if Amtrak threatened the lessors it would establish an unfavorable relationship that would be counter productive.

Stein advised that he discussed his reservations with Campbell and they decided not to take any further steps regarding BWRA's idea. After Stein expressed his reservations to

BWRA, BWRA did not contact Stein, but dealt with either Vabner or Campbell. Campbell advised that he had several meetings with Gross to discuss unwinding the deals. Campbell claimed that Gross kept changing his "story" on how much it would cost Amtrak to unwind the deals. Campbell stated that he became upset with BWRA when they showed him a letter they wanted to send to Treasury. Campbell claimed the letter made "inflammatory assertions" alleging that the deals were illegal. The letter indicated that Amtrak was involved in illegal activity and he became incensed. Campbell had a heated exchange with Gross.

D. Replacement of Guarantors

Meanwhile, in June of 2008, Amtrak sent letters to approximately fifteen banks and companies that were possible replacements for Ambac and AIG. Two companies expressed an interest; Assured Guarantee and a Berkshire Hathaway division, National Indemnity Company. After meeting with Amtrak officials, Assured Guarantee decided against the proposal. Berkshire Hathaway remained interested. Stein stated that he found the rates and fees proposed by Berkshire Hathaway reasonable, so Amtrak and Berkshire Hathaway entered into an agreement whereby Berkshire Hathaway would replace Ambac or AIG in all twelve defeased leases.

On June 20, 2008, Ambac was downgraded to the point where replacement was required for the first three leases with Wachovia. The thirty day period given to Amtrak for replacement of Ambac, was extended by Wachovia several times. Stein advised that when Ambac was downgraded he contacted Mark Trollinger (Trollinger) of Wachovia and obtained an extension of the time given to Amtrak to replace Ambac. Stein stated that when he contacted Trollinger for the extension he asked him about termination. Trollinger indicted twice in one conversation that Wachovia liked the transactions and they were not interested in termination unless it was for the full termination value.[23]

On August 6, 2008, the IRS issued letters to forty five companies involved in SILO and LILO transactions, offering them certain concessions if they terminated the deals before the end of the year. Berkshire Hathaway became concerned about the deals and Ajit Jain (Jain) of Berkshire Hathaway called Stein. Stein stated that Jain was concerned about unfavorable publicity if they agreed to guarantee the leases and wanted to know if Amtrak was going to pursue the matter with the IRS. Stein advised that he tried to calm Jain down and told him Amtrak still planned on replacing Ambac and AIG with Berkshire Hathaway.

E. Meeting with Department of Transportation

Amtrak finance personnel continued to pursue replacement of Ambac and AIG with Berkshire Hathaway claiming that neither Amtrak nor the companies contacted by the

[23] Wachovia was one of the entities that received the IRS August 2008 settlement offer. In October 2008, Wachovia submitted a non-binding acceptance to participate in the IRS settlement program. See Wells Fargo & Co. Annual Report 2008. Wells Fargo acquired Wachovia on December 31, 2008. Berkshire Hathaway owns nearly 10 % of Wells Fargo.

IRS "know if, when, or on what terms they may terminate the transactions." Amtrak's Board became more active in the pursuit of a solution. On August 15, 2008, members of the Board and Amtrak's finance executives met with the Deputy Secretary of Transportation Vice Admiral Thomas Barrett and others to discuss the situation. At that time, Amtrak indicated that the preferred course of action was to replace Ambac with Berkshire Hathaway. During this meeting they discussed the IRS alternative and Amtrak indicated that they needed to determine which of Amtrak's lessors received letters, which of Amtrak's leases were subject to the IRS policy, and how hard the IRS was going to push the lessors to accept less than full market termination value of the leases. Barrett, having been advised by Boardman that Babcock & Brown may have a conflict of interest, asked Stein and Campbell if there was a conflict on the part of any of Amtrak's consultants. Barrett explained that he wanted to be sure Amtrak's advisors were clean, independent and free of conflict. Barrett stated that Stein assured him there was no conflict.

DOT arranged a meeting for Amtrak with Treasury and/or the IRS. Meanwhile over the weekend Stein and Jain continued to execute documents for the replacement of Ambac with a settlement date of August 20, 2008. Amtrak Board member Joe Boardman sent an e-mail to Amtrak executives advising them to stop and reverse any actions to progress the closing of the transactions until there was a full analysis of the IRS position on the transactions. A meeting with the IRS took place the afternoon of August 18, 2008. After the meeting Boardman advised Amtrak executives that the IRS was only interested in the taxpayer and not Amtrak and rescinded his request to "stand down."

F. Amtrak Board's Discovery of Potential Conflict and Response

Around August 18, 2008 Boardman expressed concern to Acheson that Amtrak's financial advisor, Babcock & Brown, i.e. McWalter, had a conflict of interest, in that Babcock & Brown was an advisor to two of the equity investors on the original defeased leases. Boardman told Acheson that Campbell and Stein knew about the conflict and continued using the services of Babcock & Brown. Acheson asked Roberts to do a preliminary inquiry into the matter. Roberts talked to his predecessor, Larry Steffes (Steffes) who recalled seeing McWalter at some of the meetings when the leases were being negotiated. Roberts also talked to Graybeal of Thelen Reid who told him that McWalter was involved. Roberts advised that Graybeal told him that it was not unusual for financial advisors to "be on both side of the deal." Roberts did not talk to McWalter, but did talk to Vabner and possibly Stein. Roberts reported back to Acheson. Acheson reported Roberts's results to Boardman. After discussions with Boardman, Acheson hired WilmerHale to conduct a thorough investigation into the facts and legal issues surrounding a possible conflict of interest.

On August 22, 2008, Amtrak's Board advised Amtrak executive management that they should consider another strategy involving an approach to Treasury at a very high level, using people that understand policy ramifications of the IRS position on taking the SILO deals apart, and who are aware that Amtrak is a federally subsidized company that should not be outlaying funds to assist Wachovia or others in their deal termination

responsibilities. The Board asked for a full briefing on this option before the Berkshire Hathaway replacement agreement was executed. Kummant told Boardman that asking Treasury to be the guarantor of the debt was a last resort concept with a low probability of anyone in the Administration showing interest. The Board, at this point, was dealing directly with Kummant. Campbell became concerned that he was being cut out of discussions and interaction with the Board. Boardman responded to Kummant that the strategy he was talking about did not involve having Treasury be the guarantor. Boardman explained that the strategy involved using former Governor John Sununu to assist in ascertaining the policy issues connected with SILO/LILO deals that would prevent the declaration of default and secure Amtrak debt. Boardman also expressed concern that Amtrak was relying on Babcock & Brown for advice when they may have a conflict of interest since they handled two of the twelve transactions. Kummant responded by telling Amtrak's Chairperson that there was no other strategy or other plan.

Boardman told Kummant that Gross from BWRA would be contacting Wachovia to see if he could negotiate a deal favorable to Amtrak and that others at Amtrak should not talk to Trollinger so Gross could have a clear field to negotiate. Kummant was to tell other Amtrak executives that BWRA was conducting fully authorized conversations with Wachovia on an alternative approach to resolve the Ambac downgrade. On August 27, 2008, Gross provided Wachovia with a proposed settlement.

On August 27, 2008, Eldie Acheson, Amtrak General Counsel, told Kummant and Campbell that if "Trollinger keeps hearing nonsense from Gross" they should forward Trollinger a copy of the Board's resolution of July 24, 2008, authorizing the replacement of Ambac. Campbell, Stein and Acheson each told Trollinger that Gross does not have the authority to act or negotiate on Amtrak's behalf. On August 27, 2008, Kummant told Stein, Campbell and Acheson to "construct a consistent story" on why they were "talking to Trollinger contrary to Boardman's request" in case Boardman found out. Additionally on August 28, 2008, Boardman told Kummant not to send any items for a closing using Berkshire Hathaway prior to August 29 at 2pm. Boardman told Kummant that his staff should temporarily suspend communication with Vedder Price, as contact with Vedder Price would be made by Gross. Kummant responded that there was no legal Board meeting so Boardman's directive had no legal standing. On September 2, 2008, Kummant sent a memo to the members of the Board indicating his position on all of the above matters involving Boardman and Gross and requested a "clear accounting from Mr. Boardman on his resolution track."

G. Engagement of WilmerHale and Ropes & Gray

On September 10, 2008, Amtrak's General Counsel engaged Wilmer Cutler Pickering Hale & Dorr, LLP ("WilmerHale") to "conduct and report . . . on an investigation of alleged conflicts of interest by Babcock & Brown." The scope of the WilmerHale investigation, as described in its engagement letter, included providing an opinion on whether Babcock & Brown "and/or its principal with whom we are working, Keith McWalter, has a 'conflict of interest' in connection with their current advice B&B is providing Amtrak about its defeased lease transactions with Wachovia and eight other

financial institutions." WilmerHale also was tasked (1) to investigate "the claim that B&B and/or McWalter were 'marketing' SILO and LILO deals at or after the time that the IRS determined that they were tax shams" and (2) to "advise as to whether the public record demonstrates any support for the suggestion that Capstar and/or B&B are the subject of a criminal or regulatory investigation for their conduct in the SILO/LILO transactions."

Also in September 2008, Amtrak's Board engaged Ropes & Gray LLP ("Ropes & Gray") to perform a review of WilmerHale's investigation and to independently analyze the conflict of interest issue from a broader perspective. OIG was not provided a copy of the Ropes & Gray engagement letter.

On September 19, 2008, WilmerHale and Ropes & Gray met to discuss the progress of the WilmerHale investigation to date. At that time, WilmerHale gave to Ropes & Gray copies of certain documents and discussed the results of interviews that WilmerHale had conducted with Amtrak and Babcock & Brown employees. Neither WilmerHale nor Amtrak provided to OIG all of the documents, interview reports, and other evidence that was available to Amtrak counsel, WilmerHale and/or Ropes & Gray during their respective "investigations."

H. Amendments to the Leases to Substitute Guarantors and Other Actions

Eight of the deals were resolved by December 31, 2008. Babcock & Brown's engagement letter ended December 31, 2008, so an extension was negotiated for Babcock & Brown to be paid $50,000 per month plus expenses. Since then one deal was resolved by substituting Berkshire Hathaway and three deals were terminated. A total of nine deals were resolved by substituting Berkshire Hathaway for Ambac and AIG and three deals were terminated. The total cost to Amtrak for all twelve deals was $96.9 million. Berkshire Hathaway has since been downgraded one level. This triggered posting of collateral by Berkshire Hathaway. Vabner indicated that if Berkshire Hathaway is downgraded a "few more notches," replacement would again be necessary.

Ambac was the equity guarantor for 10 of the 12 leases, with AIG the guarantor for the 2 remaining leases.[24] As noted above, Amtrak replaced Ambac and AIG on 9 of the leases and terminated the other 3 leases. Amtrak received less than 100% of accreted value from Ambac. With respect to the AIG GICs (Trusts 2000A and 2000B), the company received 136% and 129%, respectively, of accreted value on the MTA (market termination amounts) payouts, which combined was $8.5 million more than accreted value. In contrast to the Ambac resolution, Amtrak received cash in the amount of about $2.29 million. The company terminated three of the SILOs (with Fifth Third ($23 million); Norlease ($31 million); and CIBC ($7.6 million)) for a total purchase cost of $61.6 million. The cost to Amtrak (cash outlay) for the three terminated deals was $27,261,305. The total cash outlay for the 12 leases was $96.1 million, not including legal and other fees. When legal and other transaction fees are added, the total is nearly

[24] See Exhibit 4.

$100 million.[25] Originally, Finance had estimated a cost of $72 million to resolve the SILOs, but that amount transformed to $96.1 million.[26] This was due to three factors. First, interest rates continued to drop during the year, which affected the interest rate on the new GIC with Berkshire Hathaway. Second, in a dispute with Ambac on the interpretation of Market Termination Amount, Amtrak conceded and gave Ambac a $9 million discount. Third, the decision to terminate the last three leases incurred a premium outlay. The company believed that it had to utilize Berkshire Hathaway as a replacement for Ambac and AIG because it did not have sufficient funds to wind down or terminate all the deals.

I. Babcock & Brown's Expenses

A review of documents provided by Babcock & Brown revealed that Amtrak paid Babcock & Brown $14,975 for expenses. Included in the expenses were travel expenses for McWalter as well as payment to outside counsel to represent Babcock & Brown for the WilmerHale inquiry. The travel expenses were for two trips. One trip by McWalter was to New York to look for replacement companies for Ambac and AIG. The other trip was to Washington DC to brief the Board of Directors. McWalter traveled by business class to New York at a cost of $3,206 for the round trip airfare from San Francisco. McWalter's business class trip to Washington, D.C. cost $1,558 for round trip airfare. McWalter stated that it is Babcock & Brown's policy to allow booking of business class for airplane trips over 4 hours. However, since the amount of airfare for the New York trip "far exceeded" McWalter's department's cap on travel, he had to obtain written approval from his "Group Business Head." The amount was approved because the travel was "reimbursable by client." McWalter stayed at the Alex Hotel in New York at $400 per night. In Washington, McWalter stayed at the Hay Adams hotel at a cost of $916 per night. McWalter advised that he would have been entitled to 3 nights lodging at the Hay Adams, but since the hotel was expensive, he only charged two nights to Amtrak. Babcock & Brown also billed Amtrak $91 for a Lincoln Town Car to Dulles Airport. Many of these claimed expenses were not supported by receipts.

A search of E-trax revealed that payment of the invoice in which these travel expenses were included was approved by Dale Stein, Jad Roberts, and Eleanor Acheson. No one questioned these expenses.

To date, Amtrak has paid $6,450 in attorney fees for Babcock & Brown's outside counsel for the WilmerHale investigation and $86,898 for Babcock & Brown's outside counsel to answer a subpoena from OIG for records for this investigation. To date, the cost to Amtrak for indemnification of Babcock & Brown has been $93,348.

[25] See Exhibit 5.

[26] We were informed that Amtrak placed $20 million in collateral with Wachovia to secure a forbearance/extension from the bank. We were further informed, however, that other SILO/LILO lessees of Wachovia did not have to place such collateral with them in order to receive extensions, and thus we are not sure of the basis for such distinguishable treatment or why Amtrak agreed to such terms.

V. KEY INTERVIEWS

Following is a summary of the interview for each of the individuals most knowledgeable about the defeased leases:[27]

William Campbell:

Campbell in his interview advised that he has a bachelor's degree in Marine and Electrical Engineering from the Massachusetts Maritime Academy. He has a degree in Resources Management from the National Defense University Industrial College of the Armed Forces. He has a Masters Degree in Technical Management. He has had one accounting course. His first job was with the Coast Guard in procurement management. He later became the CFO of the Coast Guard. He left the Coast Guard and became the Assistant CFO of the US Department of Veterans Affairs. Campbell told OIG that he did not understand the defeased lease situation. Campbell advised that he did not know how the defeased leases were treated on Amtrak's financial statements, did not understand the loop debt, and did not know what the rolling stock was valued at. Campbell stated that he sat in on conference calls with McWalter, but the calls were detailed and Campbell did not understand what they were talking about. Campbell explained that one of the outside consultants provided a drawing on how the leases worked. Campbell did not understand it and asked Stein to draw a simpler version for him.

Campbell stated that Amtrak hired Vedder Price, Babcock & Brown, and BWRA to advise them on the defeased lease matter. Campbell had no input in the hiring of Vedder Price. That was done by Stein and the Law Department. Campbell claimed that Stein looked at several financial consulting companies and narrowed it down to Babcock & Brown. Campbell advised that Acheson told him that since Procurement services was under his jurisdiction he could not contract with Babcock & Brown. Campbell stated he was not involved in the "how it was done, what was done or who did it" in regards to the hiring of Babcock & Brown.

Campbell told investigators that Gross of BWRA alluded to the fact that Babcock & Brown was involved in a conflict of interest with Textron and that Babcock & Brown had tried to sell the original defeased lease deals. Campbell claimed that Gross never gave him specific information, and he did not know if the deals Gross referred to were even Amtrak deals. Campbell advised that sometime later he was told, possibly by Stein, that there may be a conflict of interest in regards to Babcock & Brown. Campbell claimed that Stein told him Babcock & Brown had "crunched numbers" on a few deals, but again Campbell did not know if they were "Amtrak's deals or someone else's." Campbell stated that he was barred from participating in the hiring of Babcock & Brown so he did nothing about the possible conflict as he felt it was General Counsel's job or Vedder Price's job to vet Babcock & Brown for conflicts.

[27] See Exhibit 6 for a list of all individuals interviewed.

Campbell told investigators that Gross wrote a letter to Treasury that he (Campbell) took offense to. Campbell explained that the letter insinuated that the SILO deals were illegal and that Amtrak had participated in "illegal deals." Campbell advised that Gross eventually made a presentation to the Board. During this meeting Gross corrected Campbell in front of everyone which upset Campbell. Campbell told investigators that he was present during a conference call between Kummant, Acheson and Trollinger of Wachovia, wherein they discussed Gross. Campbell explained that Kummant was "vociferous" on the issue of Gross. Campbell recalled that either Kummant or Acheson told Trollinger that Gross did not represent Amtrak, but represented the Board. They explained to Trollinger that Gross did not have the authority to commit Amtrak to a deal.

Campbell advised that he was at a meeting with DOT Deputy Secretary Vice Admiral Tom Barrett (Barrett). Campbell did not recall Barrett asking if there were any conflicts with any of Amtrak's advisors.

Campbell stated that he thought Berkshire Hathaway would walk away from the deal if they caught Amtrak "double dealing," i.e. trying to unwind the deals rather than replacing Ambac and AIG. Campbell advised that the finance department had explored all options and determined that replacement of Ambac and AIG with Berkshire Hathaway was Amtrak's best option.

Dale Stein:

Stein, in his interview, advised that only one name came to mind when he started thinking of financial advisors, and that was Keith McWalter of Babcock & Brown. Stein wanted to use Babcock & Brown to either participate or lead in negotiations with the lessors. Stein stated that he contacted McWalter who told him that they no longer provided financial advisory services, but he would talk to the partners to see if they would agree to the engagement. McWalter called Stein back and said that they would agree to provide financial advice for $500,000, and told Stein at that time that they had no conflicts. Stein and McWalter agreed on an engagement letter which Stein sent to the Law Department. Stein claimed he had no responsibility for the engagement of Babcock & Brown once he sent it to the Law Department.

Stein advised that in May of 2008, it came to his attention that Babcock & Brown may have been involved in two of the original deals. Stein stated that he knew this could be a conflict of interest and was a serious issue. McWalter told Stein that Babcock & Brown did some "quantitative analysis" for the two banks. McWalter further told Stein that he had contacted both banks, and that the banks agreed Babcock & Brown could work for Amtrak. Stein advised that McWalter offered to put this in writing but Stein declined as he did not think this was a problem. Stein further advised that McWalter didn't know if the banks even used the information Babcock & Brown provided. Stein explained that he did not see this as a conflict as he did not think this "would cause them to bias their advice to us in any detrimental way." Stein stated that he told Campbell what he found out. Stein advised that he did not contact the Law Department for advice.

Stein stated that BWRA wanted Amtrak to meet with Treasury to convince Treasury to instruct the IRS to compel the lessors to terminate the transactions for the equity in the GIC. Stein advised that he did not like this method as he felt that it would establish an unfavorable relationship with the lessors that he felt would be counter productive. Stein stated that he and Campbell talked about it and decided not to take any further steps regarding that option. Stein advised that when the Board decided to explore that option he did not have a problem with it. Stein described himself as a "financial technician" and the decision makers in the company had taken over.

Stein stated that initially he sent letters to all the lessors and personally contacted each lessor with Vabner or McWalter. Stein advised that he asked each lessor about unwinding the deals and each indicated they were not interested. Stein advised that when he talked to Trollinger at Wachovia he asked Trollinger if Wachovia would be interested in terminating the deals. Stein explained that Trollinger told him twice in one conversation that Wachovia liked the deals and would not terminate them for anything other than full termination value.

Stein stated that he dealt with, and negotiated with, Ajit Jain of Berkshire Hathaway to replace Ambac and AIG. Stein advised that when the IRS issued their opinion letter in August of 2008, he got a phone call from Jain who was upset. Stein explained that Jain was concerned that he was exposing Berkshire Hathaway to unfavorable publicity. Stein stated that he told Jain he would be seen as a hero coming to the aid of Amtrak and calmed him down.

Stein advised that he did not reach out to other transit agencies to see what they were doing with their defeased leases. Stein explained that both Moody's and Jain indicated that no one else was interested in seeking solutions. Stein stated that his obligation was to Amtrak so he did not contact other transit agencies

Reuben Vabner:

During his interview, Vabner stated that soon after he began work at Amtrak in July 2007 he started to analyze the defeased leases and contacted many of the lessor banks. This was prior to any indication that Ambac or AIG was in danger of being downgraded. At that time, he explored the possibility of early termination with some lessors, even though the agreements contained no provision for early termination. He discussed the possibilities with Stein. In October or November of 2007, published reports warned that Ambac and AIG were in trouble. Vabner knew that Amtrak's defeased lease agreements would require replacement of Ambac and AIG in the event that their ratings were downgraded. At that point, Vabner alerted Stein of the situation. Stein instructed Vabner to engage Thelen Reid to review the lease agreements. Thelen drafted a report explaining the terms and conditions of the complex agreements and the possible effects of Ambac or AIG's downgrading.

Vabner had various discussions with others in Amtrak's Finance and Law Departments, the law firms representing Amtrak, and Mc Walter about the strategies of resolving the

financial meltdown of the lease guarantors. He stated that the debt associated with these deals was about $900 million. He also prepared the company's analysis of why the amount to resolve these leases increased from $72 million to nearly $100 million. Vabner stated that Stein wanted to hire Babcock & Brown as financial advisors.

Vabner thought that once the IRS issued the SILO opinion letter, Amtrak should have gone to Treasury the next day. Vabner advised that Amtrak did not go through the process of elimination for all solutions in a timely manner so he could not say if replacement was the best option for Amtrak.

Vabner advised that all twelve leases have been resolved. Nine of the leases substituted Berkshire Hathaway for Ambac and AIG. Three deals were unwound and terminated. Cost of resolving all twelve leases was $96.9 million. With legal fees, the cost to Amtrak was nearly $100 million.

Jared Roberts:

Roberts stated that he sent the engagement letter for Babcock & Brown to Nancy Sowa to finalize the contract using the standard Amtrak procurement method. Babcock & Brown had problems with the flow down provisions so Amtrak hired Babcock & Brown through Vedder Price. Roberts could not recall whose idea it was to hire Babcock & Brown through Vedder Price. Roberts explained that when Vedder Price refused to indemnify Babcock & Brown, he, Acheson and Herrmann agreed to do a separate indemnification agreement between Babcock & Brown and Amtrak. Roberts advised that this was unusual and he had never seen this done before. Roberts explained that he didn't see it as a problem, since the Board had already approved the hiring of Babcock & Brown and indemnification would have been a part of any contract if they had been hired directly by Amtrak.

Roberts stated that Acheson tasked him with looking into a conflict of interest on Babcock & Brown's part when she learned they had represented two of the original lessors. Roberts advised that he talked to former Law Department Associate Counsel Larry Steffes, David Graybeal of Thelen Reid, Vabner and possibly Stein. Roberts did not talk to McWalter. Roberts reported his findings to Acheson.

Eldie Acheson:

Acheson advised that Campbell obtained approval from the Board to hire Babcock & Brown. Acheson stated that she thought that the contract should go through Amtrak's normal procurement channels. When Babcock & Brown protested some of the flow-down contract provisions, she approached Vedder Price to see if they would consider hiring Babcock & Brown as a subcontractor. Vedder Price agreed. Acheson obtained approval from the Board to hire Babcock & Brown through Vedder Price.

Acheson advised that she attended a meeting with the IRS on August 18, 2008. At this meeting it was clear that that the IRS would not assist Amtrak in unwinding the deals by

putting some leverage on the banks. Later another "stand down" was issued by Boardman. Acheson stated that Rick Gross "got to" Boardman, and Boardman told Amtrak management to "stand down." Acheson advised that, in response to a request from Kummant, she told Boardman that Amtrak's bylaws prohibited Boardman from acting for the entire Board.

Acheson stated that on August 18, 2008, Boardman called Acheson at home and expressed concern about a possible conflict of interest on the part of Babcock & Brown. Acheson explained that she asked Roberts to contact those at Amtrak who were involved in the defeased leases to determine if Babcock & Brown was involved when the leases were obtained. Roberts learned that Babcock & Brown had been involved in "number crunching" on two deals. Acheson advised that she told Boardman what Roberts had found and that in her opinion there was no conflict for Amtrak. Boardman wanted the issue investigated further so she hired WilmerHale to conduct an investigation to determine if there was a conflict of interest.

David Graybeal:

Graybeal, formerly of Thelen Reid, advised that McWalter of Babcock & Brown represented a few of the equities in the original defeased lease deals. Graybeal stated that Babcock & Brown prepared investor tax profiles that provided target yield within tax constraints. Babcock & Brown's job was to get the best deal for their client, the equity. Graybeal advised that Babcock & Brown assisted the equities in the preparation of their bid and was present and vocal at negotiations. Graybeal explained that McWalter's job was not so much as an advocate for one side, but was to accommodate everyone's wishes to make the deal happen.

Graybeal advised that he thought Babcock & Brown would have a conflict representing Amtrak as they would not provide zealous representation or would be less aggressive if they wanted to continue to represent the equities in the future. Graybeal explained that Babcock & Brown's business was to "make deals happen." In order to do that Babcock & Brown needed to maintain a good relationship with the equities. Babcock & Brown would not want to do something extremely aggressive against the equities as they would be looking to do business with the equity down the road. Graybeal did not think Babcock & Brown would "pound the table" on Amtrak's behalf since they needed to maintain a good long term relationship with the banks.

Gary Lipman:

Lipman of Sumitomo advised that they hired Babcock & Brown to represent them on the original defeased leases in 2000. Lipman explained that Babcock & Brown represented Sumitomo and ICX and were present at a large meeting with the equities, financial advisors, and lawyers for the final negotiations. Lipman stated that Babcock & Brown helped them put their proposal together and set up pricing files. Sumitomo used Babcock & Brown on a few other transactions that did not involve Amtrak. Lipman advised that Sumitomo's relationship with Babcock & Brown ended in 2007.

Rick Gross:

Gross of BWRA stated that his opinion was that Amtrak's defeased leases were fraudulent tax shelters but that BWRA had a "healthy solution." BWRA suggested Amtrak go to the equities and try to unwind the deals for a relatively small amount of money due to their illegal nature. Gross explained that the deals were illegal and the equities should be approached under that premise.

Gross advised that Babcock & Brown was involved with the original deals and may be under investigation. Gross stated that a review of Amtrak's documents revealed that Babcock & Brown did more than just "run numbers." Gross explained that Babcock & Brown had a conflict representing Amtrak, as Babcock & Brown had a "vested interest' in that the equity could sue them for breach of duty since the deals turned out to be tax frauds.

Vice Admiral Thomas Barrett:

Vice Admiral Barrett advised that Boardman, who was the Administrator of the FRA at the time, told him that he had learned that one of Amtrak's financial consultants on the defeased leases may have a conflict of interest in that they were involved in the deals when they were originally set up. Barrett stated that Boardman was concerned about conflicting advice Amtrak was getting. Barrett hosted a meeting with Amtrak officials on August 15, 2008. Based on Boardman's concerns, Stein was asked if there was a conflict of interest on the part of any of Amtrak's advisors. Barrett recalled using the words "clean, independent, and conflict of interest" when making the inquiry. Barrett stated that Stein assured him there was no conflict with any of Amtrak's advisors. Barrett advised that he viewed any conflict of interest as an Amtrak issue. Barrett was more concerned that Amtrak's CEO was not taking a more active role in resolving the defeased lease problem.

Keith McWalter

McWalter advised that after Babcock & Brown lost the contract to Capstar to be Amtrak's financial advisor on the defeased leases in 1999-2000, Sue Sparks ("Sparks") of Babcock & Brown tried to market the deals to various equities. When Sumitomo and ICX agreed to have Babcock & Brown represent them, Sparks, the team leader, asked him to be part of the team. McWalter stated that his function was to review the term sheets to advise Sumitomo and ICX which terms were standard and which were negotiable. McWalter explained that his job was to make a "frilly package" for the equities to present to Amtrak and to make sure that the numbers presented were accurately described in the contract wording. McWalter advised that Babcock & Brown had proprietary software that would run the numbers to optimize the deal. McWalter estimated that adding up all the time he spent working for Sumitomo and ICX, he worked a total of two days on the deals.

McWalter stated that when Stein contacted him in 2008, to assist Amtrak in resolving the problem with Ambac and AIG, he was reluctant as Babcock & Brown no longer did that type of financial advisory work anymore. McWalter agreed to assist Amtrak because of their long standing relationship. McWalter explained that he did not want the burden of determining if Babcock & Brown was in compliance with the list of representations and warranties needed in a standard Amtrak vendor contract. McWalter advised that when Amtrak offered to hire Babcock & Brown through Vedder Price and Amtrak agreed to provide separate indemnification, he agreed to the contract.

McWalter stated that he did not recall working for Sumitomo and ICX when Stein originally contacted him. When it was brought to his attention, he did some checking and found that Babcock & Brown did represent them. McWalter explained that he did not have a good recollection of his work with Sumitomo and ICX. McWalter advised that he contacted Gary Lipman at Sumitomo and Jean Godier at ICX and told them he would be representing Amtrak to assist in restructuring the leases if Ambac and AIG were downgraded. McWalter stated that both banks were glad that McWalter was involved, as Amtrak would get good advice and assistance. McWalter did not view this as a conflict of interest problem. McWalter explained that he saw this not as working on the same deal, but as two separate transactions that involved the same set of documents. McWalter advised that he has worked for an equity to handle one problem, and for the lessee to handle a separate problem, on the same leveraged lease. McWalter sees each problem that arises as a separate transaction.

McWalter stated that Stein contacted all the equities to see about terminating the deals. McWalter did not take part in these discussions. McWalter advised that the termination value was set out in the original agreement and no equity would agree to take less than full termination value and suffer a book loss.

McWalter stated that he was not aware that Amtrak hired BWRA until later when Amtrak's Board got more involved in the leases. McWalter advised that when he reviewed BWRA's proposed solution, he saw this "option as fantasy." McWalter stated that he and Stein kept the real resolutions at hand.

VI. ANALYSIS AND CONCLUSIONS

Based upon OIG's analysis of the aforementioned facts, some of the answers to the issues posed in the beginning of this report are clear while others are equivocal. In this section we analyze the factual findings in concert with applicable legal, ethical or policy standards.

A. Did a potential conflict of interest exist with respect to Babcock & Brown's advising Amtrak in 2008 in connection with the replacement of guarantors for SILO leases, when Babcock had previously represented two lessors, and had other financial dealings with a third lessor, on the same transactions with Amtrak?

The question of whether a "conflict of interest" existed or exists may be a miscasting of the issue. This is because the term "conflict of interest" generally is interpreted as pertaining to lawyers in connection with complying with appropriate rules of professional responsibility, and additionally is subject to differing interpretations outside of the legal context. The more relevant question is whether Amtrak's relationship with Babcock and Brown exposed it to unnecessary business and financial risks in connection with its provision of advice relating to the defeased leases.

Amtrak's engagement of Babcock exposed the company to greater and unnecessary financial risks. Amtrak was entitled to unfettered financial or lease advice in resolving the defeased leases. Babcock had relationships with three of the lenders - Sumitomo and ICX, as well as Wachovia. Its relationship with Sumitomo and ICX was based upon a business service relationship wherein it provided financial advice, whereas its relationship with Wachovia was that of a borrower, having secured significant financial loans from the bank. These factors certainly could have affected whether Babcock exhibited undivided loyalty in its advice to Amtrak in dealing with any of these entities. It was not "Chinese-walled" from dealing with them or advising the company how to deal with them. Merely reviewing documents submitted by Babcock & Brown to date has not established that Babcock & Brown did not act in Amtrak's interests.

This finding is tempered or qualified by several factors: (a) the lack of sworn testimony by deposition or otherwise; (b) the paucity of documents from Babcock concerning the forming of their relationship with the banks and the absence of any documents related to the termination of those relationships; and (c) the significant inconsistencies in McWalter's recounting of what occurred.

Although Babcock had familiarity with Amtrak, because it had worked on other leasing or finance matters with Amtrak, there were other non-conflicted entities which were available to perform the work on these matters and would not have exposed the company to such risks.

Although the OIG does not have any documents related to Babcock's ethics or business conduct policies, one of its subsidiaries,' Babcock & Brown Air Limited's, "Code of Business Conduct and Ethics" is available online.[28] This Code states:

> All employees, officers, and directors are expected at all times to...pursue the ethical handling of actual or apparent conflicts of interest when conflicts or appearance of conflicts are unavoidable, including through full disclosure of any transaction or relationship that reasonably could be expected to give rise to a conflict.

As noted above, analyzing the Babcock relationship against the ethical rules which pertain to the attorney-client relationships is not the most appropriate standard.

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[28] Code of Business Conduct and Ethics, Babcock & Brown Air Limited, http://www.babcockbrownair.com/layouts/54/uploads/Code_of_Business_Conduct_and_Ethics.pdf (Adopted: November 11, 2008).

Nevertheless, by analogy, certain similar considerations should apply. Due to the fiduciary nature of the financial advisor-client relationship, a similar level of trust is essential because of the potential financial harm which can result if a financial advisor does not act in the client's best interests.

Under the Rules of Professional Conduct, a lawyer may not simultaneously represent two clients whose interests actually or potentially conflict without each client's informed written consent. Rule 3-310(C) provides:

> A member shall not, without the informed written consent of each client:
>
> (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
> (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
> (3) Represent a client in a matter and at the same time in a separate matter accept as a client or a person or entity whose interest in the first matter is adverse to the client in the first matter.

The most fundamental aspect of the attorney-client relationship is the duty of undivided loyalty owed by a lawyer to his client, and ultimately all of the ethical rules are derived from this fundamental principle. See, *United States v. Nicholas*, 606 F.Supp.2d 1109, 1117 (C.D. Cal. 2009). The duty of loyalty requires a lawyer "to protect his client in every possible way, and it is a violation of that duty for him to assume a position adverse or antagonistic to his client." *Id.* (quoting *Anderson v. Eaton*, 211 Cal. 113, 116 (Cal. 1930)). Therefore, just like an attorney in a dual representation case, a financial representative cannot have undivided loyalty to either of his clients if he is the representative for clients on both sides of solving and negotiating lease terms in a transaction.

B. Was Amtrak at risk of not receiving the full benefit of Babcock & Brown's expertise and advice due to Babcock & Brown's representation of equity investors in connection with either (1) the same transactions on which Babcock & Brown was now advising Amtrak or (2) any other matters not involving Amtrak but for which Babcock & Brown's concern over its ongoing business relationship with the equity investors would otherwise taint the advice Babcock & Brown gave to Amtrak?

From all evidence available to OIG, it appears obvious that Babcock & Brown, and Keith McWalter in particular, could not have been completely independent or impartial with regard to advising Amtrak in 2008 regarding the very same transactions on which Babcock & Brown had represented Sumitomo and ICX in 1999-2000. On this question, OIG adopts the rationale and legal analysis set forth in the Ropes & Gray report, which is well-documented. Babcock & Brown produced no documentation or evidence that either ICX or Sumitomo ever ceased to be its client; although Sumitomo claimed that it ended their relationship in 2007. OIG reached this conclusion without regard to whether

Babcock & Brown's lack of complete objectivity rose to the level of a "conflict of interest" in a strict legal sense; rather, OIG concludes that Amtrak most likely did not obtain the full benefit of the expert advice for which it hired McWalter and Babcock & Brown. Likewise, OIG believes that Babcock & Brown could not have provided independent or impartial advice to Amtrak regarding its SILO arrangements with Wachovia during the same time frame that Wachovia was threatening to take actions that would result in substantial losses to, and potential bankruptcy of, Babcock & Brown.

Amtrak has paid Babcock & Brown more than $750,000 for their financial advice and expenses. In conducting this investigation, OIG did not incur the expense of contracting with any other financial advisor to evaluate what was done; and due to the complexity of the leases, the difficulty is in determining what would have worked at a given point in time had other solutions been pursued. Nevertheless, it is clear enough that Amtrak management did not timely review all possible solutions, and in some cases tried to obstruct the exploration of anything other than replacement.

For example, some of those knowledgeable about McWalter's advice stated that he advised against directly approaching lessors to ask for a close-out of any of the defeased leases at a discount to termination value. McWalter instead advised that it would be better, and show strength, if Amtrak waited for the banks to come to Amtrak with a request for an early termination, which apparently did not occur.

Consequently, the OIG has concerns whether Babcock & Brown provided advice or services to Amtrak which were worth $750,000. OIG's interviews and review of records reveal strong support for engaging and maintaining their services coming only from Dale Stein.

C. Did any Amtrak managers or advisors mislead Amtrak's Board of Directors or Department of Transportation officials in informing them concerning the defeased leases or potential conflict?

Funding for Amtrak for operating and capital expenditures is requested annually by Amtrak Administration through the Department of Transportation (DOT) budget request, and directly by Amtrak through its Federal Grant and Legislative Request to Congress. Since FY2003, Amtrak's appropriations require DOT approval of Amtrak's allocation of Federal funding. The Federal Railroad Administration (FRA) provides analytical support to the DOT Secretary as a member of Amtrak's Board of Directors. FRA is also responsible for administering Federal grants to Amtrak, giving the FRA increased oversight of Amtrak spending.

BWRA, a financial consultant hired by Amtrak, was of the opinion that Amtrak's defeased lease deals were abusive tax shelters. BWRA suggested that Amtrak meet with Treasury and ask Treasury to instruct the IRS to compel the lessors to terminate the transactions for the equity in the GIC. Stein stated that he expressed his reservations to this method, believing that if Amtrak threatened the equities it would establish an unfavorable relationship with them that would be counter productive. Stein advised that

he discussed his reservations with Campbell and they decided not to take any further steps regarding BWRA's idea.

On August 8, 2008, Campbell informed the Board, based on Stein's recommendation that their first priority was to replace the three Wachovia transactions with Berkshire Hathaway. The second priority was to replace AIG in two other transactions. Campbell further advised that they would pursue discussions with Wachovia, Berkshire Hathaway and the Treasury and would keep the Board informed. BWRA's proposed solution was not mentioned.

Joe Boardman and other Board members became aware of the alternative solution proposed by BWRA. Boardman, who was also the FRA Administrator for DOT, set up a meeting with Vice Admiral Thomas Barrett, Deputy Secretary of Transportation for August 15, 2008 to discuss the situation and to ask DOT to help with Treasury. Attending the meeting from Amtrak were Donna McLean (then-chairperson of Amtrak's Board of Directors), Campbell, Stein, and Boardman. At that time, Amtrak told DOT that the preferred course of action was to replace Ambac and AIG with Berkshire Hathaway. During this meeting they discussed the IRS alternative. Amtrak asked Barrett to approach the Treasury Department on Amtrak's behalf, to seek their assistance in resolving the leases that were caused by Ambac and AIG's financial difficulty.

Barrett told OIG agents that prior to the meeting Boardman had advised him that someone at Amtrak told Boardman that Amtrak's financial consultants may have a conflict of interest. Boardman's contacts indicated that the financial consultant may have been involved when these deals were set up. Barrett explained that Boardman strongly questioned the advice Amtrak received from this consultant. During the meeting with Amtrak, either Barrett or Boardman asked Amtrak if there was any conflict of interest on the part of any of their consultants. Barrett stated that he wanted to make sure that Amtrak was getting clean independent advice and recalled making remarks about the conflict. Barrett recalled specifically using the words "clean," "independent" and "conflict of interest" when he asked Amtrak about their consultants. Barrett advised that Stein assured them that there was no problem, there was no conflict, and no one was benefiting from this deal.

Barrett stated that he saw the conflict of interest matter as an "Amtrak issue" or an internal matter to be resolved. Barrett explained that DOT could not assess the quality of advice Amtrak received, nor could they get involved in conflict of interest determinations.

Although Barrett admits that he saw the conflict of interest as an "Amtrak problem" and not DOT's, it is clearly not in the best interests of Amtrak to have its executive management be less than candid with high ranking DOT officials that have oversight of Amtrak's funding and spending. DOT expects, and should receive, honest forthright information from Amtrak's management officials. Anything less than complete candor is unacceptable.

D. Did Amtrak managers take prudent, proper and appropriate action in Amtrak's best business and financial interests in their decisions concerning resolving the issues related to the defeased leases; (including any potential conflicts)?

This section analyzes whether Amtrak management took timely, prudent, proper and appropriate action to resolve the issues related to the defeased leases, and whether they acted in Amtrak's best financial interests in their decisions. All twelve leases have been resolved at a cost to Amtrak of $96.9 million plus legal fees.

1. Analyzing All Options

Amtrak management should be commended for realizing the potential problem and for meeting the issues head on. Once they recognized that Ambac and AIG might be downgraded, Thelen Reid was asked to prepare a summary of the leases along with a list of "action items" in preparation for the possible downgrade. Thelen recommended that Amtrak contact the defeasance parties to see what they intended to do in order to maintain the required credit ratings. Thelen also suggested Amtrak preemptively negotiate a waiver, relaxation, or secure a credit enhancement suitable to the equity investors. Thelen also suggested contacting replacement companies if available; confirm the mechanism for unwinding the arrangements, and develop a litigation position in the event that compliance is not economically practical.

Amtrak then contracted with a legal advisor and two financial advisors. Based upon review of documents and interviews conducted, it appears that Amtrak's first step was to contact possible replacement parties to determine if there one was available. Once it was determined that a replacement party was available, all other recommendations appear to have been abandoned. Vedder Price in interviews said that once a replacement was found they could not argue in litigation that a replacement was not possible. Dale Stein advised that when BWRA offered their solution, he thought that taking a hard line with the banks would be counter productive as they needed their cooperation to keep Amtrak out of default. There were nine different equities involved. All of them had to agree to unwind the deals. One hold out could place Amtrak in default, thereby causing cross defaults. Therefore Stein did not explore BWRA's solution, and dismissed it early on.

It was not until the Board got involved that Amtrak looked at BWRA's recommended solution. This was after the IRS issued their settlement initiatives. This solution was not explored in a timely manner so it is not known if this solution would have been a viable alternative. It now appears that some transit agencies have unwound their SILO deals at minimal cost based on this initiative. Amtrak, however, did not seriously consider it.

Due to the complex nature of these deals it is clear that many in management did not understand the intricacies of the deals. Campbell readily admitted he did not understand the deals and relied on Stein for advice. Everyone interviewed stated that Reuben Vabner had the best understanding of the deals. Vabner explained many of the nuances to Stein; however it was Campbell, who knew the least, who made the presentations to the Board.

Therefore it appears that the Board was presented only with what Stein thought was the best solution and not all possibilities. Stein and others felt there was a sense of urgency to the Berkshire Hathaway replacement to keep them from backing out of the agreement. This urgency may have been self imposed. It was not until the Board got more involved that other options were explored. Despite advice to do so, Amtrak management did not timely act on several fronts such as seeking information from WMATA, working with APTA, or becoming more involved in efforts to effect legislation.

Aside from the issues of conflict of interest, accurately reporting to the Board and DOT, and timely review of all options, the question remains whether Amtrak has exercised prudent legal and business decisions regarding the defeased leases. This does not admit to easy or facile answers and the OIG believes the information discussed below will assist the Board in its determination and judgment. To assess Amtrak's decisions, the OIG discussed the issues with a few persons knowledgeable about defeased leases, contacted other transit entities holding defeased leases and obtained relevant published reports, articles and publications concerning how others had approached or are resolving these issues. Not surprisingly, there was no common or consistent response by the transit entities.

2. Other Transit Entities

There are basically seven strategies or solutions, not all dissimilar or disconnected, which other transit entities have employed in resolving SILO issues: (1) ignore the downgrading of the insurer and risk default claims or termination by the lenders; (2) replace the insurer with another surety company, which entity meets the requisite credit ratings set forth under the agreement; (3) pledge additional collateral for repayment of the loan, which usually must be cash, U.S. Treasuries or certain federal agency securities; (4) file litigation or court action against the lender, asserting causes of action such as fraud, breach of contract, breach of covenant of fair dealing, commercial impossibility, and requesting injunctive and declaratory judgment relief; (5) seek legislative or regulatory relief; (6) delay resolution by having the lender agree to hold off on default or agree to a cooling period in order to obtain a replacement surety; and (7) unwind the leases by paying termination value or something less that that.

Most transits appear to have been placed in a financial predicament similar to Amtrak's due to a downgrade by Standard and Poor's or Moody's of a guarantor or surety, such as Ambac or AIG.[29] The predominant strategy used by transit agencies appears to have been to employ categories (2) and (3) (replacement and additional collateral), with some unwinding, and only a few instances of litigation. Some lessees have been more aggressive and diverse than has Amtrak, pursuing unwinding some of the leases while simultaneously pursuing legislative and regulatory options, and also being prepared to file litigation, if necessary. Others have primarily utilized replacement as the preferred option, but even then had extreme difficulty finding replacements, given the financial

[29] Critically, it should be noted that Amtrak OIG did not analyze the lease documents themselves to determine whether other transits' lease terms were consistent or similar to Amtrak's.

turmoil which resulted in a recession and a freeze on credit. Two lawsuits of which the OIG is aware were filed after either receipt of a default letter (WMATA) or a strong threat of a default letter (CTA - receipt of replacement letter).[30]

The Wall Street Journal reported that: Metro has unwound agreements with Bank of New York-Mellon, SunTrust Bank, Belgium's KBC Bank, Regents Bank and Norlease Inc. In the process Metro reaped more than $100 million from the deals, which it used for capital investments. See, Vaughn, Metro Delayed Upgrades Because of Tax Shelter, Wall St. J. (Jun 25, 2009), http://online.wsj.com/article/SB124595679614655491.html .

Many transit agencies reported that they have sought legislative or regulatory assistance from government leaders, including submitting letters, meeting with congressional staff and providing testimony before congressional committees. There have also been various efforts by transit trade associations to assist transit agencies in obtaining legislation or regulatory action to reasonably unwind these deals, e.g., American Public Transportation Association (APTA). For instance, APTA advocated for the agencies by sending letters; holding press conferences; collaborating with industry coalition partners; and meeting with members of Congress.[31]

Along the legislative front, proposed legislation aimed at having the government act as a guarantor of the loans, but those efforts were not successful and the legislation did not pass in the Senate.[32] As a result of recent events related to the crash on WMATA's subway system and safety concerns of certain rolling stock (which presumably could not have been replaced because of the defeased leases), Senator Robert Menendez of New Jersey has proposed legislation (Close the SILO/LILO Loophole Act, S. 1341) which would impose a 100 percent excise tax on windfall profits received by banks.[33]

In a June 2009 letter to William W. Millar, President of the American Public Transportation Association (APTA), Senator Grassley requested a list of all transit agencies that have participated in SILO-LILO transactions, the lenders in those transactions, the payments which transit agencies have made, and continue to make, to the banks, and a list of safety and reliability projects identified by these agencies that have not been funded.

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[30] Both WMATA and CTA retained the law firm of Thompson Coburn to represent them in their lawsuits. The CTA action recently was dismissed voluntarily, while the parties have sought to settle the case without a denial letter from the bank.

[31] See. E.g., letter dated October 22, 2008 from William Miller, President of APTA, to Mary E. Peters, DOT Secretary (Exhibit 1).

[32] See HR 7321, Auto Industry Financing and Restructuring Act, 110th Cong., 2d Sess., Section 18. Referred to Senate on December 11, 2008.

[33] See Exhibit 2.

Recently, Moody's Investors Service reviewed how transit agencies had handled the downgrading of the credit guarantors, such as AMBAC and AIG.[34] It found that 17 of the 25 agencies studied were not directly affected because none of their agreements were out of compliance under the rating requirements or because the potential net termination payments were modest or reasonable. The remaining eight had greater potential termination amounts and in some cases had not unwound or restructured any of their agreements.[35] The report found: "Importantly, all contacted transit issuers have reported that no investors are presently demanding termination payments. . . Instead, investors typically have offered extensions either verbally or more formally, negotiated resolutions with minimal termination payments, or have not aggressively pursued payments". This was in part due to the federal court decisions related to the IRS. It also noted CTA's and MARTA's efforts to resolve their SILO transactions.

OIG's analysis confirms Moody's report, but with some enhanced detail. We contacted several transit agencies in an effort to obtain information regarding how other transits have resolved their SILO/LILO agreements. In addition, OIG obtained information from other medium, including public sources, regarding these transit entities efforts at resolving these issues. The following summarizes the information obtained regarding the above-referenced transit agencies.

1. One transit agency stated that it had four LILO agreements worth approximately $68 million. Each LILO was with a different equity investor. The agency representative further stated that his agency was working out one of the agreements with the cooperation of the equity investor. According to the representative, the parties were negotiating the early termination language and he anticipated a mutually agreeable resolution in the near future. The representative also stated that, with regard to a second agreement, the parties had mutually agreed to continue the LILO without substantive change. Finally, regarding the two remaining LILOs, the representative stated that the equity investors have not contacted the transit agency and the agreements were, "off the radar screen," for the moment.

2. One transit agency stated that it had approximately 19 agreements, primarily SILOs, involving rail cars (also known as rolling stock) and other SILO agreements involving other transit agency assets. The equity investors were local, national and international companies. This entity had not done anything with regard to the agreements involving the rail cars (approximately $1 billion), which made up 1/3 of the total SILO agreements. Regarding the remaining 2/3 of the SILOs, the representative from this transit agency indicated that they had collapsed one deal with an equity investor. Specifically, the agency had terminated the deal and had paid the equity investor less than $1 million to end

[34] See Lynn Hume, *Transit Issuers in Lease-Backed Deals Lower Exposure: Moody's,* Bond Buyer Vol. 367, Iss. 33080 (March 9, 2009), 2009 WLNR 4361447.

[35] Hume at 1.

the agreement. Another deal was resolved when the transit agency replaced the insurer (AIG) for other guarantees suitable to the equity investor. This transit agency is continuing to negotiate with other equity investors and is using a financial advisor to assist with the on-going negotiations. It has considered possible litigation, but has not had to resort to that step yet. Finally, the transit agency is hoping that there will be some Congressional action (there is a bill pending in the Senate that imposes a 100% excise tax on equity investors' profits from the SILO/LILO agreements) as a negotiating tool.

3. Another transit agency is in the process of terminating many of its SILO agreements. This entity was buying its way out of the agreements after the collapse of the insurer (AIG). According to its representative, some of the terminations resulted in the transit agency paying the equity investor. He indicated that, in some of the deals, there was sufficient collateral remaining that reasonably reduced the out-of-pocket costs to the transit agency. Other deals had stipulated loss of value so that the transit agency knew what its costs were to collapse the deal. Other equity investors were seeking secure collateral in place of the insurer. The transit agency was still working on these agreements to come up with sufficient collateral to satisfy the equity investor. Finally, according to the representative, the transit agency was entering into forbearance agreements with some of its equity investors.

4. One agency, with three lease agreements, reported that each agreement was handled differently. One agreement was terminated by the equity investors (at a cost of $15 million). A second agreement advised the transit agency that it was satisfied with the insurer's (AIG's) status. The third equity investor sent the transit agency notice, demanding that AIG be replaced. This last investor, however, is allowing the transit agency to pursue potential replacement options for AIG that would be mutually acceptable.

5. One transit agency that was insured by AIG reported that, in several of its SILO/LILO agreements, it was required to, and did, pledge collateral in the form of securities issued or guaranteed by the U.S. Government which were rated AAA by Standard & Poor's and that had a market value in excess of its obligations to the equity investor(s). The transit agency also reported that, in one of its SILO agreements, the downgrading of AIG forced it to provide replacement collateral in the form of U.S. Treasury strips.[36] The cost of the replacement collateral was $32 million. Subsequently, the transit agency was required to provide additional collateral in the form of U.S. Treasury debt obligations. This additional collateral cost the transit agency $37 million.

[36] "Strips" are long term government securities, which normally mature over 10 to 30 years. They are backed by the US government, and thus carry no credit risk. They do not pay interest and are created from treasury notes and bonds. See, www.aitraining.com/treasurystrip.htm.

6. Another transit agency sought protection in federal court after an equity investor sought $43 million payment from the transit agency following the downgrading of AIG's rating status. Following the court filing, the transit agency negotiated an end to the leasing deal with the equity investor. The transit agency has approximately 14 similar agreements but, to date, none of the remaining equity investors have sought to collapse their deals.

7. Exploring replacement of AIG as a guarantor of its SILO and LILO agreements is the option for another entity. The transit agency's management believes that the potential loss to the agency, if the equity investors collapse the deals, could amount to $150 million. The agency believes that this figure represents a probable, but not anticipated, loss amount.

8. One transit agency has three SILO agreements. In December 2008, the agency received notice that its guarantor, AMBAC, had been downgraded. Under the terms of the agreement, the transit agency had 30 days to find a suitable replacement guarantor. Since then, the transit agency has negotiated a series of 30 day extensions with its equity investor. The transit agency continues to operate under a 30 day extension while it seeks a suitable guarantor. With regard to the two remaining SILO agreements, according to a representative from the transit agency, neither equity investor has made any demands on the agency.

9. Another transit has represented that it was seeking to replace AIG as a guarantor of certain of its lease transactions and was also working towards a regulatory or legislative solution.

Some have expressed concerns about Amtrak's replacement strategy, arguing that Amtrak remains in a vulnerable position because of potential downgrades of Berkshire Hathaway, which would place Amtrak in the position of finding another guarantor and bearing the expense of doing so. They advocate that Amtrak was in a position of strength and should have negotiated to unwind or terminate these deals at far less than termination value. They point for support to other transits' strategies, the IRS settlement initiative, Berkshire Hathaway's downgrade, noted court decisions where other tax-exempt entities and the IRS have prevailed against the lenders, and increasing congressional concern with the SILO transactions.

Considering all of these factors, OIG believes that Amtrak's actions in finding a replacement for AMBAC were conservative, yet not wholly inconsistent with actions or strategies of some of the other transit agencies. However, because Amtrak apparently did not timely and fully explore or share the advice of one of its lease advisors (BW Realty Advisors),[37] OIG cannot determine whether Amtrak would have been able to resolve the

[37] See e.g., Exhibit 3, June 12, 2008 memorandum from BW Realty to Campbell, Stein and Vabner. One of the predicted dangers of the replacement (Berkshire for AMBAC) is that Berkshire could suffer a further downgrade which would place the company in the same predicament. The advice appears to have not been shared fully since only part of the team working on these matters was aware of its existence. For instance,

issues on more favorable terms. OIG caveats that for the Board to draw a more accurate comparison between Amtrak's actions and that of the other transits, much greater detail and analysis is necessary, including, but not limited to, 1) whether the resolution of each defeased lease was at, below or above accreted value, or closer to termination value;[38] 2) the amount recovered from the GIC and 3) the terms and provisions of the contracts. The now-prevailing climate (legislatively, politically, legally, and with sufficient benchmarks) may offer Amtrak additional options with more favorable terms and strategies than when Amtrak replaced Ambac.

3. Effectiveness of Engagement of WilmerHale and Ropes & Gray

WilmerHale's draft report, dated October 1, 2008, concluded that there was "little or no risk of a disqualifying conflict" and that Amtrak's minimal exposure to "material bias" was properly determined as a business judgment matter by Amtrak's CFO and Treasurer. Although the WilmerHale report indicates that WilmerHale collected extensive documentation and e-mails from Amtrak and Babcock & Brown, some of which are attached to the report, many report findings rely almost exclusively on representations and post-hoc rationalization made by McWalter, Stein and/or Campbell. For example, WilmerHale appeared to accept at face value a post hoc letter that McWalter wrote to WilmerHale describing his recollections of the facts and circumstances surrounding the transactions. Ropes & Gray's subsequent report reflects several of the inconsistencies in statements made by McWalter and finds that McWalter's credibility is "suspect." OIG has discovered no evidence to contradict Ropes & Gray's finding. Similarly, on the basis of post-hoc statements from Stein and Campbell, WilmerHale concluded that Amtrak management properly determined either that Babcock & Brown had no conflict of interest or that Stein and Campbell had proper authority, as CFO and Treasurer of Amtrak, to waive any conflict of interest in engaging financial advisory services. Ropes & Gray's report came to the opposite conclusion.

In addition, the WilmerHale report reflects certain unexplained inconsistencies and unsupported assumptions. For example, WilmerHale concluded that Babcock & Brown's work for the equity investors during the time of negotiation of the defeased leases with Amtrak was limited to "primarily number crunching." However, p. 5-7 of the WilmerHale report indicates that McWalter described Babcock & Brown's role more extensively, e.g., "bring[ing] equity investors to the table," and "presenting to Amtrak's advisor the initial pricing files and providing economic analytical services to the two equity investors." As Ropes & Gray's report reflects, WilmerHale's finding is contradicted by documented objective evidence from Thelen that Babcock & Brown, McWalter in particular, was extensively involved in developing and negotiating the defeased leases, representing the interests of the equity investors. Similarly, on pages 3 and 31 of the draft report, WilmerHale stated that Babcock & Brown's "primary role was to provide financial analysis and support in connection with the replacement of sureties . .

Keith McWalter of Babcock and Brown informed OIG that he was not aware of BWRA and its advice to Finance until August, 2008.

[38] Resolution at termination value would be difficult to comprehend in light of the IRS's actions under the proposed settlement agreement; *i.e.*, granting the lender the benefits which the IRS had just taken away.

." (emphasis added). However, this assumption is contradicted by WilmerHale's description of Babcock & Brown's engagement letter, found on pages 12 and 21 of the draft WilmerHale report, which describes six types of services to be performed by Babcock & Brown, only one of which involves advice in connection with the replacement of sureties.

Because OIG received only a draft report, we have no way of knowing whether WilmerHale was given an opportunity to correct or address any of these anomalies, or to otherwise respond to the Ropes & Gray report.

Additionally, the WilmerHale report contains many statements and findings which are irrelevant to the questions raised through OIG's investigation, as described in Section III.A of this Memorandum. The scope of WilmerHale's engagement appears not to have encompassed the key questions that were central to OIG's investigation (and we are not suggesting that they should have), but instead asked WilmerHale to provide opinions on other issues. The report indicates that WilmerHale interpreted the scope of its engagement to exclude any inquiry beyond opining on whether a "conflict of interest," in the strictest legal sense, existed. In addition, it is not clear from the WilmerHale report to what extent, if any, WilmerHale was influenced by Amtrak counsel's prior determination, as communicated to Boardman, that no conflict existed.

Ropes & Gray's draft report, dated October 17, 2008, points out certain inconsistencies in the WilmerHale report, particularly with regard to conflicting statements made by McWalter, but focuses on how Amtrak management handled the conflict allegation. Ropes & Gray's report applies legal standards to WilmerHale's findings of fact. Ropes & Gray concluded that: (1) Babcock & Brown had a "clear potential conflict" which was not adequately disclosed to Amtrak; (2) although a risk of financial harm occurred as a result of the existence of a potential conflict and the manner in which Amtrak dealt it, fortuitously no actual financial harm resulted; (3) Stein and Campbell did not have or seek sufficient information to constitute informed consent, which is required for an effective waiver of a potential conflict; and (4) the Board was not timely informed of the potential conflict. Ropes & Gray found that the potential conflict was "substantively mishandled" by Amtrak management. Ropes & Gray recognized that "conflicts matter . . . because they can undermine confidence in the integrity of the process." Ropes & Gray recommended that Amtrak promulgate a clear policy for processing allegations of contractor potential conflicts.

In OIG's opinion, neither firm's report definitively answered the question of whether Amtrak was exposed unnecessarily to a greater business and/or financial risk by engaging Babcock & Brown to provide advice and expertise to Amtrak on the very same transactions that Babcock & Brown previously negotiated on behalf of the other side (the equity investors). Neither report included a detailed timeline analysis showing when, if at all, Babcock & Brown discontinued its representation of equity investors, either in connection with Amtrak's defeased leases or in general as valued clients of Babcock & Brown. In addition, the question of whether Amtrak suffered any actual financial harm cannot be definitively determined without additional evidence concerning the relationship

between Babcock & Brown and Sumitomo and ICX. Nevertheless, OIG believes that the Ropes & Gray report is the more persuasive and well-reasoned of the two. The many inconsistencies and non-sequiturs in the WilmerHale report lead OIG to wonder whether WilmerHale was told, before it initiated its investigation, what conclusion it should reach.

E. Were Amtrak's procurement regulations circumvented in order to hire Babcock & Brown?

From the evidence available to OIG, it appears that Amtrak's procurement policies were disregarded. The engagement with Babcock & Brown was not competitively procured, and did not comply with procurement requirements mandated in Amtrak's Grant Agreement with the FRA. In January 2008, after talking with several law firms, Amtrak's General Counsel hired Vedder Price to assist Amtrak with strategies and negotiations,[39] but Stein wanted to hire McWalter. Stein contacted McWalter and negotiated a fee for engaging Babcock & Brown. Stein then sent the "done deal" engagement letter drafted by Stein and McWalter to the Law Department, who correctly advised that the appropriate course of action was to enter into a services agreement using Amtrak's standard contract form.

Babcock & Brown refused to sign Amtrak's standard contract form and attempted to delete or revise not only important terms that protect Amtrak, but also the mandatory terms and conditions which Amtrak must include in every contract in order to receive federal funding and comply with its grant agreement with the FRA. In OIG's opinion, McWalter's refusal to accept the grant agreement flow-down terms and other standard terms that Amtrak contractors routinely accept (albeit sometimes with minor modifications) should have been a red flag to Amtrak. Nevertheless, due to Stein's insistence that only McWalter could perform advisory services relating to the SILO transactions, Amtrak's General Counsel requested that Vedder Price hire Babcock & Brown as a subcontractor, without flowing down the grant-mandated provisions. Even then, Babcock & Brown insisted on having a separate indemnification agreement from Amtrak.

F. Did Amtrak properly review and approve Babcock & Brown's expenses prior to payment of invoices?

Amtrak policy states that "reasonably priced lodging" should be secured and current national maximum room rates should be observed. The GSA per diem rate for New York in July 2008 was $220 a night for lodging and $64 for meals and incidental expenses, for a total of $284 a day. GSA per diem rate for Washington DC in July 2008 was $154 a night for lodging and $64 for meals and incidental expenses, for a total of $218 a day. A hotel charge of $916 per night in Washington DC is not "reasonable" in OIG's opinion, nor is $400 per night for New York City.

[39] OIG has discovered no evidence that the Vedder Price engagement itself was improper.

Amtrak employees, and contractors who are engaged under Amtrak's standard contract terms, cannot travel by first class or business class unless approved by a higher level Amtrak official. Amtrak policy states that travel by air "must be at the lowest airfare available." McWalter's business class air fare charge of $3,206 for the round trip from San Francisco to New York was excessive even by Babcock & Brown standards because it "far exceeded" the cap McWalter's department had on travel. McWalter had to obtain written approval from his "Group Business Head" to book the ticket. The amount was approved only because the travel was "reimbursable by client."

From the evidence available to OIG, it appears that Amtrak did not follow its own policies and procedures with regard to reviewing and approving Babcock & Brown's expenses. Likewise, OIG found no evidence that Vedder Price ever reviewed or challenged any of Babcock & Brown's expenses. McWalter's travel expenses exceeded his own company's standard limits, and far exceeded the limits typically imposed on Amtrak employees and contractors. Amtrak paid expenses that were unsubstantiated by receipts, contrary to Amtrak's policies and standard practice for contractors and consultants.

VII. RECOMMENDATIONS

1) The highest ranking executives, specifically at the heart of the corporate control group, should have immediately and thoroughly reviewed all options for the defeased leases. The downgrading of Ambac and AIG cost Amtrak nearly $100 million to resolve. This is money Amtrak had to divert from other projects. Amtrak Executive Management should have been more involved in day to day dealings concerning possible options.

2) Amtrak's Board of Directors should review Amtrak's indemnification policy. The Board should determine if it's in the best interests of Amtrak to pay attorneys fees when management employees are witnesses in a matter and are not the subject or target of an investigation. The cost of indemnification for Acheson, Campbell, Stein and Roberts has not been determined, but is believed to be substantial.

3) Amtrak needs a policy for reporting potential conflicts of interest. It should not be left up to each individual, without input from the Law Department or an ethics officer, to decide if a conflict exists. These controls are important given the complexity of these agreements and because failure to handle these matters properly could cripple the company financially. This policy should set out who can make such determinations on behalf of Amtrak. Stein and Campbell did not seek legal advice regarding the possible conflict of interest of Babcock & Brown. OIG believes that there was, at a minimum, an appearance of a conflict of interest which posed a financial risk to Amtrak in that Amtrak does not appear to have received "zealous representation" from Babcock & Brown.

4) Amtrak managers did not take timely actions to review all alternatives to resolve Amtrak's defeased leases. Amtrak management did not explore all available options until the Board took a more active role in the pursuit of solutions. The Board was not

fully informed of all alternatives, but was presented only with the management preferred option of Berkshire Hathaway as a replacement for Ambac and AIG. OIG believes that the Board, as the decision-making authority, should have been informed of all alternatives, even if management's recommendation preferred one option over another.

5) Dale Stein and William Campbell did not inform a Department of Transportation official of the potential conflict of interest on the part of Babcock & Brown even after specific inquiry of the DOT official. Amtrak managers must be directed not to withhold information from federal government officials. In certain circumstances, this action could rise to the level of a criminal violation of law. OIG has not concluded that a criminal violation occurred in this instance, but OIG recommends that Amtrak generate a clear, consistent, and enforced policy regarding communications with government representatives.

6) In engaging contractors or consultants, Amtrak should not circumvent either its own procurement policies or federally-mandated clauses and procedures without a sufficient and well-documented basis. Amtrak should not indemnify any contractors or consultants without a sufficient and well-documented basis.

7) Amtrak employees, and companies who are subpoenaed by the OIG should be required to provide documents directly to OIG, without prior review by the Law Department. Likewise, Amtrak employees should be directed to cooperate with OIG interviews without notifying the Law Department. Actions taken by the Law Department in connection with this investigation resulted in unnecessary delays and increased costs to Amtrak.

8) Amtrak should not approve any reimbursable expenses claimed by any contractor or consultant that are not substantiated with receipts. Amtrak should be more diligent in reviewing expenses for reasonableness as well as for compliance with Amtrak policy. Approval of expenses exceeding Amtrak policy limits should be supported with a written justification.

9) The Finance and Law departments should conduct a joint review or evaluation of all SILO-like or similar creative-financing arrangements in which the company is presently engaged, or where AIG or Ambac are involved, and report to the Board's Audit Committee any unusual financial risks and whether those risks can be ameliorated or discounted.

10) The Board should establish either a checklist of factors to be identified, or a contract approval form (or both), for approving any significant contracts or transactions. The checklist or form should include, without limitation: a) identification of whether management has conducted a conflict of interest evaluation; b) description of services or products; c) sufficiently detailed explanation of reasons for needing service or products; d) whether there has been legal review of a written contract and who conducted such review; e) length of time to perform service(s) or provide goods; f) brief discussion of

any indemnification provision; g) basis for compensation and payment terms; h) projected total expenditures; and i) an explanation of how the contractor was chosen.

EXHIBIT 1

AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

October 22, 2008

The Honorable Mary E. Peters
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Dear Secretary Peters:

I am requesting your assistance in contacting the Treasury Secretary to seek immediate assistance to avert a crisis in the transit industry.

At least 31 of the largest transit agencies across the country are at risk of financial catastrophe as a result of the upheaval in world financial markets. Investors in Lease-In/Lease-Out and Sale-In/Lease-Out (LILO/SILO) transactions are taking advantage of technical provisions of the agreements to declare the transit agencies in default of their obligations in spite of the sound financial instruments – U.S. Treasury securities – that guarantee every payment for the lives of the Federal Transit Administration promoted and approved transactions.

There is an efficient, financially sound, and risk free means of avoiding both the defaults and the cascading effects these defaults would likely have on state and local financing markets, transit services, and congestion. The Treasury, under authority of the Emergency Economic Stabilization Act, could effectively replace AIG or other troubled entities as the holders of the securities "baskets," eliminating the technical default and restoring the level playing field necessary to reasonably unwind these deals.

We urgently need Treasury to act quickly to avert the disastrous results of payment demands that are already being delivered to some of the biggest transit agencies in the country and are likely to be delivered soon to dozens more. We have communicated with several officials at Treasury but have yet to receive any feedback. Your support and assistance would help immensely to bring this issue before the appropriate officials.

My staff and I, as well as those of the transit agencies at risk, stand ready to assist you in any way necessary in making the case to the Treasury. For assistance, please contact James LaRusch or Robert Healy of my staff at (202)496-4800, or email jlarusch@apta.com or rhealy@apta.com.

Sincerely yours,

William W. Millar
President

WWM/tjj

1666 K Street, N.W., 11th Floor Washington, DC 20006 Phone (202) 496-4800 FAX (202) 496-4324 www.apta.com

EXHIBIT 2

ROBERT MENENDEZ
NEW JERSEY

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET
ENERGY AND NATURAL RESOURCES
FINANCE
FOREIGN RELATIONS

United States Senate
WASHINGTON, DC 20510–3005

528 SENATE HART OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224–4744

ONE GATEWAY CENTER
11TH FLOOR
NEWARK, NJ 07102
(973) 645–3030

208 WHITE HORSE PIKE
SUITE 18–19
BARRINGTON, NJ 08007
(856) 757–5353

June 26, 2009

The Honorable Steny H. Hoyer
Majority Leader
U.S. House of Representatives
H-107, The Capitol
Washington, DC 20515

Dear Majority Leader:

I write to offer my help and to extend my sincere condolences on the Red Line Metro crash Monday. I know it must be a difficult time for you and your constituents, and my thoughts are with the victims of this tragedy.

I also wanted to offer my support in funding improvements to the Washington Metropolitan Area Transit Authority (WMATA) system to help ensure that this accident is not repeated. To that end, I wanted to alert you to legislation I introduced recently called the Close the SILO/LILO Loophole Act (S.1341). I believe this legislation could help protect WMATA and other transit agencies who are being threatened by banks seeking to gain a windfall from the current economic climate while potentially putting transit agencies at risk.

As you know from the letter you received from my esteemed colleague, Senator Grassley, he has expressed concerns that this accident may have been caused by implications from a SILO/LILO transaction and not decades of federal neglect of public transportation and inadequate federal funding of our nation's transit systems. The bottom line is that, in order to help prevent such a tragedy in the future, we must ensure that transit agencies have adequate resources to keep passengers safe. As part of that, I strongly believe that we must protect transit agencies from banks who are seeking to exploit a technicality that would result in agencies having to pay banks millions of dollars that could otherwise be used to shore up equipment and ensure safe operations, even though they have not missed a single payment to the bank. Once we remove this threat, the door will be open to terminating these transactions in a fair and equitable manner.

Please find attached a copy of my legislation as well as a short document explaining how the legislation works. I commend you for rising to the challenge this tragic accident has posed and for marshalling federal resources to protect your constituents and the residents of the District. Do not hesitate to enlist my help in this endeavor.

Sincerely,

Robert Menendez

ROBERT MENENDEZ
United States Senator

Stop Banks from Collecting Illegal Tax Benefits from Public Agencies
Support the Close the SILO/LILO Loophole Act

The Close the SILO/LILO Loophole Act will protect transit agencies and other local public entities from the risk of having to pay tens of millions of dollars to banks at a time when demand for government services is at an all time high and government budgets are strapped. The technicalities are complicated, but the equities are clear. Congress cannot let banks gain windfalls via tax shelters at the expense of the nation's rural electric coops, transit agencies and other public agencies.

Background

From the 1990's to 2003, public agencies, including transit agencies and rural electric coops, entered into Lease-In/Lease-Out (LILO) and Sale-In/Lease-Out (SILO) transactions with banks and other taxpaying entities. Under the SILO/LILO contracts, the public entity transferred assets (equipment or infrastructure) to the bank while simultaneously entering into a long-term lease with the bank. The public agency paid a AAA-rated entity a fee to make lease payments throughout the term of the lease.

While the leases provided much needed resources for capital intensive projects, Congress viewed them as blatant tax avoidance schemes and they were effectively eliminated in 2003. In 2008 the Internal Revenue Service proposed a settlement of the leases effectively eliminating all future tax benefits although allowing the underlying commercial transaction to remain in place. Although many taxpayers have terminated these transactions, many are still outstanding despite the elimination of tax benefits.

The Problem

Unfortunately, certain banks have attempted to make a windfall. As stated above, local public entities paid a lump sum to a AAA-rated third party institution and that third party would make lease payments to the banks. Because of the financial crisis, these third party institutions, such as AIG, are no longer AAA-rated. Banks are claiming, therefore that the public entities are in technical default. The penalty for such a default is the amount of money the banks were anticipating getting in tax benefits – the very tax benefits that were declared illegal in 2003. Banks are not being harmed – this is truly a technical default since no lease payments have been missed, but the costs to public agencies are real.

This attempt by banks to gain a windfall from public entities is happening at exactly the wrong time. The defaults will be a financial hardship for public institutions that serve our constituents and could cause them to add to the increased expenses our overstretched constituents are already facing. We must take action to prevent imposing more burdens on our constituents.

The Solution

The attached legislation will continue the efforts of Congress and the Internal Revenue Service (IRS), and remove the economic benefits for banks to exploit these technical defaults. The bill would impose a 100 percent excise tax on the windfall proceeds received by banks from the LILO and SILO transactions, and serve to strip their temptation to reap the economic benefits of abusive tax shelters while simultaneously dealing a significant financial blow to public institutions that effectively provide important services to the public. It will also supplement existing Internal Revenue Service and Congressional efforts to eliminate all anticipated tax incentives under LILO and SILO transactions.

111TH CONGRESS
1ST SESSION

S. 1341

To amend the Internal Revenue Code of 1986 to impose an excise tax on certain proceeds received on SILO and LILO transactions.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to impose an excise tax on certain proceeds received on SILO and LILO transactions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Close the SILO/LILO Loophole Act of 2009".

SEC. 2. EXCISE TAX ON CERTAIN PROCEEDS RECEIVED ON SILO AND LILO TRANSACTIONS.

(a) IN GENERAL.—Subchapter F of chapter 42 of subtitle D of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 4965A. EXCISE TAX ON CERTAIN PROCEEDS RECEIVED ON SILO AND LILO TRANSACTIONS.

"(a) IMPOSITION OF TAX.—In the case of any person other than a SILO/LILO lessee that receives any ineligible amount as a party to any SILO transaction or any LILO transaction, such person shall pay a tax for the taxable year in which such ineligible amounts are received.

"(b) AMOUNT OF TAX.—The amount of the tax imposed under subsection (a) with respect to any person shall be an amount equal to the aggregate ineligible amounts received by such person in the taxable year.

"(c) DEFINITIONS.—For purposes of this section—

"(1) INELIGIBLE AMOUNT.—The term 'ineligible amount' means, with respect to any SILO transaction or LILO transaction, the excess of—

"(A) the aggregate proceeds received by the taxpayer attributable to or arising from any remedial action relating to such transaction, or any consensual termination or rescission of any such transaction (including the value of any property received and any additional amounts purporting to indemnify or reimburse the taxpayer for taxes assessable on any amounts received), over

"(B) the aggregate proceeds described in subparagraph (A) that are received from third

parties (other than the SILO/LILO lessee) pursuant to a payment arrangement (including a defeasance escrow arrangement) entered into at the time of such transaction in which the SILO/LILO lessee's payment obligations were economically defeased in whole or in part.

"(2) SILO TRANSACTION.—The term 'SILO transaction' means a purported sale-leaseback arrangement which is identified as a listed transaction in Notice 2005-13.

"(3) LILO TRANSACTION.—The term 'LILO transaction' means a transaction which is a 'lease-in/lease-out' transaction described in Revenue Rulings 99-14 and 2002-69 and identified as a listed transaction in Notice 2000-15, or which is substantially similar to such a transaction.

"(4) SILO/LILO LESSEE.—The term 'SILO/LILO lessee' means any lessee in a SILO transaction or a LILO transaction that is—

"(A) a tax-exempt entity (within the meaning of section 168(h)(2)) or any other cooperative, nonprofit, limited dividend, or mutual association, or

"(B) any other person that does not derive a substantial economic benefit from the tax characterization of such transaction.

"(d) CERTAIN TRANSFERS DISREGARDED.—If any person who is subject to the tax under subsection (a) is a party to any transaction that results in the transfer of such person's rights with respect to a SILO transaction or a LILO transaction to any other person who would, but for this subsection, not be subject to the full amount of the tax under subsection (a) with respect to such SILO transaction or LILO transaction, then such transfer shall be disregarded for purposes of this section and the taxpayer shall continue to be treated as the recipient of any ineligible amount.

"(e) REGULATORY AUTHORITY.—The Secretary is authorized to promulgate regulations consistent with the purposes of this section, including regulations to prevent the avoidance of such purposes.

"(f) COORDINATION WITH OTHER TAXES AND PENALTIES.—The tax imposed by this section is in addition to any other tax, addition to tax, or penalty imposed under this title.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter F of chapter 42 of subtitle D of the Inter-

nal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 4965A. Excise tax on certain proceeds received on SILO and LILO transactions.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after the date of the introduction of this Act, in taxable years ending after such date.

SEC. 3. DENIAL OF DEDUCTION FOR COSTS OF CERTAIN ACTIONS RELATING TO SILO AND LILO TRANSACTIONS.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 269B the following new section:

"SEC. 269C. COSTS OF CERTAIN ACTIONS RELATING TO SILO AND LILO TRANSACTIONS.

"(a) GENERAL RULE.—If any party to a SILO transaction or a LILO transaction (other than a SILO/LILO lessee) brings a remedial action seeking to recover any ineligible amount with respect to such transaction, in computing taxable income no deduction shall be allowed for any attorney fees or other costs attributable to such action.

"(b) DEFINITIONS.—For purposes of this section, the terms 'SILO transaction', 'LILO transaction', 'SILO/

LILO lessee', and 'ineligible amount' have the meanings given such terms by section 4965A(c).".

(b) CLERICAL AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 269B the following new item:

"Sec. 269C. Costs of certain actions relating to SILO and LILO transactions.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to costs incurred after the date of the introduction of this Act.

EXHIBIT 3

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BW Realty Advisors LLC

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Second Floor
Washington, DC 20036
(202) 347-4900
fax (202) 347-4588
www.BWRealtyAdvisors.com

MEMORANDUM

To: William Campbell, Chief Financial Officer, Amtrak
Dale Stein, Treasurer, Amtrak
Reuben Vabner, Senior Director-Corporate Finance, Amtrak

From: BW Realty Advisors

Re: Strategy for resolving the Amtrak Defeased Rail Car Lease problem

Date: June 12, 2008

Introduction: In 1999 and 2000, Amtrak entered into 12 transactions with 9 leasing companies (the "Subject Transactions") to sell and lease-back existing rail cars which Amtrak had previously purchased. The cumulative total stated price of the cars sold in those transactions was $915,155,000, even though they were carried on Amtrak's books at $334,690,000. However, Amtrak received only $124,171,000 in cash for reasons which are set forth below. Those transactions are now at risk of default because of the actual and potential downgrading of several credit support entities which participated in the transactions. Since Amtrak is the lessee of the rail cars it sold, and since the cars are pledged as collateral to the debt holder in the event of a default, the possibility exists that Amtrak will have to fund significant amounts back into the transactions in order to ensure its ongoing ability to utilize the cars as well as to comply with its transactional contractual obligations. We have been engaged to identify and pursue a legislative strategy which will result in the unwinding of the transactions and the release of the collateral at no cost to Amtrak.

Background: Equipment leasing transactions were very popular in the past decades as a way for corporations to acquire expensive heavy equipment on a lease basis without encumbering their balance sheets or invading their own capital. Rolling stock, together with aircraft, was commonly financed in this way. Unfortunately, some promoters exploited this finance mechanism by pushing the transactional and tax "envelope" beyond what the tax code fairly contemplated in allowing heavy equipment lessors to own and depreciate such equipment and share the savings with lessee/users of the equipment under "true leases". The Subject Transactions are examples of these excesses which led, in part, to the passage of Section 470 of the Internal Revenue Code in 2004 (the "Grassley Amendment") to restrict these excesses at least to the extent that non-profit lessees participated.

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Problems with the Abusive Equipment Leases: When the IRS attacks equipment leasing transactions, it does so on several bases: 1) there is no true lease of the equipment but rather just a financing and thus the putative lessor should not be able to claim depreciation since it never became the owner of the equipment; 2) even if there is a real lease, the lessor has inflated the value of the equipment subject to lease and thus taken greater depreciation deductions than those to which it is entitled; and 3) even if there is a real lease, the lessor is never at risk of losing any money and thus there is no economic substance to the transaction supporting the deduction of the depreciation on the equipment. In reality, these problems often run together in suspect transactions.

Specific Problems with the Subject Transactions: As far as can be ascertained without seeing the appraisal and tax opinions for each of the Subject Transactions, the following appear to characterize each of them:

1) Inflated Equipment Values Based on "Loop Debt": Approximately 75% ($693MM of the $915MM) of the purchase price for the rolling stock was not paid for in cash. The money was apparently "loaned" through a book entry from a subsidiary of AMBAC and then recorded as an asset by another subsidiary of the same company, but no such funds changed hands or were received by the lessor or paid to Amtrak. In 6 of the 12 transactions MBIA provided the financial guaranty on the Loop Debt. These loans were booked at notional interest rates ranging from 8.45% to 8.75% and were to be "repaid" by the lessor from Amtrak lease payments. However, it was anticipated that the lender's affiliate would "make" the loan payments through offsetting book entries and Amtrak would not be required to make the "loan portion" of the lease payments. The transactions appear designed to make the loans look real when, in fact, they were not. The sole purpose for such a structure appears to be to provide "substance" to an inflated purchase price and to allow the deduction of "interest". In effect, the lessors wrote off $693MM of value in the railcars they purchased without paying for that value, and also deducted interest on loans which were never funded. While we understand that the total purchase price was appraised at the values reflected in the transactions, we also understand that the appraisal was never shared with Amtrak and may not have been a fair reflection of the real value of the rolling stock sold in the Subject Transactions. On the assumption that it is not, this aspect of the Subject Transactions cast serious doubt on the values claimed by the lessors in filings with the IRS as well as on the validity of the interest deductions they claimed.

2) Insurance Against Lessors' Potential Loss: The Subject Transactions are also characterized by pre-funded Guaranteed Investment Contracts ("GICs") or pre-funded Equity Payment Undertaking Agreements ("EPUAs") for the benefit of the lessors. These contracts were funded by Amtrak with approximately $97,984,000 in cash from the sale proceeds paid for the rolling stock through the lessors' equity investment. In 10 of the Subject Transactions the GICs were arranged through AMBAC affiliates and 2 EPUAs were entered into with an affiliate of AIG. The GICs/EPUAs require AMBAC/AIG to deliver specified amounts to the lessors throughout the term of the leases of the rolling stock accreted at a specified interest rate which ensured available proceeds to pay permitted withdrawals. The permitted withdrawals covered each lessor's portion of the lease payments, early termination value, and early buy-out purchase price. The GICs/EPUAs were entered into to defease the entire

portion of Amtrak's lease payments which were not "attributed" to the Loop Debt described above, as well as early buy-out purchase price. Thus, the lessors took no risk that Amtrak, the lessee, would default on its railcar lease obligations over the term of the Subject Transactions. In fact, the only risk they actually took is that the general credit of AMBAC would deteriorate to the point it could not fund the permitted withdrawals. In addition, AMBAC/AIG issued surety bonds to protect the equity in the event of an early termination; the surety bonds were for the difference between the amount accreted in the GICs/EPUAs and the much higher termination values. Finally, Amtrak's funding of the GICs/EPUAs did not release Amtrak from its obligations to make the "equity portion" of the lease payments in the event they were not paid under the GICs/EPUAs as planned. While there is, in theory, some risk associated with this structure that the lessors will not receive the return of their funds, it is minimal, at best, and is likely to be challenged by the IRS as not creating sufficient economic substance to establish the non-tax motivation for the lessors entering into the Subject Transactions.

Problems Presented for Amtrak by the Subject Transactions: Amtrak was supposed to have no actual lease liability because the "debt portion" of the lease would be "paid" through offsetting book transactions between the lenders and their affiliates pursuant to loan payment undertaking agreements and the "equity portion" (including the early buy out purchase price) was to be entirely satisfied by the GICs/EPUAs. Amtrak was nevertheless put in the position of "ultimate guarantor" because it is required to make the full rent payments (both debt and equity portions) due under the leases if such payments are not "made" pursuant to the mechanisms described above (presumably to help add legitimacy to the transaction from a tax perspective). This could happen in the event of a transactional default including, *inter alia*, a downgrading of any of the parties guaranteeing the lessors' payments. Since that downgrading has already begun, there is the real possibility that Amtrak will be threatened with actual lease payments or other payments to cure the current and expected defaults arising from the weakening of the financial guarantors' positions. Amtrak's liability could potentially rise to close to $1 billion. Since Amtrak received only 13% of the nominal purchase price from the sale of its assets, it is manifestly unjust to force it to pay anything additional under any circumstances. Nevertheless, in a bankruptcy or other proceeding resulting from the insolvency of a credit support party, Amtrak has been advised that the documents might well be enforced against it. Finally, while the Subject Transactions present questions of conduct by Amtrak detrimental to the government (which created it and funds it on a continuing basis) through Amtrak's participation in abusive tax shelters which have since been outlawed, the possibility exists that Amtrak may have been the unwitting victim of aggressive promoters. Query whether its own counsel provided adequate advice in this regard?

Strategies to Confront the Problem:

1) Obtain immediate confirmation of the factual analysis set forth above, including, to the extent possible, the appraisal and tax opinions issued in the Subject Transactions.
2) Obtain comparable value information on the value of the rolling stock at the time sold in the Subject Transactions;
3) Obtain confirmation from current counsel (Vedder, Price) of Amtrak's downside position;
4) Arrange meetings with the lessors to:
    a. Notify them of Amtrak's disenchantment with the Subject Transactions;

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b. Determine the current position of each lessor with the Subject Transactions regarding the IRS and their booking:
    i. Audit underway;
    ii. Settlement reached;
    iii. Status unchanged from time of booking the Subject Transactions;
    iv. Reserved against;
    v. Booked as capital lease;
c. Notify them that Amtrak will seek to set aside the Subject Transactions based on fraud in the inducement, failure of consideration, improper relationships between the purported lender and the purported borrower or other viable theory unless standstill agreements are entered into allowing Amtrak to pursue its legislative strategy; and
d. Investigate, refine and pursue the legislative strategy with all deliberate speed, i.e. to offer the equity participants closing agreements with the IRS to the effect that if they surrender the rolling stock free and clear of any interest by a date certain, receiving only the accreted value of the GICs/EPUAs at that time, the IRS will not challenge any claim by the equity participants that they owned the assets as a result of the Subject Transactions.

5) Arrange meeting with AMBAC/AIG to determine if each can fund the GICs/EPUAs at their current accreted values and to do so in a bankruptcy-proof manner.

Proposed Timeline

June 13 – June 30
a. Review facts and theories with Amtrak Counsel (Vedder, Price)
b. Brief Alex Kumant on scope of problem and proposed strategy
c. Brief Board of Directors at June meeting

July 1 – 31
a. Meet with equity participants in transaction and obtain 6-month standstills
b. Meet with AMBAC to begin funding and segregation process
c. Meet with Treasury to present proposal

August 1 - 31
a. Refine proposal with Treasury;
b. Meet with IRS
c. Brief relevant congressional committee chairs

September 1 – 30
a. Refine specific offer from IRS
b. Begin negotiations with equity over surrender

October – December
a. Conclude equity negotiations
b. Obtain surrender and release of rolling stock
c. Restate balance sheet

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EXHIBIT 4

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Amtrak 1999 and 2000 Lease Summary

Printed August 5, 2008

Tranche	Closing	Equip Value	Equity	Lender	Debt Pymt Und Provider	Debt Pymt Und Guarantor	Equity Coll Prov	EqCollPr Guarantor	Coll Req'd	Surety Provider	Surety Amount	Replacement Ratings Floor	Repl Days	Eq Coll Proceeds	Notes
1999 C	12/10/99	76,312	1	AME I	AME A	Ambac	ACFI	Ambac	Yes(1)	Ambac	Full	AA/Aa2	30(3)	AV	(4)
1999 D	12/10/99	75,284	1	AME I	AME A	Ambac	ACFI	Ambac	Yes(1)	Ambac	Full	AA/Aa2	30(3)	AV	(4)
1999 E	12/10/99	77,708	1	AME I	AME A	Ambac	ACFI	Ambac	Yes(1)	Ambac	Full	AA/Aa2	30(3)	AV	(4)
1999 F	12/10/99	79,361	2	AME I	AME A	Ambac	ACFI	Ambac	No	Ambac	Full	AA-/Aa3	30(3)	AV	
1999 G	12/10/99	76,174	3	AME I	AME A	Ambac	ACFI	Ambac	No	Ambac	Full	AA-/Aa3	30(3)	AV	
2000 A	6/13/00	75,796	3	AME I	AME A	MBIA	AIGMF	AIG	Yes(2)	Ambac	Strip	AA-/Aa3	30(3)	MTA	
2000 B	6/13/00	75,031	4	AME I	AME A	MBIA	AIGMF	AIG	Yes(2)	Ambac	Strip	AA-/Aa3	30(3)	MTA	
2000 C	8/17/00	109,420	5	AME I	AME A	MBIA	ACFI	Ambac	No	Ambac	Full	AA-/Aa3	60	MTA	
2000 D	8/17/00	76,800	6	AME I	AME A	MBIA	ACFI	Ambac	No	Ambac	Full	AA-/Aa3	60	AV	(5)
2000 E	8/1/00	25,400	7	AME I	AME A	MBIA	ACFI	Ambac	No	Ambac	Full	AA-/Aa3	30(3)	MTA	
2000 F	8/1/00	79,550	8	AME I	AME A	MBIA	ACFI	Ambac	No	Ambac	Full	AA-/Aa3	30(3)	MTA	
2000 G	8/1/00	101,850	9	AME I	AME A	MBIA	ACFI	Ambac	No	Ambac	Full	AA-/Aa3	30(3)	MTA	
		928,686													

ACFI Ambac Capital Funding, Inc.
Ambac Ambac Assurance Corporation
AME I AME Investments LLC (Ambac Affiliate)
AME A AME Asset Funding LLC (Ambac Affiliate)
AIGMF AIG Matched Funding Corp
AIG American International Group, Inc
AV Accreted Value
MTA Market Termination Amount

Notes

(1) Collateral required if rating below AAA/Aaa
(100% of AV in Cash or 104% of AV in Treasuries)

(2) Collateral required if rating below AA-/Aa3
(104% AV in Cash/Treas or 105% AV Other Govt Agency)
(3) Amtrak "good faith" determination for replacement
(4) Funding Costs issues; language issues
(5) Equity relies only on Surety

Owner Participants

		Counsel	Vedder
1	First Union Commercial Corporation (Wachovia)	Moore & Van Allen	Bogaard/Golden/Advani
2	Norwest Bank Minnesota, National Association (Wells Fargo)	Hunton & Williams	Gerber/Peyton/Stoklas
3	Pacific Century Leasing, Inc. (Bank of Hawaii) (99 G)	Hunton & Williams	Gerber/Peyton/Stoklas
3	Pacific Century Leasing, Inc. (Bank of Hawaii) (00 A)	Hunton & Williams	Bogaard/Golden/Advani
4	US Bancorp Leasing & Financial	TBD	Bogaard/Golden/Advani
5	ICX Corporation (Royal Bank of Scotland)	TBD	Wassall/Barlin
6	Sumitomo Bank Capital Markets, Inc. (SMBC Leasing)	Troutman Sanders	Gerber/Peyton/Stoklas
7	CIBC Capital Corporation	Hunton & Williams	Wassall/Barlin
8	The Fifth Third Leasing Company	Troutman Sanders	Wassall/Barlin
9	Norlease, Inc. (Northern Trust)	Hunton & Williams	Wassall/Barlin

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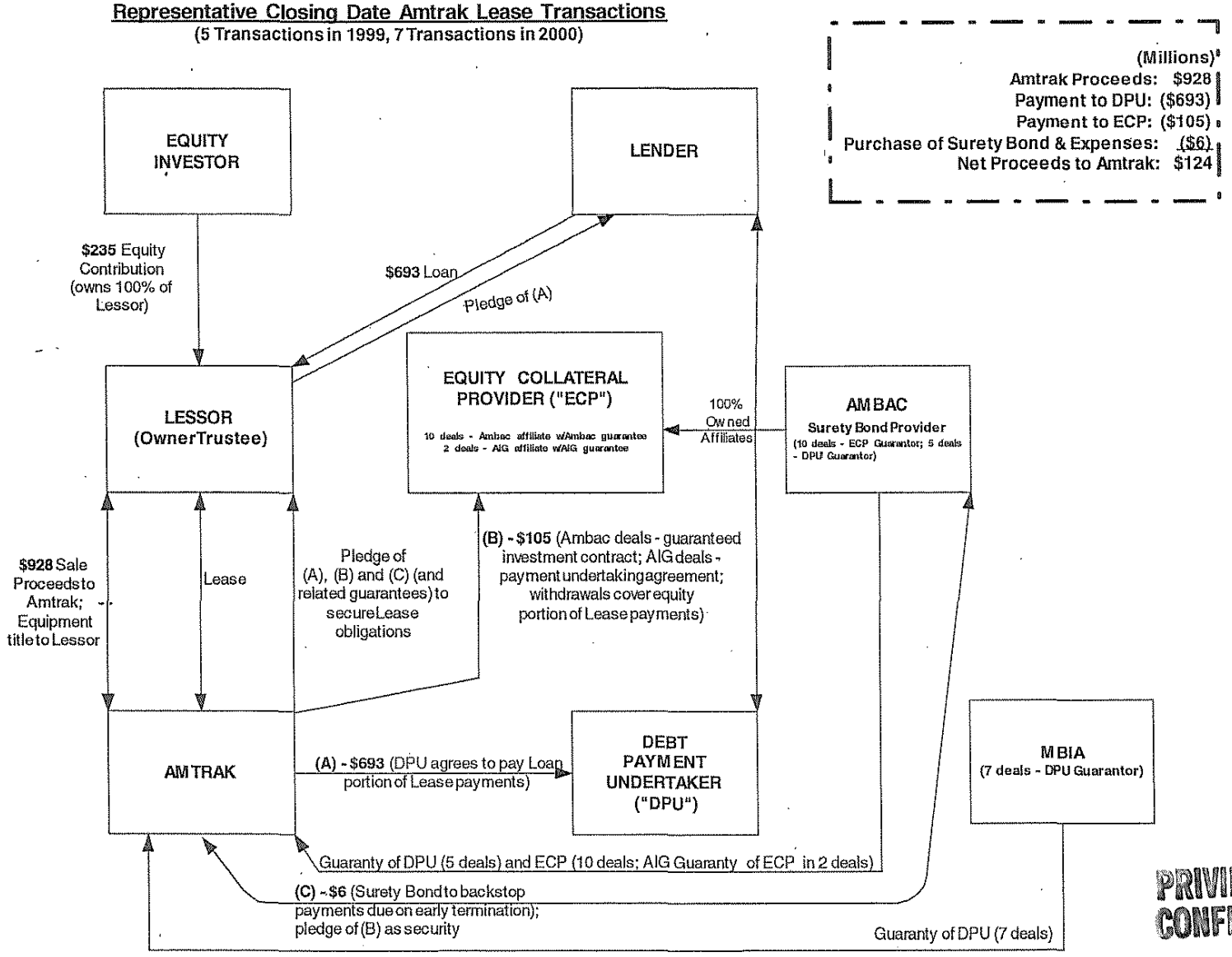
Representative Closing Date Amtrak Lease Transactions

(5 Transactions in 1999, 7 Transactions in 2000)



Drawing1

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BABCOCK & BROWN

EXHIBIT 5

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Final Cost of Replacing Nine Defeased Leases and Terminating Three Defeased Leases									
			Applicable - All Transactions	Applicable - Terminations Only	Applicable - Replacement Only	Applicable - Replacement Only	Applicable - All Transactions (after 99C-99D-99E)	Applicable - Replacement Only (2000A & 2000B) Transactions	Applicable - All Transactions
Transaction Reference	Equity Party in Transaction	Action Taken	GIG Funds Returned by Ambac/AIG	Equipment Purchase Cost (for Lease Terminations)	New GIG Funds Deposited with NIC	Surety Bond Premium	Commitment Fee	Credit from NIC	Amtrak Total Cash Outlay
1999C	Wachovia	Replaced Ambac with NIC	14,620,059	-	(21,330,725)	(1,139,455)	-		(7,850,121)
1999D	Wachovia	Replaced Ambac with NIC	14,423,144	-	(21,506,412)	(1,148,840)	-		(8,232,108)
1999E	Wachovia	Replaced Ambac with NIC	14,632,982	-	(20,631,323)	(1,107,494)	(11,250,000)		(18,355,835)
1999F	Wells Fargo	Replaced Ambac with NIC	14,445,001	-	(23,449,596)	(1,147,935)	1,250,000		(8,902,530)
1999G	Bank of Hawaii	Replaced Ambac with NIC	14,012,701	-	(21,923,570)	(1,131,936)	1,250,000		(7,792,805)
2000A	Bank of Hawaii	Replaced Ambac with NIC	16,684,000	-	(16,483,367)	(770,430)	1,250,000	1,050,000	1,730,203
2000B	US Bancorp.	Replaced Ambac with NIC	17,961,000	-	(18,895,697)	(804,570)	1,250,000	1,050,000	560,733
2000C	Royal Bank of Scotland	Replaced Ambac with NIC	16,661,305	-	(28,876,676)	(1,440,170)	1,250,000		(12,405,541)
2000D	Sumitomo Bank Cap Mkts	Replaced Ambac with NIC	16,046,753	-	(23,738,360)	(1,150,094)	1,250,000		(7,591,701)
2000E	Canadian Imperial Bank ('CIBC')	Lease Terminated	4,560,721	(7,600,000)	-				(3,039,279)
2000F	Fifth Third Bank	Lease Terminated	11,970,931	(23,000,000)	-				(11,029,069)
2000G	Norlease	Lease Terminated	17,807,043	(31,000,000)	-				(13,192,957)
			$173,825,640	**($61,600,000)**	**($196,835,726)**	**($9,840,924)**	**(3,750,000)**	**$2,100,000**	**($96,101,010)**
	NIC = National Indemnity Corp.								

EXHIBIT 6

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PEOPLE INTERVIEWED	AFFILIATION AT TIME OF LEASES
Eldie Acheson	Amtrak
Vice Admiral Thomas Barrett	Department of Transportation
Joe Boardman	Amtrak
Jon Bogaard	Vedder Price
William Campbell	Amtrak
Kim Dally	Amtrak
Dean Gerber	Vedder Price
David Graybeal	Thelen Reid
Richard Gross	BW Realty Associates
John Hackett	Capstar
William Herrmann	Amtrak
Tracy Kenny	KPMG
Elizabeth Lawson	KPMG
Gary Lipman	Sumitomo
Donna McLean	Amtrak
Keith McWalter	Babcock & Brown
Dennis Moore	Amtrak
Jared Roberts	Amtrak
Raj Srinath	Amtrak
Nancy Sowa	Amtrak
Dale Stein	Amtrak
John Sununu	BW Realty Associates
Michael Sununu	BW Realty Associates
Nicholas Troiano	Amtrak
Mark Trollinger	Wachovia
Reuben Vabner	Amtrak

EXHIBIT 17

M E M O R A N D U M

October 15, 2008

To: Donna McLean, Chairman
Board of Directors
National Railroad Passenger Corporation

FRIED FRANK

From: Michael R. Bromwich

cc: Alex Kummant, President and CEO
Eleanor D. Acheson, Vice President, General Counsel and Corporate Secretary
National Railroad Passenger Corporation

Re: Amtrak Inspector General Policy

Amtrak President and CEO Alex Kummant and Amtrak General Counsel Eleanor D. Acheson have asked that I provide a memorandum (i) that responds to the advice you apparently have been given that the current version of the policy generally known within Amtrak as Exec-1 ("Current Exec-1"), which went into effect in November 2007, is in some way inconsistent with the Inspector General Act (the "IG Act") or is "illegal" and (ii) that comments on the proposed new revision of Exec-1 ("Proposed Revision of Exec-1") as well as the draft memorandum entitled "Cooperation with the Office of Inspector General" ("Draft Memo") that would be distributed to all Amtrak departments and employees. This memorandum provides some background information and my observations at this time based on the draft documents I have reviewed. In addition, I am available to meet with you or other members of the Amtrak Board as you deem appropriate to discuss these issues further. I am providing my thoughts based on my independent knowledge and my work last year with prior Chairman of the Amtrak Board David Laney and after conferring with the General Counsel on these issues.

At the outset let me say that I know of no basis for a claim that Current Exec-1 is inconsistent with the IG Act or is illegal. As a former Inspector General for the U.S. Department of Justice, and having represented clients before various Offices of Inspector General, I am fully familiar with the IG Act and the quality standards and other "best practices" for Inspectors General. Current Exec-1 was drafted to balance the authority and responsibility of the Amtrak Office of Inspector General ("OIG") against the legitimate needs of the Corporation. In this memorandum, I have attempted to summarize the history of my work with prior Chairman Laney, the concerns that Current Exec-1 addressed, and the significant risks that the proposed changes raise for the both the Board and the Corporation.

I. Drafting of Current Exec-1

A. Chairman David Laney Sought a Balance of Interests

As you may know, I worked extensively late last year with former Chairman Laney to develop the current Amtrak policy, which was approved by Chairman Laney on November 5, 2007. Current Exec-1 is the third iteration of an "Exec-1" policy,[1] which has established the overall contours of the relationship between Amtrak and the OIG for more than fifteen years. It was developed to inform Amtrak employees of the function of the OIG at Amtrak and to facilitate the orderly and effective interaction between the OIG and other Amtrak employees.[2]

Chairman Laney asked me to make various revisions to the prior version of the policy that (1) reflected the appropriate balance between the authority and responsibility of the OIG and the business and operational interests of Amtrak and (2) clarified the responsibility of the Chairman to supervise the OIG, as required by the IG Act. Chairman Laney actively solicited the input of the Amtrak OIG and passed along its comments and suggested changes to me. Many of the OIG's suggestions were included in various drafts, and many of those suggested changes were incorporated in the final document. At no point during my work with Chairman Laney on Current Exec-1 did he mention that the OIG had any issues or complaints that any aspect of what is now Current Exec-1 was either illegal or inconsistent with the IG Act. Chairman Laney engaged me to work with him directly and confidentially on the Exec-1 issues. He asked me to keep my consultation with him confidential, and I followed that instruction.

B. Current Exec-1 Complies with IG Act

Current Exec-1 was developed with specific attention to the legal requirements of the IG Act and with thought and concern for the prerogatives and responsibilities of the OIG and various other components of Amtrak. As noted above, Current Exec-1 was developed with substantial input from the OIG, and many of its provisions reflect specific comments of -- and suggested language from -- the OIG. Certainly, Current Exec-1 was not developed in an effort to limit or diminish the legitimate power or authority of the OIG, and at no time while I was advising Chairman Laney did I come to understand that the OIG believed that any provisions of what became Current Exec-1 were "illegal." The OIG's comments and suggestions were all relayed through Chairman Laney, and at no time was I advised by Chairman Laney that any of the proposed changes to Exec-1, which ultimately were incorporated in the final version of Current Exec-1, were thought to be illegal. Based on my interactions with Chairman Laney, I

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1 The first version was issued by the Amtrak Inspector General in June 1992. The second iteration was issued in July 2005 by then-President and CEO David Gunn.

2 Specifically, Section 1.0 of Current Exec-1 states, in relevant part: "The purpose of this policy is to summarize the scope, authority, responsibilities and oversight of the OIG and that of Amtrak personnel in cooperating with or responding to the OIG. This policy is intended to clarify the duties and responsibilities of the OIG and of Amtrak personnel in connection with OIG activities . . . ." The two prior iterations of Exec-1 likewise stated that their purpose was, in relevant part, to flesh out "the scope, authority and responsibilities" of the OIG.

would be surprised if he received such information at the time and failed to pass it along. For these reasons, I truly was surprised to hear that you apparently have been told that at least some provisions of Current Exec-1 violate the IG Act and are therefore "illegal." I do not believe that to be the case and would like to know the specifics of that claim so that I may consider them and properly respond.

As a general matter, it is not contrary to the IG Act, or otherwise inappropriate, for an agency to have internal policies addressing the function of the OIG within the agency, including its investigative function. OIGs are expected to operate consistent with "internal agency policies and procedures," according to, for example, the *Quality Standards for Investigations* promulgated by the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency ("PCIE/ECIE"). *See* PCIE/ECIE, *Quality Standards for Investigations* (Dec. 2003) at 7 ("Investigations should be initiated, conducted, and reported in accordance with (a) all applicable laws, rules, and regulations; (b) guidelines from the Department of Justice and other prosecutive authorities; and (c) *internal agency policies and procedures*." (emphasis added)). Although an OIG and management may have disagreements over the contents of such internal policies, the policies themselves are not contrary to either the letter or spirit of the IG Act.[3] Moreover, such policies are fully consistent with subsection 8G(d) of the IG Act, which provides that "[e]ach Inspector General shall report to and be under the general supervision of the head of the designated Federal entity," and with subsection 4(a)(5), which requires the OIG to "keep the head of such [designated Federal entity] and the Congress fully and currently informed." Clearly defining the relationship between an OIG and its agency is also a best practice, as recognized by the Inspector General community's own "Working Relationship Principles for Agencies and Offices of Inspector General," which states that "[t]o work most effectively together, the Agency and its OIG need to clearly define what the two consider to be a productive relationship."

Given this history and context, and, particularly, given some of what I consider ill-advised omissions and additions in the Proposed Revision of Exec-1, I think it prudent for -- and I would urge -- you and the Board to give full consideration to the underlying concerns that led the prior Board Chairman to implement Current Exec-1 before you undertake a wholesale revision of the current policy. Moreover, I believe it is important that you and the Board fully understand the impact of changes contained in the Proposed Revision of Exec-1 and the Draft Memo before adopting those changes.

II. Provisions Proposed to be Omitted from Current Exec-1

In order to assist you and the Board, I have reviewed both Current Exec-1 and the Proposed Revision of Exec-1. I will first analyze the provisions that are proposed for deletion to put into sharper focus the implications of removing those provisions. I have also analyzed the proposed deletions in light of the proposed Draft Memo, which provides some additional context for the Proposed Revision of Exec-1.

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[3] Indeed, if such policies were "illegal" across the board, the Proposed Revision of Exec-1 and the Draft Memo would themselves fall into that category.

A. Authority to Waive Attorney-Client Privilege

The Proposed Revision of Exec-1 would eliminate a provision in Current Exec-1, Section 5.3, which was fully consistent with the IG Act and was designed to ensure that Amtrak's critical privileges and proprietary and other confidential interests are protected. The ability of Amtrak to protect these interests, and the lack of an established policy and procedure to do so, was one of former Chairman Laney's chief concerns. The Proposed Revision of Exec-1, however, contains no provision regarding the handling and safekeeping of Amtrak's privileged, proprietary, and/or confidential information. The Draft Memo contains a provision regarding the handling of privileged information that appears to vest the responsibility of protecting the Corporation's interests with the OIG. This combination -- deleting Section 5.3 of Current Exec-1 and adding a new directive in the Draft Memo that seems to eliminate any apparent role for the General Counsel to protect Amtrak's legal rights in connection with its privileged, proprietary, and confidential information -- is troubling for several reasons.

As you may know, the current protocol in Section 5.3 of Current Exec-1 (as well as the more detailed arrangement set forth in the Agreed Protocol signed by the Inspector General and the General Counsel in October 2007) for the production of privileged and confidential materials to the OIG was developed to address particular concerns of the Corporation over the leaking of highly sensitive and privileged material to unauthorized persons in the Fall of 2006.[4] The current production protocol ensures that *the OIG has access to all Amtrak information regardless of its privileged or confidential nature*, while at the same time ensuring that the Law Department, which has the institutional responsibility to protect those privileges for Amtrak, can do so. The current protocol is fully consistent with the IG Act and in line with the PCIE/ECIE's admonition that Inspectors General "respect[] the value and ownership of privileged, confidential, or classified information received." PCIE/ECIE, *Quality Standards for Federal Offices of Inspector General* (Oct. 2003) at 6.

The Draft Memo vests with the OIG in the first instance the responsibility to identify Amtrak's privileged information and to protect it from disclosure to third parties. Specifically, the Draft Memo contemplates that the OIG "will coordinate with the Board prior to the release of privileged information." This arrangement, however, begs the question of how the OIG -- which has no institutional competence to identify Amtrak's privileged, proprietary, or confidential information -- would know when to coordinate such efforts with the Board, which itself may not be in a position to evaluate properly the privileged, proprietary, or confidential nature of the information. This arrangement, which shifts responsibility for making privilege decisions away from the Corporation's chief legal officer, seems unworkable in practice and ill-advised as a matter of policy.

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[4] It should be noted, too, that the prior General Counsel specifically requested that the Inspector General take appropriate action to address this breach of Amtrak's interests. I understand that, to date, the Law Department has not received a response to that request, which we have been advised is part of a pattern of unresponsiveness on the part of the OIG to the Law Department. On those few occasions when my firm has been asked by the Law Department to communicate directly with the OIG, in the same way we routinely do with prosecutors, regulators, and other OIGs, we have not been able to get our phone calls returned or to obtain responses to our e-mails.

Generally speaking, the power to waive a corporation's privilege rests with the corporate decision maker at the time the waiver determination is made, whether it is the corporation's board or its officers.[5] In Amtrak's case, I am advised that the power to manage the Corporation is vested in the Board of Directors and delegated as set forth in the bylaws to officers of the Corporation. In light of this structure, any decision that could affect Amtrak's ability to protect its privilege can only be made by the full Board or, to the extent there has been a delegation, the Corporation's officers. On matters of privilege, the General Counsel is best positioned to make such judgments and to protect the interests of the Corporation. The process devised by the Draft Memo for protecting privilege, however, anticipates that the OIG will have primary responsibility for identifying and protecting Amtrak's privilege interests, thereby vesting in the OIG a pure management function that is incompatible with the OIG's mandate under the IG Act and outside its institutional competence to perform. Moreover, to the extent this process vests the OIG with primary responsibility for protecting Amtrak's privilege interests, the OIG would be operating under an inherent conflict of interest. The only reason for the OIG to bring a privilege question to the Board would be that the OIG has already determined that the information should be disclosed to a third party (and, thus, that the privilege should be waived). The OIG has its own statutory interests and responsibilities and may, at times, find itself at odds with the Corporation. For that very reason, the OIG is singularly ill-equipped to play the institutional role of deciding when to waive the Corporation's privilege interests.[6] I am not aware of any compelling reason to create and implement such an unusual process, which is unprecedented in my experience -- in either the public or private sector -- because it includes the OIG but excludes the Corporation's chief legal officer.

B. Proposed Removal of Principles Outlining OIG Supervision

At the time that Chairman Laney consulted with me, he had only recently become fully familiar with his responsibilities, as head of Amtrak, to supervise the OIG. The scope of that supervisory role is set forth in the IG Act, and the provisions adopted in Current Exec-1 are designed to ensure that the Board Chairman is and continues to be properly informed of the OIG's activities in order for the Chairman to fulfill this statutory requirement.

The Proposed Revision of Exec-1 would eliminate Sections 5.1 and 6.1 of Current Exec-1, which relate to the supervision of the Amtrak OIG pursuant to the IG Act and to the

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5 *See, e.g., CFTC v. Weintraub*, 471 U.S. 343, 348-49 & n.4 (1985). *Weintraub* notes that state corporation laws generally vest management authority in a corporation's board of directors. The same principles apply under the law to Amtrak, as well as under Amtrak's charter and bylaws.

6 As a point of reference, the Department of Justice Office of Inspector General ("DOJ OIG") frequently conducted investigations involving highly-classified materials when I was the Inspector General. In those investigations, the decision whether to declassify certain information as part of the DOJ OIG's public reports was ultimately made by those parts of the Department that had originated the information, and not by the DOJ OIG. The rationale for not permitting the DOJ OIG to make unilateral declassification decisions is the same as the rationale for not permitting the Amtrak OIG to make decisions about waiving Amtrak's attorney-client privilege. OIGs are not the proper entities to make judgments as to whether to release certain categories of protected information. In these circumstances, OIGs have an institutional bias to release, rather than protect, information.

Amtrak OIG's statutory reporting obligations. Both sections are based on -- and are fully consistent with -- Sections 5 and 8G(d) of the IG Act, which impose on the Inspector General the statutory obligation, among other things, to keep the head of Amtrak "fully and currently informed." Here again, I thought this information was appropriate to include in a policy statement summarizing for Amtrak employees, who may not be familiar with the IG Act, the general scope, authority, and responsibilities of the Amtrak OIG. I am at a loss as to why these sections might be eliminated. While the IG Act does not require that these provisions be outlined in a policy, there is certainly nothing inconsistent or "illegal" about them. Moreover, it was my judgment that these provisions provided transparency regarding the Chairman's supervisory responsibilities, which have moved from the CEO to the Board Chairman in recent years, as specifically set forth in the IG Act.[7]

C. Other Significant Items Proposed to be Removed from Current Exec-1

The Proposed Revision of Exec-1 would eliminate Section 3.1 in Current Exec-1, which sets forth the purposes and objectives for establishing the Amtrak OIG, as those purposes and objectives relate to Amtrak employees and as articulated in Section 4 of the IG Act. A similar provision was included in the first iteration of Exec-1; and, in developing Current Exec-1, I thought it appropriate to include a statement of the OIG's general purpose and authority. I thought it appropriate to include this information in a policy statement that summarized for Amtrak employees, who may not be familiar with the IG Act, the scope, authority, and responsibilities of the Amtrak OIG. There is certainly nothing in these provisions that is illegal or inconsistent with the IG Act.

The Proposed Revision of Exec-1 also eliminates Section 6.3 in Current Exec-1, relating to unauthorized publicity of Amtrak OIG activities by OIG employees. This issue was a significant concern for Chairman Laney, and, in my experience, this provision is in line with the practice in the Inspector General community. This provision is consistent with the IG Act, and it is unclear to me why this reasonable provision -- aimed at deterring unauthorized public statements by line personnel -- should be eliminated. Again, there is certainly nothing in this provision that is illegal or inconsistent with the IG Act.

The Proposed Revision of Exec-1 would eliminate Section 7.3 of Current Exec-1, which includes reasonable policies regarding communications between the OIG and Amtrak management. Specifically, Section 7.3 of Current Exec-1 requires that the OIG provide notification and periodic updates (unless the Inspector General determines that sharing such information is inappropriate under the circumstances) to department heads of any OIG review, audit, inspection, or investigation requiring the assistance of employees from that department. Section 7.3 also requires the OIG to use its best efforts to minimize any disruption of normal operations of the Corporation. Nothing in these provisions is illegal or inconsistent with the IG

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7 The definition of the "head of Amtrak" to be "the Chair" in Section 4.0 of the Proposed Revision of Exec-1 should also be revised back to the definition in Current Exec-1 because the "head" of Amtrak has changed over the last few years and that term is confusing if not more specifically defined. Current Exec-1 eliminates any confusion or need to revise Exec-1 should the head of Amtrak be changed in the future.

Act. Rather, the provisions in Section 7.3 of Current Exec-1 are fully consistent with the IG Act and are flexible enough to accommodate the legitimate needs of the OIG to maintain confidentiality, while at the same time ensuring that management can continue to operate the business. Furthermore, far from being contrary to the IG Act, appropriate policies and procedures, such as those in Section 7.3 of Current Exec-1, that encourage communication and cooperation between an OIG and management are fully consistent with the IG Act's goals of promoting economy, efficiency, and effectiveness. Thus, the Proposed Revision of Exec-1's elimination of policies and procedures designed to encourage open communication between the OIG and management seems counter-productive to the mission of the OIG and the interests of Amtrak as a whole.

My concern in this regard is heightened by the additional requirements in the Proposed Revision of Exec-1 and the Draft Memo that, in effect, impose a blanket confidentiality on all OIG activities absent a specific waiver of confidentiality from the OIG. Subsection 6.1(g) of the Proposed Revision of Exec-1 requires Amtrak employees to keep confidential all OIG requests for records, files, or information unless the OIG authorizes disclosure. (Although there is another exception, which would allow disclosure when "necessary to the performance of official duties," it is far from clear what this exception contemplates to be "official duties.") In a similar vein, the Draft Memo requires that Amtrak employees respond "directly to the OIG" and without "interference or review by, or notification to," any other Amtrak department. Implementing this requirement would impose an inefficient and generally unnecessary secrecy on OIG investigations. For example, far from hindering OIG investigations, the proper coordination of document productions is generally a good practice and, in my experience, more efficient than piece-meal productions from individual sources. Taken together, the elimination of the provisions in Section 7.3 of Current Exec-1 providing for notification of department heads and the addition of a blanket secrecy in the Proposed Revision of Exec-1 and the Draft Memo would mean that department heads are likely to find themselves in the middle of an OIG investigation in which there is no suspicion that they engaged in any type of wrongdoing, without any coordination of effort or ability to work with the OIG to give weight to the legitimate operational needs of the Corporation. This problem was a particular concern for Chairman Laney, and Section 7.3 was specifically included in Current Exec-1 to address this concern.

III. New Provisions Included in the Proposed Revision of Exec-1 and the Draft Memo That Cause Concern

The Proposed Revision of Exec-1 and Draft Memo include a number of other new provisions (in addition to those discussed above) that should be reconsidered or at least evaluated in light of potential significant consequences for the Corporation. These include provisions that are beyond the scope of a policy that is limited to addressing the authority of the OIG and its relationship to the rest of the Corporation.

A. Signed Sworn Statement

The requirement in subsection 6.1(b) that employees provide the OIG with a "signed sworn statement" upon request raises concerns in terms of potential consequences for employees and the OIG should an Amtrak employee refuse to provide a sworn statement. Although the OIG has the power to compel employees to provide information, and even the authority under

the IG Act to administer oaths, none of the prior versions of Exec-1 contained any reference to sworn statements, and I am not aware of any reason to include such a reference in the Proposed Revision of Exec-1. This provision more appropriately belongs in an internal OIG manual of investigative practices or procedures. (Such manuals are commonplace among investigative agencies and provide appropriate written guidance for the conduct of investigations and the exercise of due professional care.) Moreover, it is important to ensure that sworn statements, to the extent they are compelled, be used only in limited circumstances and with the knowledge that their use will generally eliminate the possibility of criminal prosecution of anyone who provides such a statement.[8]

First, I am advised by the Amtrak General Counsel that the application of a penalty to Amtrak employees based on this requirement raises concerns of an increased risk of constitutional claims brought by employees under a *Bivens*[9] theory, which allows individuals to bring claims for damages against *Federal Government agencies* for constitutional violations. This is a concern for the Corporation, not the OIG, because any discipline required to be imposed as a penalty for failing to provide a sworn statement to the OIG would be imposed by the Corporation. The OIG has no authority to discipline Amtrak employees but, rather, can only recommend that disciplinary measures be taken by management. Thus, if employees were to be disciplined for failing to comply with this provision, they may assert that the Corporation violated their constitutional rights under color of federal law. *See Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 394 (1995) (holding, in a First Amendment case, that Amtrak is "an agency . . . of the United States for the purpose of individual rights guaranteed against the Government by the Constitution"). Although, as I understand it, no successful *Bivens* claim has ever been brought against Amtrak to date, the Law Department remains concerned that a *Bivens* action brought under certain circumstances would be allowed to go forward against Amtrak to its long-term detriment. Any court decision adverse to the Corporation on this issue likely would have significant ramifications for Amtrak employees and on how Amtrak conducts its business and could significantly impair Amtrak's status and rights as a private, for-profit corporation incorporated under the laws of the District of Columbia.

Second, I am further advised that Amtrak's bylaws entitle Amtrak employees to broad indemnification rights, including the payment of attorneys' fees by the Corporation. A requirement that employees sign a sworn statement could entitle them to legal counsel paid for by the Corporation to advise them on whether to sign such a statement when it has been demanded by the OIG.[10]

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8 *See Garrity v. New Jersey*, 385 U.S. 493 (1967).

9 *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

10 As a point of comparison, sworn statements are rarely if ever taken during internal corporate investigations -- I have taken none in the hundreds of interviews I have conducted in the private sector in the past nine years -- and are rarely taken in government investigations. I have no information as to why the OIG, at this point in its history, has determined that it is important for this power to be embodied in a new version of Exec-1.

B. Prohibition on Employee Conversations

Both the Proposed Revision of Exec-1 and the Draft Memo take the unusual step of mandating employee silence regarding communications with the OIG. In fact, they could be read to *prohibit* employees -- in all instances -- from notifying their supervisors or other appropriate Amtrak departments or personnel when approached by the OIG. That can be an appropriate limitation in some instances, but only where there is some legitimate basis for concern that such notification would impair or impede the OIG's investigation. In short, that prohibition should be the exception, not the rule.

The imposition of blanket silence regarding OIG investigations contained in the Proposed Revision of Exec-1 and the Draft Memo is not the norm within the Inspector General community and should not be the norm for Amtrak. In addition to the OIG's reporting obligations to the Board and to Congress, professional standards for OIGs strongly suggest that they *engage* with management and *inform* management of their activities. Specifically: "The OIG should make a special and continuing effort to keep program managers and their key staff informed, if appropriate, about the purpose, nature, and content of OIG activity associated with the manager's programs. These efforts may include periodic briefings as well as interim reports and correspondence." PCIE/ECIE, *Quality Standards for Federal Offices of Inspector General* (Oct. 2003) at 30. Obviously, there will be instances where confidentiality is appropriate, but the proposed revisions would cloak all OIG investigations with "confidentiality" from the start. To the extent confidentiality is needed for a particular OIG investigation, the obligation under Current Exec-1 of every employee not to "obstruct" an investigation provides a sufficient basis for such a request.

The prohibition on employees speaking with anyone else, with no exception created even for legal counsel, has no basis in the IG Act and is quite troubling. The IG Act does not authorize the OIG to prohibit an employee from speaking with anyone else, particularly legal counsel. To the extent this prohibition is designed to avoid the obstruction or impairment of OIG investigations, it is framed far too broadly. It should properly be limited to discussions with others whom the employee believes -- or is told by the OIG -- to be likely witnesses during an investigation. In twenty-five years of conducting and directing investigations in the Department of Justice and for scores of private companies, I have never seen a blanket, preemptive prohibition such as this untethered to the needs of a specific investigation.

An employee's rights are further implicated by new language contained in Section 6.3 of the Proposed Revision of Exec-1, which, perhaps because of awkward drafting, appears to place limitations on the ability of an employee's counsel to speak with anyone involved in the investigation, including other lawyers. This limitation has no foundation in the IG Act or in the practices of any other investigative or prosecutorial agencies, including the Department of Justice. More generally, Sections 6.3, 6.4, and 6.5 are more appropriately included, to the extent they are not otherwise objectionable, in a manual of investigative policies and procedures, and not in a broad policy statement regarding the relationship between the Amtrak OIG and Amtrak employees.

C. Extending Exec-1 To "Contractors"

The addition of "contractors" in Section 2.0 of the Proposed Revision of Exec-1 would expand the coverage of the policy to persons and entities outside of Amtrak. Because this new term is not defined in the Proposed Revision of Exec-1, this addition raises a number of questions about who would qualify as a "contractor" -- whether it is contract employees or vendors, or both. Without knowing the reason for this addition, it remains unclear why the inclusion of "contractors" here is necessary or appropriate for an internal Amtrak policy statement. Moreover, Exec-1 does not appear to me to be an appropriate vehicle for defining the relationship between the Amtrak OIG and contractors (whomever they may be) or for imposing obligations on contractors. These matters are more appropriately included in the contract or agreement between the Corporation and the contractor. The IG Act already provides the OIG with the authority to investigate and audit vendors that do business with Amtrak, so it is unclear how and whether the inclusion of this language in the Proposed Revision of Exec-1 would address any legitimate concerns of the OIG.

IV. Conclusion

As I have described, Current Exec-1 was drafted less than a year ago to carefully balance the needs of the OIG as well as Amtrak's management. The OIG was involved in suggesting revisions to various drafts of that policy and never once, to the best of my knowledge, suggested that any provision was inconsistent with the IG Act or interfered with the OIG's ability to conduct investigations and audits. I do not know whether the concerns that Chairman Laney was addressing by revising the policy have been brought to your attention or to the Board's attention, but, as noted above, many of those concerns are *not* addressed in the Proposed Revision of Exec-1. Those concerns were very real and apparent to Chairman Laney and would therefore seem to be worthy of careful attention before his work is largely undone. In addition, I trust you will give appropriate weight to the disruption and confusion that would be created by issuing a new version of Exec-1 so soon after the version issued by Chairman Laney and without compelling evidence that it has substantial defects or has been found to be unworkable in practice.

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EXHIBIT 18

HUNTON& WILLIAMS

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July 27, 2009

Via Electronic Transmission

Ellen Beares
Committee on Appropriations
Transportation, Housing and Urban Development
and Related Agencies Subcommittee
SD-133 Dirksen Senate Office Building
Washington, D.C. 20510-6200

Re: Amtrak's Office of Inspector General

Dear Ellen:

In response to your requests in connection with investigation of the above-captioned matter, attached are written responses to your July 17, 2009 email requests to Caroline Decker, including Attachment A (list of law firms that have been engaged over the past three years).

Confirming our discussions, we have requested that you hold these documents in confidence, and it is our mutual understanding that provision of these documents does not constitute a waiver of any attorney work product or attorney-client privilege that may exist with regard to these documents. We understand that you will take steps to hold these documents as confidential unless a more formal process is pursued to release pertinent information. We further understand that if such a course is to be pursued, you will notify us in advance and afford us an opportunity to discuss applicability of privilege and potential harm from any disclosures.

Sincerely,

Mark B. Bierbower

Enclosures

cc (w/enc.): Steve Castor
Caroline Decker
Jason Foster
Jon Kamarck

Mike McCarthy
Joe McHugh
Rachel Milberg

These requests for information were received Thursday, July 17 from Ellen Beares, minority staff for Senate Appropriations Subcommittee on Transportation/HUD.

REQUEST #1

1) Who has been indemnified by Amtrak (title, salary, Fulltime or part time employee) and why they have been indemnified? Many employees have been indemnified over the years.

Answer -- Amtrak's Bylaws and indemnification policy provide for indemnification and advancement of legal expenses where the employee was properly acting within the scope of his or her employment. Since Amtrak regularly indemnifies employees who have been over the years individually named in lawsuits filed against Amtrak, we have only identified instances where senior level employees of the have sought and been granted indemnification. Each of these individuals was, or is, a full-time employee.

1. Fred Weiderhold, Inspector General, 1998. Payment of $45,718.22 attorneys' fees associated with lawsuit against Mr. Weiderhold.
2. Allison Conway-Smith, Chief Engineer, 2000. Payment of attorneys' fees associated with investigation. No records.
3. Arlene Friner, Chief Financial Officer, 2004. Payment of $71,360 attorneys' fees associated with investigation.
4. Stephanie Audette, Treasurer, 2004-2007. Payment of $131,036 attorneys' fees associated with investigation.
5. William Campbell, Chief Financial Officer, 2009. Payment of $58,210 attorneys' fees associated with investigation.
6. Dale Stein, Treasurer, 2009. Payment of $47,663 attorneys' fees associated with investigation.
7. Eleanor D. Acheson, Vice President, General Counsel and Corporate Secretary, 2008-2009. Payment of approximately $9,975 attorneys' fees associated with investigation.
8. Jared Roberts, Managing Deputy General Counsel – Corporate, 2009. Payment of $10,391 attorneys' fees associated with investigation.
9. Alex Kummant, President and Chief Executive Officer, 2009. Mr. Kummant has requested indemnification but no fees have been incurred as of this date.

2) Who has been retained by your Counsel's office (name of firm, hourly rate) over the past three years, how much has been paid out in total to outside law firms in the last three years.

Answer -- See Attachment A for list of firms engaged over the past three years and Table 1. for the total number of matters handled and the total fees incurred in Fiscal Years 2007, 2008 and 2009 to date. Particularly for the law firms retained by the Company for Claims matters, many of these firms represent the company in large numbers of claims each year.

REQUEST #2

1. What is the total amount of money spent by the Amtrak Law Department on outside counsel since the release of the Toothman Report?

Answer -- Same as No. 2 in Request #1 above.

2. Of that amount, how much was spent on engagements related to the Office of Inspector General?

Answer -- Fried, Frank has been engaged by both the Board and the Company to assist on OIG matters. The Board fees totaled $38,000 in 2007. Fried Frank billed $45,000 in fees in 2007, $150,000 in 2008, and $65,000 in FY2009.

Hunton & Williams has been engaged by the Board and billed $155,000 in fees in FY2009.

3. Which law firms are currently being paid by Amtrak to represent the board, the entity itself, the law department, or individual Amtrak or Amtrak OIG employees on engagements related to the OIG?

Answer -- Fried Frank and Hunton & Williams are the only firms that are currently engaged by the Company to provide advice to the Board of Directors and the Company on matters related to the Amtrak Inspector General.

4. Is Amtrak paying for Jesse James to represent the Interim Inspector General Lorraine Green, if so, why? Does James represent the Interim IG in her personal capacity or does he represent the Office?

Answer -- We have no information regarding the retention of Mr. James by the OIG. This question should be posed to Lorraine Green, Interim Inspector General.

REQUEST #3

Would like to know about protocol for Board meetings ... specifically:

1. Is Amtrak subject to 'sunshine laws'? No. However, Amtrak is subject to and complies with the Freedom of Information Act. See, 49 CFR 701.

2. Are Board meetings "transparent"...? They are private.

3. Who is invited to Board meetings? Directors, Department of Transportation representatives, Officers of the company, the Amtrak Inspector General, a representative of the DOT Inspector General and others as determined by the Board.

4. Are minutes from Board meetings public? No

5. Are Board meeting agendas public? No

6. Are there bylaws that set the rules/guidelines for Board meetings? Can we see them? There are Corporate Bylaws and they can be provided.

Table 1. Outside Counsel Expenditures*

	Outside Counsel Legal Fees	No. of Open General Law Matters*	No. of Open Claims Matters*
FY 2007	23,592,288	193	3,714
FY 2008	27,622,574	206	4,636
FY 2009 (YTD)	23,187,130	161	4,691◀

* All included within the total outside counsel expenditures.

◀ Through July 26, 2009

ATTACHMENT A

2007 Law Firms

General Counsel

Adams & Reese
Alston Bird
Alvord and Alvord
Anderson Rasor
Arent Fox
Arnold & Porter
Baker & McKenzie
Barker & Castro
Bate Peterson
Bird & Bird
Blackwell & Associates
Bonner Kiernan
Bryan Cave
Buchanan Ingersoll
Cahill Goetsch & Maurer
Carlton Fields
Chaffe McCall, LLP
Collier Shannon Rill & Scott
Curtis Mallet-Prevost Colt
Davis & Young
Debevoise & Plimpton
Dickstein Shapiro
DLA Piper Rudnick
Drinker Biddle & Reath
Durkin, McDonnell, Clifton
Florio & Perrucci
Fox Rotschild
Fried Frank
Gravel & Shea
Hartline Dacus Barger
Hill Farrer & Burrill
Hodes, Ulman, Pessin & Katz
Hogan & Hartson
Hohn & Scheuerle
Holland & Knight
Honigman Miller Schwartz
Howd & Ludorf, LLC
Jackson Lewis LLP
Jenner & Block
Kollman & Saucier
Kramer Levin Naftalis
Kruchko & Fries
Landman, Corsi, Ballaine & Ford
Latham & Watkins
LeBoeuf, Lamb, Greene
Levine Blaszak
Lovitz Law Firm, P.C.
Manatt, Phelps & Phillips
Manko Gold
May Oberfell Lorber
Mayer Brown Roe &
McDermott Will & Emery
McNamee, Lochner, Titus & Williams
Millberg Gordon & Stewart
Miller & Chevalier
Miller Thomson

Claims

Abrahamson Reed & Bilse
Aiken Bridges Attorney at Law
Anderson Rasor & Partners LLP
Anspach Meeks Ellenberger LLP
Atkinson & Thal
Bateman & Gibson LLC
Berman & Savage
Bonner Kiernan Trebach &
Bowles & Bowles
Bradley & Freed PSC
Burns Anderson Jury & Brenner
Burns White & Hickton
Carr Allison
Chaffe McCall Phillips Toler
Coates & Logan LLC
Crowley & Clarida LLP
Davidson Meaux Sonnier
Dickie McCamey & Chilcote
Doherty & Kerley LLP
Durkin McDonnell Clifton
Eduardo Cosio PA
Edwards & Angell LLP
Fedota Childers & May PC
Ferris Burson Entrekin & Follis
Flynn & Associates PC
Fraser Milner Casagrain LLP
Forrester Jordan & Dick LLC
Friday Eldredge & Clark
Fulcher Hagler LLP
Gallagher Rowan & Egbert PC
Garlington Lohn & Robinson
Godfrey Braun & Frazier LLP
Gravel & Shea
Gundlach Lee Eggmann Boyle
Hall & Evans LLC
Hitt Hiller Monfils Williams LLP
Hohn & Scheuerle
Huddleston Bolen LLP
Hunton & Williams
Jackson Walker LLP
John Bonistalli
Landman Corsi Ballaine & Ford PC
Lane Powell Spears Lubersky
Law Offices of Patrick H Barth
Lemle & Kelleher
Lombardi Loper & Conant LLP
McDowell Knight Roedder & Sledge
McLearyDomico & Kyle PLLC
McLeod Alexander Powel & Apfel
McNamee Lochner Titus & Williams
Melkus Fleming & Gutierrez PL
Millberg Gordon & Stewart PLLC
Miller Thomson LLP
Modrall Sperling Roehl
Moseley Prichard Parrish Knight
Mullen & Mullen

2007 Law Firms

General Counsel

Morgan Lewis & Bokius
Morrison & Foerster
Nilles, Ilvedson, Stroup,
Obermeayer, Rebmann, Maxwell
Ogilvy Renault
Pamela Price and Associates
Paul Hastings Janofsky
Perkins Coie
Phillips Erlewine
Potter, Anderson & Corroon
Reed Smith LLP
Robbins Russell Englebert Orseck
Robinson Brog
Schnader, Harrison, Segal
Sessions & Fisherman LLP
Seyfarth, Shaw, Fairweather
Steptoe & Johnson
Thelen Reid & Priest
Trevett Criston Salzar
Vedder Price
Venable LLP
Watson Farley & Williams LLP
WilmerHale
Wolf Block Schorr

Claims

Ogletree Deakins Nash Smoak & Stewart PC
Potter Anderson & Corroon
Randolph Cregger Chalfant LLP
Robert C Varney & Associates
Ryan Ryan Johnson & DeLuca LLP
Sanchez Daniels & Hoffman
Sidley & Austin LLP
Sims Law Firm
Spence Ricke Sweeney & Gemes PA
Steptoe & Johnson LLP
Stuart & Branigin LLP
Thompson Coburn
Trevett Cristo Salzer & Andolina
Whiteford Taylor & Preston
Williams Venker & Sanders LLC
Wills & Massalon LLC
Wise Carter Child & Caraway
Wolf Law PC

2008 Law Firms

General Counsel

Adams & Reese
Alston & Bird
Anderson Rasor & Partners
Arent Fox
Baker & McKenzie
Barker & Castro
Bate Peterson
Bates White LLC
Bonner Kiernan
Buchanan Ingersoll
Capozzola, Carl Law Offices of
Carlton Fields
Coletter Holt & Associates
Davis & Young
Dieter, Stephens & Durham
Dickstein Shapiro LLP
DLA Piper Rudnick
Duane Morris & Heckscher
Durkin McDonnell Clifton
Edwards & Angell LLP
Emmet, Marvin & Martin
Fried Frank
Goodwin Proter
Gundlach Lee Eggmann Boyle
Hartline Dacus Barger
Hill Farrer & Burrill
Hodes Ulman Pessin & Katz
Hogan & Hartson
Holland & Knight
Howd & Ludorf, LLC
Jackson Lewis LLP
Jenner & Block
Kollman & Saucier
Kramer Levin Naftalis
Kruchko & Fries
Landman Corsi Ballaine & Ford
Latham & Watkins
Law Office of Jay S.
LeBoeuf, Lamb, Greene
Levine Blaszak
Manatt Phelps & Phillips
Manko Gold
Mayer Brown Roe &
McNamee, Locher,
Messer Caparello & Self
Millber Gordon & Stewart
Miller & Chevalier
Miller Canfield
Miller Thomson
Morgan Lewis & Bockius
Morris James Hitchens
Morrison & Foerster
Niziankiewicz & Miller
Obermayer, Rebmann Maxwell

Claims

Abrahamson Reed & Bilse
Aiken Bridges Attorney at Law
Anderson Rasor & Partners LLP
Anspach Meeks Ellenberger LLP
Atkinson & Thal
Barry S Bendetowies
Berman & Savage
Bonner Kiernan Trebach &
Bowles & Bowles
Bradley & Freed PSC
Brasher Law Firm LLC
Burns Anderson Jury & Brenner
Burns White & Hickton
Carr Allison
Chaffe McCall Phillips Toler
Coates & Logan LLC
Crowley & Clarida LLP
Davidson Meaux Sonnier
Dickie McCamey & Chilcote
Domico & Kyle PLLC
Durkin McDonnell & Clifton
Eduardo Cosio PA
Edwards & Angell LLP
Fedota Childers & May PC
Ferris Burson Entrekin & Follis
Flynn & Associates PC
Forrester & Dick Attorneys at Law
Friday Eldredge & Clark
Fulcher Hagler LLP
Gallagher Rowan & Egbert PC
Garlington Lohn & Robinson
Gholson Burson Entrekin & Orr LLC
Godfrey Braun & Frazier LLP
Gundlach Lee Eggmann Boyle
Hall & Evans LLC
Hitt Hiller Monfils Williams LLP
Hohn & Scheuerle
Huddleston Bolen LLP
Hunton & Williams
Irwin Fritchie Urquhart & Moore
Jackson Walker LLP
John Bonistalli
Lamson Dugan & Murray LLP
Landman Corsi Ballaine & Ford PC
Lane Powell Spears Lubersky
Law Offices of Patrick H Barth
Lemle & Kelleher
Lombardi Loper & Conant LLP
McClure Ramsay Dickerson & Escoe
McDowell Knight Roedder & Sledge
McLeod Alexander Powel & Apfel
McNamee Lochner Titus & Williams
Melkus Fleming & Gutierrez PL
Millberg Gordon & Stewart PLLC

2008 Law Firms

General Counsel

Ogilvy Renault
Perkins Coie
Phillips & Erlewine
Potter Anderson & Corroon
Reed Smith LLP
Robbins Russell
Shawe & Rosenthal
Sprenger & Lang PLLC
Squire Sanders
Steptoe & Johnson
Thelen Reid & Priest
Tobin O'Conner & Ewing
Vedder Price
Venable LLP
Watson, Farley & Williams LLP
WilmerHale
Wolf Block Schorr

Claims

Miller Thomson LLP
Modrall Sperling Roehl
Moseley Prichard Parrish Knight
Nixon Peabody LLP
Randolph Cregger Chalfant LLP
Ray Valdez McChristian & Jeans, Attys & Counsel
Robert T. Varney
Ryan Ryan Johnson & DeLuca LLP
Sanchez Daniels & Hoffman
Setliff & Holland PA
Sidley Austin LLP
Sims Law Firm
Smith Moore LLP
Spence Ricke Sweeney & Gemes PA
Steptoe & Johnson LLP
Stuart & Branigin LLP
Thompson Coburn
Vedder Price Kaufman Kammholz
Whiteford Taylor & Preston
Wilcox Lancaster & Lacy PLC
Williams Venker & Sanders LLC
Wise Carter Child & Caraway
Wolf Law PC

2009 Law Firms

General Counsel

Alston & Bird
Alvord and Alvord
Arent Fox
Babcock & Brown
Baker & McKenzie
Bate Peterson
Bonner Kiernan
Colette Holt & Assiciates
Cozen O'Connor
Davis & Young
Dickstein Shapiro
DLA Piper Rudnick
Donnelly McDowell
Duane Morris
Durkin McDonnell Clifton
Edwards & Angell LLP
Fox Rothschild
Fried Frank
Garlington Lohn & Robinson
Gilbert Oshinsky LLP
Hill Farrer & Burrill
Hodes Ulman Pessin & Katz
Hogan & Hartson
Holland & Knight
Hunter & Geist, Inc.
Hunton & Williams
Jackson Lewis LLP
Jenner & block
Kobre & Kim LLP
Kollman & Saucer
Kramer Levin Naftalis
Kruchko & Fries
Landman Corsi Ballaine & Ford
Latham & Watkins
LeBoeuf, Lamb, Greene
Levine Blaszak
Manatt Phelps & Phillips
Manko Gold
McDermott Will & Emery
McKenna Long
McNamee Lockner Titus & Williams
Miles & Stockbridge
Miller & Chevalier
Miller Canfield
Morgan Lewis & Bockius
Morris James, Hitchens
Morrison & Foerster
Nauman Smith Shissler & Hall
Obermayer, Rebmann, Maxwell
Ogilvy Renault
Patton Boggs
Pepper Hamilton
Perkins Coie
Phillips & Erlewine
Reed Smith LLP
Robbins Rusell
Shawe & Rosenthal
Shearman & Sterling
Shefsky & Froelich
Squire Sanders
Steptoe & Johnson
Thelen Reid & Priest
Tobin O'Connor & Ewing
Troutman Sanders
Vedder Price
Wheat Wu
WilmerHale
Wolf Block Schorr

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Bateman Gibson LLC
Bonner Kiernan Trebach &
Boyle Brasher LLC
Burns Anderson Jury & Brenner
Burns White & Hickton
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Crowley & Clarida LLP
Davidson Meaux Sonnier
Dickie McCamey & Chilcote
Domico & Kyle PLLC
Durkin McDonnell Clifton &
Eduardo Cosio PA
Edwards Angell Palmer & Dodge
Fedota Childers & May PC
Flynn & Associates PC
Forrester & Dick LLC
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Godfrey Braun & Frazier LLP
Gundlach Lee Eggman Boyle
Hall & Evans LLC
Hitt Hiller Monfils Williams LLP
Hohn & Scheuerle
Huddleston Bolen LLP
Hunton & Williams
Irwin Fritchie Urquhart & Moore
Jackson Walker LLP
John Bonistalli
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Melkus Fleming & Gutierrez PL
Millberg Gordon & Stewart PLLC
Modrall Sperling Roehl
Moseley Prichard Parrish Knight
Mullen & Mullen
Nixon Peabody LLP
Nyemaster Goode West Hansell & O'Brien PC
Randolph Cregger Chalfant LLP
Robert T. Varney & Associates
Ryan Ryan Johnson & DeLuca LLP
Sanchez Daniels & Hoffman
Setliff & Holland PA
Sims Law Firm
Smith & Haskell Law Firm LLP
Spence Ricke Sweeney & Gemes PA
Stuart & Branigin LLP
The Reardon Law Firm PC
Thompson Coburn
Whiteford Taylor & Preston
Wilcox Lancaster & Lacy
Williams Venker & Sanders LLC
Wise Carter Child & Caraway
Wolf Law PC

EXHIBIT 19

Public Law 111–5
111th Congress

An Act

Making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes.

Feb. 17, 2009
[H.R. 1]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

American Recovery and Reinvestment Act of 2009.
26 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Recovery and Reinvestment Act of 2009".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

SEC. 3. PURPOSES AND PRINCIPLES.

26 USC 1 note.

(a) STATEMENT OF PURPOSES.—The purposes of this Act include the following:

CAPITAL INVESTMENT FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Capital Investment Fund", $290,000,000, for information technology security and upgrades to support mission-critical operations, of which up to $38,000,000 shall be transferred to, and merged with, funds made available under the heading "Capital Investment Fund" of the United States Agency for International Development: *Provided,* That the Secretary of State and the Administrator of the United States Agency for International Development shall coordinate information technology systems, where appropriate, to increase efficiencies and eliminate redundancies, to include co-location of backup information management facilities, and shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

Deadline.
Spending plan.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General" for oversight requirements, $2,000,000.

INTERNATIONAL COMMISSIONS

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Construction" for the water quantity program to meet immediate repair and rehabilitation requirements, $220,000,000: *Provided,* That up to $2,000,000 may be transferred to, and merged with, funds available under the heading "International Boundary and Water Commission, United States and Mexico—Salaries and Expenses": *Provided further,* That the Secretary of State shall submit to the Committees on Appropriations within 90 days of enactment of this Act a detailed spending plan for funds appropriated under this heading.

Deadline.
Spending plan.

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

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SUPPLEMENTAL DISCRETIONARY GRANTS FOR A NATIONAL SURFACE TRANSPORTATION SYSTEM

For an additional amount for capital investments in surface transportation infrastructure, $1,500,000,000, to remain available through September 30, 2011: *Provided,* That the Secretary of Transportation shall distribute funds provided under this heading as discretionary grants to be awarded to State and local governments or transit agencies on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area,

or a region: *Provided further,* That projects eligible for funding provided under this heading shall include, but not be limited to, highway or bridge projects eligible under title 23, United States Code, including interstate rehabilitation, improvements to the rural collector road system, the reconstruction of overpasses and interchanges, bridge replacements, seismic retrofit projects for bridges, and road realignments; public transportation projects eligible under chapter 53 of title 49, United States Code, including investments in projects participating in the New Starts or Small Starts programs that will expedite the completion of those projects and their entry into revenue service; passenger and freight rail transportation projects; and port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement: *Provided further,* That of the amount made available under this paragraph, the Secretary may use an amount not to exceed $200,000,000 for the purpose of paying the subsidy and administrative costs of projects eligible for federal credit assistance under chapter 6 of title 23, United States Code, if the Secretary finds that such use of the funds would advance the purposes of this paragraph: *Provided further,* That in distributing funds provided under this heading, the Secretary shall take such measures so as to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities: *Provided further,* That a grant funded under this heading shall be not less than $20,000,000 and not greater than $300,000,000: *Provided further,* That the Secretary may waive the minimum grant size cited in the preceding proviso for the purpose of funding significant projects in smaller cities, regions, or States: *Provided further,* That not more than 20 percent of the funds made available under this paragraph may be awarded to projects in a single State: *Provided further,* That the Federal share of the costs for which an expenditure is made under this heading may be up to 100 percent: *Provided further,* That the Secretary shall give priority to projects that require a contribution of Federal funds in order to complete an overall financing package, and to projects that are expected to be completed within 3 years of enactment of this Act: *Provided further,* That the Secretary shall publish criteria on which to base the competition for any grants awarded under this heading not later than 90 days after enactment of this Act: *Provided further,* That the Secretary shall require applications for funding provided under this heading to be submitted not later than 180 days after the publication of such criteria, and announce all projects selected to be funded from such funds not later than 1 year after enactment of this Act: *Provided further,* That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further,* That the Secretary may retain up to $1,500,000 of the funds provided under this heading, and may transfer portions of those funds to the Administrators of the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration and the Maritime Administration, to fund the award and oversight of grants made under this heading.

Waiver authority.

Publication.
Criteria.
Deadline.

Applications.
Deadlines.

FEDERAL AVIATION ADMINISTRATION

SUPPLEMENTAL FUNDING FOR FACILITIES AND EQUIPMENT

For an additional amount for necessary investments in Federal Aviation Administration infrastructure, $200,000,000, to remain available through September 30, 2010: *Provided,* That funding provided under this heading shall be used to make improvements to power systems, air route traffic control centers, air traffic control towers, terminal radar approach control facilities, and navigation and landing equipment: *Provided further,* That priority be given to such projects or activities that will be completed within 2 years of enactment of this Act: *Provided further,* That amounts made available under this heading may be provided through grants in addition to the other instruments authorized under section 106(l)(6) of title 49, United States Code: *Provided further,* That the Federal share of the costs for which an expenditure is made under this heading shall be 100 percent: *Provided further,* That amounts provided under this heading may be used for expenses the agency incurs in administering this program: *Provided further,* That not more than 60 days after enactment of this Act, the Administrator shall establish a process for applying, reviewing and awarding grants and cooperative and other transaction agreements, including the form and content of an application, and requirements for the maintenance of records that are necessary to facilitate an effective audit of the use of the funding provided: *Provided further,* That section 50101 of title 49, United States Code, shall apply to funds provided under this heading.

Deadline. Procedures.

Applicability.

GRANTS-IN-AID FOR AIRPORTS

For an additional amount for "Grants-In-Aid for Airports", to enable the Secretary of Transportation to make grants for discretionary projects as authorized by subchapter 1 of chapter 471 and subchapter 1 of chapter 475 of title 49, United States Code, and for the procurement, installation and commissioning of runway incursion prevention devices and systems at airports of such title, $1,100,000,000, to remain available through September 30, 2010: *Provided*, That such funds shall not be subject to apportionment formulas, special apportionment categories, or minimum percentages under chapter 471: *Provided further,* That the Secretary shall distribute funds provided under this heading as discretionary grants to airports, with priority given to those projects that demonstrate to his satisfaction their ability to be completed within 2 years of enactment of this Act, and serve to supplement and not supplant planned expenditures from airport-generated revenues or from other State and local sources on such activities: *Provided further,* That the Secretary shall award grants totaling not less than 50 percent of the funds made available under this heading within 120 days of enactment of this Act, and award grants for the remaining amounts not later than 1 year after enactment of this Act: *Provided further,* That the Federal share payable of the costs for which a grant is made under this heading shall be 100 percent: *Provided further,* That the amount made available under this heading shall not be subject to any limitation on obligations for the Grants-in-Aid for Airports program set forth in any Act: *Provided further,* That the Administrator of the Federal Aviation Administration may retain up to 0.2 percent of the funds provided under this

Deadlines.

heading to fund the award and oversight by the Administrator of grants made under this heading.

FEDERAL HIGHWAY ADMINISTRATION

HIGHWAY INFRASTRUCTURE INVESTMENT

For an additional amount for restoration, repair, construction and other activities eligible under paragraph (b) of section 133 of title 23, United States Code, and for passenger and freight rail transportation and port infrastructure projects eligible for assistance under subsection 601(a)(8) of such title, $27,500,000,000, to remain available through September 30, 2010: *Provided,* That, after making the set-asides required under this heading, 50 percent of the funds made available under this heading shall be apportioned to States using the formula set forth in section 104(b)(3) of title 23, United States Code, and the remaining funds shall be apportioned to States in the same ratio as the obligation limitation for fiscal year 2008 was distributed among the States in accordance with the formula specified in section 120(a)(6) of division K of Public Law 110–161: *Provided further,* That funds made available under this heading shall be apportioned not later than 21 days after the date of enactment of this Act: *Provided further,* That in selecting projects to be carried out with funds apportioned under this heading, priority shall be given to projects that are projected for completion within a 3-year time frame, and are located in economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161): *Provided further,* That 120 days following the date of such apportionment, the Secretary of Transportation shall withdraw from each State an amount equal to 50 percent of the funds awarded to that State (excluding funds suballocated within the State) less the amount of funding obligated (excluding funds suballocated within the State), and the Secretary shall redistribute such amounts to other States that have had no funds withdrawn under this proviso in the manner described in section 120(c) of division K of Public Law 110–161: *Provided further,* That 1 year following the date of such apportionment, the Secretary shall withdraw from each recipient of funds apportioned under this heading any unobligated funds, and the Secretary shall redistribute such amounts to States that have had no funds withdrawn under this proviso (excluding funds suballocated within the State) in the manner described in section 120(c) of division K of Public Law 110–161: *Provided further,* That at the request of a State, the Secretary of Transportation may provide an extension of such 1-year period only to the extent that he feels satisfied that the State has encountered extreme conditions that create an unworkable bidding environment or other extenuating circumstances: *Provided further,* That before granting such an extension, the Secretary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension: *Provided further,* That 3 percent of the funds apportioned to a State under this heading shall be set aside for the purposes described in subsection 133(d)(2) of title 23, United States Code (without regard to the comparison to fiscal year 2005): *Provided further,* That 30 percent of the funds apportioned to a State under this heading shall be suballocated within the State in the manner and for the purposes described in the first sentence of subsection

Deadline.

Effective date.

Effective date.

Submission.

133(d)(3)(A), in subsection 133(d)(3)(B), and in subsection 133(d)(3)(D): *Provided further,* That such suballocation shall be conducted in every State: *Provided further,* That funds suballocated within a State to urbanized areas and other areas shall not be subject to the redistribution of amounts required 120 days following the date of apportionment of funds provided under this heading: *Provided further,* That of the funds provided under this heading, $105,000,000 shall be for the Puerto Rico highway program authorized under section 165 of title 23, United States Code, and $45,000,000 shall be for the territorial highway program authorized under section 215 of title 23, United States Code: *Provided further,* That of the funds provided under this heading, $60,000,000 shall be for capital expenditures eligible under section 147 of title 23, United States Code (without regard to subsection(d)): *Provided further,* That the Secretary of Transportation shall distribute such $60,000,000 as competitive discretionary grants to States, with priority given to those projects that demonstrate to his satisfaction their ability to be completed within 2 years of enactment of this Act: *Provided further,* That of the funds provided under this heading, $550,000,000 shall be for investments in transportation at Indian reservations and Federal lands: *Provided further,* That of the funds identified in the preceding proviso, $310,000,000 shall be for the Indian Reservation Roads program, $170,000,000 shall be for the Park Roads and Parkways program, $60,000,000 shall be for the Forest Highway Program, and $10,000,000 shall be for the Refuge Roads program: *Provided further,* That for investments at Indian reservations and Federal lands, priority shall be given to capital investments, and to projects and activities that can be completed within 2 years of enactment of this Act: *Provided further,* That 1 year following the enactment of this Act, to ensure the prompt use of the $550,000,000 provided for investments at Indian reservations and Federal lands, the Secretary shall have the authority to redistribute unobligated funds within the respective program for which the funds were appropriated: *Provided further,* That up to 4 percent of the funding provided for Indian Reservation Roads may be used by the Secretary of the Interior for program management and oversight and project-related administrative expenses: *Provided further,* That section 134(f)(3)(C)(ii)(II) of title 23, United States Code, shall not apply to funds provided under this heading: *Provided further,* That of the funds made available under this heading, $20,000,000 shall be for highway surface transportation and technology training under section 140(b) of title 23, United States Code, and $20,000,000 shall be for disadvantaged business enterprises bonding assistance under section 332(e) of title 49, United States Code: *Provided further,* That funds made available under this heading shall be administered as if apportioned under chapter 1 of title 23, United States Code, except for funds made available for investments in transportation at Indian reservations and Federal lands, and for the territorial highway program, which shall be administered in accordance with chapter 2 of title 23, United States Code, and except for funds made available for disadvantaged business enterprises bonding assistance, which shall be administered in accordance with chapter 3 of title 49, United States Code: *Provided further,* That the Federal share payable on account of any project or activity carried out with funds made available under this heading shall be, at the option of the recipient, up to 100 percent of the total cost thereof: *Provided further*, That

Grants.

Effective date.
Redistribution authority.

funds made available by this Act shall not be obligated for the purposes authorized under section 115(b) of title 23, United States Code: *Provided further,* That funding provided under this heading shall be in addition to any and all funds provided for fiscal years 2009 and 2010 in any other Act for "Federal-aid Highways" and shall not affect the distribution of funds provided for "Federal-aid Highways" in any other Act: *Provided further,* That the amount made available under this heading shall not be subject to any limitation on obligations for Federal-aid highways or highway safety construction programs set forth in any Act: *Provided further,* That section 1101(b) of Public Law 109–59 shall apply to funds apportioned under this heading: *Provided further,* That the Administrator of the Federal Highway Administration may retain up to $40,000,000 of the funds provided under this heading to fund the oversight by the Administrator of projects and activities carried out with funds made available to the Federal Highway Administration in this Act, and such funds shall be available through September 30, 2012.

Applicability.

FEDERAL RAILROAD ADMINISTRATION

Grants.

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

For an additional amount for section 501 of Public Law 110–432 and discretionary grants to States to pay for the cost of projects described in paragraphs (2)(A) and (2)(B) of section 24401 of title 49, United States Code, subsection (b) of section 24105 of such title, $8,000,000,000, to remain available through September 30, 2012: *Provided,* That the Secretary of Transportation shall give priority to projects that support the development of intercity high speed rail service: *Provided further,* That within 60 days of the enactment of this Act, the Secretary shall submit to the House and Senate Committees on Appropriations a strategic plan that describes how the Secretary will use the funding provided under this heading to improve and deploy high speed passenger rail systems: *Provided further,* That within 120 days of enactment of this Act, the Secretary shall issue interim guidance to applicants covering grant terms, conditions, and procedures until final regulations are issued: *Provided further,* That such interim guidance shall provide separate instructions for the high speed rail corridor program, capital assistance for intercity passenger rail service grants, and congestion grants: *Provided further,* That the Secretary shall waive the requirement that a project conducted using funds provided under this heading be in a State rail plan developed under chapter 227 of title 49, United States Code: *Provided further,* That the Federal share payable of the costs for which a grant is made under this heading shall be, at the option of the recipient, up to 100 percent: *Provided further,* That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further,* That section 24405 of title 49, United States Code, shall apply to funds provided under this heading: *Provided further,* That the Administrator of the Federal Railroad Administration may retain up to one-quarter of 1 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading, and funds retained for said purposes shall remain available through September 30, 2014.

Deadline.
Strategic plan.

Deadline.
Guidance.

Waiver authority.

Compliance.

Applicability.

CAPITAL GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

For an additional amount for the National Railroad Passenger Corporation (Amtrak) to enable the Secretary of Transportation to make capital grants to Amtrak as authorized by section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110–432), $1,300,000,000, to remain available through September 30, 2010, of which $450,000,000 shall be used for capital security grants: *Provided,* That priority for the use of non-security funds shall be given to projects for the repair, rehabilitation, or upgrade of railroad assets or infrastructure, and for capital projects that expand passenger rail capacity including the rehabilitation of rolling stock: *Provided further*, That none of the funds under this heading shall be used to subsidize the operating losses of Amtrak: *Provided further*, That funds provided under this heading shall be awarded not later than 30 days after the date of enactment of this Act: *Provided further,* That the Secretary shall take measures to ensure that projects funded under this heading shall be completed within 2 years of enactment of this Act, and shall serve to supplement and not supplant planned expenditures for such activities from other Federal, State, local and corporate sources: *Provided further,* That the Secretary shall certify to the House and Senate Committees on Appropriations in writing compliance with the preceding proviso: *Provided further,* That not more than 60 percent of the funds provided for non-security activities under this heading may be used for capital projects along the Northeast Corridor: *Provided further,* That of the funding provided under this heading, $5,000,000 shall be made available for the Amtrak Office of Inspector General and made available through September 30, 2013.

Deadline.

Deadline.

Certification.

FEDERAL TRANSIT ADMINISTRATION

TRANSIT CAPITAL ASSISTANCE

Grants.

For an additional amount for transit capital assistance grants authorized under section 5302(a)(1) of title 49, United States Code, $6,900,000,000, to remain available through September 30, 2010: *Provided,* That the Secretary of Transportation shall provide 80 percent of the funds appropriated under this heading for grants under section 5307 of title 49, United States Code, and apportion such funds in accordance with section 5336 of such title (other than subsections (i)(1) and (j)): *Provided further,* That the Secretary shall apportion 10 percent of the funds appropriated under this heading in accordance with section 5340 of such title: *Provided further,* That the Secretary shall provide 10 percent of the funds appropriated under this heading for grants under section 5311 of title 49, United States Code, and apportion such funds in accordance with such section: *Provided further,* That funds apportioned under this heading shall be apportioned not later than 21 days after the date of enactment of this Act: *Provided further,* That 180 days following the date of such apportionment, the Secretary shall withdraw from each urbanized area or State an amount equal to 50 percent of the funds apportioned to such urbanized areas or States less the amount of funding obligated, and the Secretary shall redistribute such amounts to other urbanized areas or States that have had no funds withdrawn under this proviso utilizing whatever method he deems appropriate to ensure that all funds

Deadline.

Effective date.

Effective date.

redistributed under this proviso shall be utilized promptly: *Provided further,* That 1 year following the date of such apportionment, the Secretary shall withdraw from each urbanized area or State any unobligated funds, and the Secretary shall redistribute such amounts to other urbanized areas or States that have had no funds withdrawn under this proviso utilizing whatever method he deems appropriate to ensure that all funds redistributed under this proviso shall be utilized promptly: *Provided further,* That at the request of an urbanized area or State, the Secretary of Transportation may provide an extension of such 1-year period if he feels satisfied that the urbanized area or State has encountered an unworkable bidding environment or other extenuating circumstances: *Provided further,* That before granting such an extension, the Secretary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension: *Provided further,* That of the funds provided for section 5311 of title 49, United States Code, 2.5 percent shall be made available for section 5311(c)(1): *Provided further,* That of the funding provided under this heading, $100,000,000 shall be distributed as discretionary grants to public transit agencies for capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transportation systems: *Provided further,* That for such grants on energy-related investments, priority shall be given to projects based on the total energy savings that are projected to result from the investment, and projected energy savings as a percentage of the total energy usage of the public transit agency: *Provided further,* That applicable chapter 53 requirements shall apply to funding provided under this heading, except that the Federal share of the costs for which any grant is made under this heading shall be, at the option of the recipient, up to 100 percent: *Provided further,* That the amount made available under this heading shall not be subject to any limitation on obligations for transit programs set forth in any Act: *Provided further,* That section 1101(b) of Public Law 109–59 shall apply to funds appropriated under this heading: *Provided further,* That the funds appropriated under this heading shall not be comingled with any prior year funds: *Provided further,* That notwithstanding any other provision of law, three-quarters of 1 percent of the funds provided for grants under section 5307 and section 5340, and one-half of 1 percent of the funds provided for grants under section 5311, shall be available for administrative expenses and program management oversight, and such funds shall be available through September 30, 2012.

Submission.

Applicability.

Applicability.

FIXED GUIDEWAY INFRASTRUCTURE INVESTMENT

For an amount for capital expenditures authorized under section 5309(b)(2) of title 49, United States Code, $750,000,000, to remain available through September 30, 2010: *Provided*, That the Secretary of Transportation shall apportion funds under this heading pursuant to the formula set forth in section 5337 of title 49, United States Code: *Provided further*, That the funds appropriated under this heading shall not be commingled with any prior year funds: *Provided further*, That funds made available under this heading shall be apportioned not later than 21 days after the date of enactment of this Act: *Provided further*, That 180 days following the date of such apportionment, the Secretary shall

Deadline.

Effective date.

withdraw from each urbanized area an amount equal to 50 percent of the funds apportioned to such urbanized area less the amount of funding obligated, and the Secretary shall redistribute such amounts to other urbanized areas that have had no funds withdrawn under this proviso utilizing whatever method he or she deems appropriate to ensure that all funds redistributed under this proviso shall be utilized promptly: *Provided further*, That 1 year following the date of such apportionment, the Secretary shall withdraw from each urbanized area any unobligated funds, and the Secretary shall redistribute such amounts to other urbanized areas that have had no funds withdrawn under this proviso utilizing whatever method he or she deems appropriate to ensure that all funds redistributed under this proviso shall be utilized promptly: *Provided further*, That at the request of an urbanized area, the Secretary of Transportation may provide an extension of such 1-year period if he or she feels satisfied that the urbanized area has encountered an unworkable bidding environment or other extenuating circumstances: *Provided further*, That before granting such an extension, the Secretary shall send a letter to the House and Senate Committees on Appropriations that provides a thorough justification for the extension: *Provided further*, That applicable chapter 53 requirements shall apply except that the Federal share of the costs for which a grant is made under this heading shall be, at the option of the recipient, up to 100 percent: *Provided further*, That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: *Provided further*, That notwithstanding any other provision of law, up to 1 percent of the funds under this heading shall be available for administrative expenses and program management oversight and shall remain available for obligation until September 30, 2012.

Effective date.

Submission.

Applicability.

Applicability.

CAPITAL INVESTMENT GRANTS

For an additional amount for "Capital Investment Grants", as authorized under section 5338(c)(4) of title 49, United States Code, and allocated under section 5309(m)(2)(A) of such title, to enable the Secretary of Transportation to make discretionary grants as authorized by section 5309(d) and (e) of such title, $750,000,000, to remain available through September 30, 2010: *Provided*, That such amount shall be allocated without regard to the limitation under section 5309(m)(2)(A)(i): *Provided further*, That in selecting projects to be funded, priority shall be given to projects that are currently in construction or are able to obligate funds within 150 days of enactment of this Act: *Provided further*, That the provisions of section 1101(b) of Public Law 109–59 shall apply to funds made available under this heading: *Provided further*, That funds appropriated under this heading shall not be commingled with any prior year funds: *Provided further*, That applicable chapter 53 requirements shall apply, except that notwithstanding any other provision of law, up to 1 percent of the funds provided under this heading shall be available for administrative expenses and program management oversight, and shall remain available through September 30, 2012.

Applicability.

Applicability.

MARITIME ADMINISTRATION

SUPPLEMENTAL GRANTS FOR ASSISTANCE TO SMALL SHIPYARDS

To make grants to qualified shipyards as authorized under section 3508 of Public Law 110–417 or section 54101 of title 46, United States Code, $100,000,000, to remain available through September 30, 2010: *Provided,* That the Secretary of Transportation shall institute measures to ensure that funds provided under this heading shall be obligated within 180 days of the date of their distribution: *Provided further,* That the Maritime Administrator may retain and transfer to "Maritime Administration, Operations and Training" up to 2 percent of the funds provided under this heading to fund the award and oversight by the Administrator of grants made under this heading.

Deadline.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For an additional amount for necessary expenses of the Office of Inspector General to carry out the provisions of the Inspector General Act of 1978, as amended, $20,000,000, to remain available through September 30, 2013: *Provided,* That the funding made available under this heading shall be used for conducting audits and investigations of projects and activities carried out with funds made available in this Act to the Department of Transportation: *Provided further,* That the Inspector General shall have all necessary authority, in carrying out the duties specified in the Inspector General Act, as amended (5 U.S.C. App. 3), to investigate allegations of fraud, including false statements to the Government (18 U.S.C. 1001), by any person or entity that is subject to regulation by the Department.

Audits. Investigations.

Fraud.

GENERAL PROVISION—DEPARTMENT OF TRANSPORTATION

SEC. 1201. (a) MAINTENANCE OF EFFORT.—Not later than 30 days after the date of enactment of this Act, for each amount that is distributed to a State or agency thereof from an appropriation in this Act for a covered program, the Governor of the State shall certify to the Secretary of Transportation that the State will maintain its effort with regard to State funding for the types of projects that are funded by the appropriation. As part of this certification, the Governor shall submit to the Secretary of Transportation a statement identifying the amount of funds the State planned to expend from State sources as of the date of enactment of this Act during the period beginning on the date of enactment of this Act through September 30, 2010, for the types of projects that are funded by the appropriation.

Deadline. Certification.

Submission. Time period.

(b) FAILURE TO MAINTAIN EFFORT.—

If a State is unable to maintain the level of effort certified pursuant to subsection (a), the State will be prohibited by the Secretary of Transportation from receiving additional limitation pursuant to the redistribution of the limitation on obligations for Federal-aid highway and highway safety construction programs that occurs after August 1 for fiscal year 2011.

(c) PERIODIC REPORTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, each grant recipient shall submit to the covered agency from which they received funding periodic reports on the use of the funds appropriated in this Act for covered programs. Such reports shall be collected and compiled by the covered agency and transmitted to Congress. Covered agencies may develop such reports on behalf of grant recipients to ensure the accuracy and consistency of such reports.

(2) CONTENTS OF REPORTS.—For amounts received under each covered program by a grant recipient under this Act, the grant recipient shall include in the periodic reports information tracking-

(A) the amount of Federal funds appropriated, allocated, obligated, and outlayed under the appropriation;

(B) the number of projects that have been put out to bid under the appropriation and the amount of Federal funds associated with such projects;

(C) the number of projects for which contracts have been awarded under the appropriation and the amount of Federal funds associated with such contracts;

(D) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts;

(E) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts;

(F) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under the appropriation and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of job-years created and the total increase in employment since the date of enactment of this Act; and

(G) for each covered program report information tracking the actual aggregate expenditures by each grant recipient from State sources for projects eligible for funding under the program during the period beginning on the date of enactment of this Act through September 30, 2010, as compared to the level of such expenditures that were planned to occur during such period as of the date of enactment of this Act.

(3) TIMING OF REPORTS.—Each grant recipient shall submit the first of the periodic reports required under this subsection not later than 90 days after the date of enactment of this Act and shall submit updated reports not later than 180 days, 1 year, 2 years, and 3 years after such date of enactment.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) COVERED AGENCY.—The term "covered agency" means the Office of the Secretary of Transportation, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Federal Transit Administration and the Maritime Administration of the Department of Transportation.

(2) COVERED PROGRAM.—The term "covered program" means funds appropriated in this Act for "Supplemental Discretionary Grants for a National Surface Transportation System"

to the Office of the Secretary of Transportation, for "Supplemental Funding for Facilities and Equipment" and "Grants-in-Aid for Airports" to the Federal Aviation Administration; for "Highway Infrastructure Investment" to the Federal Highway Administration; for "Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service" and "Capital Grants to the National Railroad Passenger Corporation" to the Federal Railroad Administration; for "Transit Capital Assistance", "Fixed Guideway Infrastructure Investment", and "Capital Investment Grants" to the Federal Transit Administration; and "Supplemental Grants for Assistance to Small Shipyards" to the Maritime Administration.

(3) GRANT RECIPIENT.—The term "grant recipient" means a State or other recipient of assistance provided under a covered program in this Act. Such term does not include a Federal department or agency.

(e) Notwithstanding any other provision of law, sections 3501–3521 of title 44, United States Code, shall not apply to the provisions of this section.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

PUBLIC HOUSING CAPITAL FUND

For an additional amount for the "Public Housing Capital Fund" to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (the "Act"), $4,000,000,000, to remain available until September 30, 2011: *Provided,* That the Secretary of Housing and Urban Development shall distribute $3,000,000,000 of this amount by the same formula used for amounts made available in fiscal year 2008, except that the Secretary may determine not to allocate funding to public housing agencies currently designated as troubled or to public housing agencies that elect not to accept such funding: *Provided further,* That the Secretary shall obligate funds allocated by formula within 30 days of enactment of this Act: *Provided further,* That the Secretary shall make available $1,000,000,000 by competition for priority investments, including investments that leverage private sector funding or financing for renovations and energy conservation retrofit investments: *Provided further,* That the Secretary shall obligate competitive funding by September 30, 2009: *Provided further,* That public housing authorities shall give priority to capital projects that can award contracts based on bids within 120 days from the date the funds are made available to the public housing authorities: *Provided further,* That public housing agencies shall give priority consideration to the rehabilitation of vacant rental units: *Provided further,* That public housing agencies shall prioritize capital projects that are already underway or included in the 5-year capital fund plans required by the Act (42 U.S.C. 1437c–1(a)): *Provided further,* That notwithstanding any other provision of law, (1) funding provided under this heading may not be used for operating or rental assistance activities, and (2) any restriction of funding to replacement housing uses shall be inapplicable: *Provided further,* That notwithstanding any other provision of law, the Secretary shall institute measures to ensure that funds provided under this heading

Deadline.

Deadline.
Contracts.

shall serve to supplement and not supplant expenditures from other Federal, State, or local sources or funds independently generated by the grantee: *Provided further,* That notwithstanding section 9(j), public housing agencies shall obligate 100 percent of the funds within 1 year of the date on which funds become available to the agency for obligation, shall expend at least 60 percent of funds within 2 years of the date on which funds become available to the agency for obligation, and shall expend 100 percent of the funds within 3 years of such date: *Provided further,* That if a public housing agency fails to comply with the 1-year obligation requirement, the Secretary shall recapture all remaining unobligated funds awarded to the public housing agency and reallocate such funds to agencies that are in compliance with those requirements: *Provided further,* That if a public housing agency fails to comply with either the 2-year or the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the public housing agency and reallocate such funds to agencies that are in compliance with those requirements: *Provided further,* That in administering funds appropriated or otherwise made available under this heading, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds: *Provided further,* That, in addition to waivers authorized under the previous proviso, the Secretary may direct that requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to amounts made available under this heading: *Provided further,* That of the funds made available under this heading, up to .5 percent shall be available for staffing, training, technical assistance, technology, monitoring, travel, enforcement, research and evaluation activities: *Provided further,* That funds set aside in the previous proviso shall remain available until September 30, 2012: *Provided further,* That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Personnel Compensation and Benefits, Office of Public and Indian Housing" and shall retain the terms and conditions of this account, including reprogramming provisions, except that the period of availability set forth in the previous proviso shall govern such transferred funds: *Provided further,* That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to "Administration, Operations, and Management", for non-personnel expenses of the Department of Housing and Urban Development: *Provided further,* That any funds made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund".

Deadlines.

Waiver authority.

NATIVE AMERICAN HOUSING BLOCK GRANTS

For an additional amount for "Native American Housing Block Grants", as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA") (25

U.S.C. 4111 et seq.), $510,000,000 to remain available until September 30, 2011: *Provided,* That $255,000,000 of the amount provided under this heading shall be distributed according to the same funding formula used in fiscal year 2008: *Provided further,* That the Secretary shall obligate funds allocated by formula within 30 days of enactment of this Act: *Provided further,* That the amounts distributed through the formula shall be used for new construction, acquisition, rehabilitation including energy efficiency and conservation, and infrastructure development: *Provided further,* That in selecting projects to be funded, recipients shall give priority to projects for which contracts can be awarded within 180 days from the date that funds are available to the recipients: *Provided further,* that the Secretary may obligate $255,000,000 of the amount provided under this heading for competitive grants to eligible entities that apply for funds authorized under NAHASDA: *Provided further,* That the Secretary shall obligate competitive funding by September 30, 2009: *Provided further,* That in awarding competitive funds, the Secretary shall give priority to projects that will spur construction and rehabilitation and will create employment opportunities for low-income and unemployed persons: *Provided further,* That recipients of funds under this heading shall obligate 100 percent of such funds within 1 year of the date funds are made available to a recipient, expend at least 50 percent of such funds within 2 years of the date on which funds become available to such recipients for obligation and expend 100 percent of such funds within 3 years of such date: *Provided further,* That if a recipient fails to comply with the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the recipient and reallocate such funds through the funding formula to recipients that are in compliance with these requirements: *Provided further,* That if a recipient fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds originally awarded to the recipient: *Provided further,* That notwithstanding any other provision of law, the Secretary may set aside up to 2 percent of funds made available under this paragraph for a housing entity eligible to receive funding under title VIII of NAHASDA (25 U.S.C. 4221 et seq.): *Provided further,* That in administering funds appropriated or otherwise made available under this heading, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds: *Provided further,* That of the funds made available under this heading, up to .5 percent shall be available for staffing, training, technical assistance, technology, monitoring, travel, enforcement, research and evaluation activities: *Provided further,* That funds set aside in the previous proviso shall remain available until September 30, 2012: *Provided further,* That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Personnel Compensation and Benefits, Office of Public and Indian Housing" and shall retain the terms and conditions of this account, including reprogramming provisions, except that the period of availability set forth in the

Deadline.

Deadline.

Deadlines.

Waiver authority.

previous proviso shall govern such transferred funds: *Provided further,* That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to "Administration, Operations, and Management", for non-personnel expenses of the Department of Housing and Urban Development: *Provided further,* That any funds made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund".

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT FUND

For an additional amount for "Community Development Fund" $1,000,000,000, to remain available until September 30, 2010 to carry out the community development block grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.): *Provided*, That the amount appropriated in this paragraph shall be distributed pursuant to 42 U.S.C. 5306 to grantees that received funding in fiscal year 2008: *Provided further*, That in administering the funds appropriated in this paragraph, the Secretary of Housing and Urban Development shall establish requirements to expedite the use of the funds: *Provided further*, That in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available to the recipients: *Provided further*, That in administering funds appropriated or otherwise made available under this heading, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such waiver is necessary to expedite or facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute.

Requirements.

Waiver authority.

For the provision of emergency assistance for the redevelopment of abandoned and foreclosed homes, as authorized under division B, title III of the Housing and Economic Recovery Act of 2008 ("the Act") (Public Law 110–289) (42 U.S.C. 5301 note), $2,000,000,000, to remain available until September 30, 2010: *Provided,* That grantees shall expend at least 50 percent of allocated funds within 2 years of the date funds become available to the grantee for obligation, and 100 percent of such funds within 3 years of such date: *Provided further,* That unless otherwise noted herein, the provisions of the Act govern the use of the additional funds made available under this heading: *Provided further,* That notwithstanding the provisions of sections 2301(b) and (c)(1) and section 2302 of the Act, funding under this paragraph shall be allocated by competitions for which eligible entities shall be States, units of general local government, and nonprofit entities or consortia of nonprofit entities, which may submit proposals in partnership with for profit entities: *Provided further,* That in selecting grantees, the Secretary of Housing and Urban Development shall ensure that the grantees are in areas with the greatest number and percentage of foreclosures and can expend funding within the period allowed under this heading: *Provided further,* That additional award criteria for such competitions shall include demonstrated grantee

Deadlines.

Award criteria.

capacity to execute projects, leveraging potential, concentration of investment to achieve neighborhood stabilization, and any additional factors determined by the Secretary of Housing and Urban Development: *Provided further,* That the Secretary may establish a minimum grant size: *Provided further,* That the Secretary shall publish criteria on which to base competition for any grants awarded under this heading not later than 75 days after the enactment of this Act and applications shall be due to HUD not later than 150 days after the enactment of this Act: *Provided further,* That the Secretary shall obligate all funding within 1 year of enactment of this Act: *Provided further,* That section 2301(d)(4) of the Act is repealed: *Provided further,* That section 2301(c)(3)(C) of the Act is amended to read "establish and operate land banks for homes and residential properties that have been foreclosed upon": *Provided further,* That funding used for section 2301(c)(3)(E) of the Act shall be available only for the redevelopment of demolished or vacant properties as housing: *Provided further,* That no amounts made available from a grant under this heading may be used to demolish any public housing (as such term is defined in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a)): *Provided further,* That a grantee may not use more than 10 percent of its grant under this heading for demolition activities under section 2301(c)(3)(C) and (D) unless the Secretary determines that such use represents an appropriate response to local market conditions: *Provided further,* That the recipient of any grant or loan from amounts made available under this heading or, after the date of enactment under division B, title III of the Housing and Economic Recovery Act of 2008, may not refuse to lease a dwelling unit in housing with such loan or grant to a participant under section 8 of the United States Housing Act of 1937 (42 U.S.C 1437f) because of the status of the prospective tenant as such a participant: *Provided further,* That in addition to the eligible uses in section 2301, the Secretary may also use up to 10 percent of the funds provided under this heading for grantees for the provision of capacity building of and support for local communities receiving funding under section 2301 of the Act or under this heading: *Provided further,* That in administering funds appropriated or otherwise made available under this section, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of funds except for requirements related to fair housing, nondiscrimination, labor standards and the environment, upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds: *Provided further*, That in the case of any acquisition of a foreclosed upon dwelling or residential real property acquired after the date of enactment with any amounts made available under this heading or under division B, title III of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), the initial successor in interest in such property pursuant to the foreclosure shall assume such interest subject to: (1) the provision by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and (2) the rights of any bona fide tenant, as of the date of such notice of foreclosure: (A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on

Publication.
Criteria.
Deadlines.

Deadline.

42 USC 5301 note.

42 USC 5301 note.

Waiver authority.

Foreclosure.
Notice.
42 USC 5301 note.

the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice under this paragraph; or (B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under this paragraph, except that nothing in this paragraph shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants: *Provided further*, That, for purposes of this paragraph, a lease or tenancy shall be considered bona fide only if: (1) the mortgagor under the contract is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property: *Provided further*, That the recipient of any grant or loan from amounts made available under this heading or, after the date of enactment, under division B, title III of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) may not refuse to lease a dwelling unit in housing assisted with such loan or grant to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) because of the status of the prospective tenant as such a holder: *Provided further*, That in the case of any qualified foreclosed housing for which funds made available under this heading or, after the date of enactment, under division B, title III of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) are used and in which a recipient of assistance under section 8(o) of the U.S. Housing Act of 1937 resides at the time of foreclosure, the initial successor in interest shall be subject to the lease and to the housing assistance payments contract for the occupied unit: *Provided further*, That vacating the property prior to sale shall not constitute good cause for termination of the tenancy unless the property is unmarketable while occupied or unless the owner or subsequent purchaser desires the unit for personal or family use: *Provided further*, That if a public housing agency is unable to make payments under the contract to the immediate successor in interest after foreclosures, due to (1) an action or inaction by the successor in interest, including the rejection of payments or the failure of the successor to maintain the unit in compliance with section 8(o)(8) of the United States Housing Act of 1937 (42 U.S.C.1437f) or (2) an inability to identify the successor, the agency may use funds that would have been used to pay the rental amount on behalf of the family—(i) to pay for utilities that are the responsibility of the owner under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to make payments to a utility provider in lieu of payments to the owner, except prior notification shall not be required in any case in which the unit will be or has been rendered uninhabitable due to the termination or threat of termination of service, in which case the public housing agency shall notify the owner within a reasonable time after making such payment; or (ii) for the family's reasonable moving costs, including security deposit costs: *Provided further,* That this paragraph shall not preempt any Federal, State or local law that provides more protections for tenants: *Provided further,* That of the funds made available under this heading, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, travel,

Contracts.

42 USC 5301 note.

enforcement, research and evaluation activities: *Provided further*, That funds set aside in the previous proviso shall remain available until September 30, 2012: *Provided further*, That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Personnel Compensation and Benefits, Community Planning and Development" and shall retain the terms and conditions of this account, including reprogramming provisions, except that the period of availability set forth in the previous proviso shall govern such transferred funds: *Provided further*, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to "Administration, Operations, and Management" for non-personnel expenses of the Department of Housing and Urban Development: *Provided further*, That any funds made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund".

HOME INVESTMENT PARTNERSHIPS PROGRAM

For an additional amount for capital investments in low-income housing tax credit projects, $2,250,000,000, to remain available until September 30, 2011: *Provided,* That such funds shall be made available to State housing credit agencies, as defined in section 42(h) of the Internal Revenue Code of 1986, and shall be apportioned among the States based on the percentage of HOME funds apportioned to each State and the participating jurisdictions therein for Fiscal Year 2008: *Provided further,* That the housing credit agencies in each State shall distribute these funds competitively under this heading and pursuant to their qualified allocation plan (as defined in section 42(m) of the Internal Revenue Code of 1986) to owners of projects who have received or receive simultaneously an award of low-income housing tax credits under section 42(h) of the Internal Revenue Code of 1986: *Provided further,* That housing credit agencies in each State shall commit not less than 75 percent of such funds within one year of the date of enactment of this Act, and shall demonstrate that the project owners shall have expended 75 percent of the funds made available under this heading within two years of the date of enactment of this Act, and shall have expended 100 percent of the funds within 3 years of the date of enactment of this Act: *Provided further,* That failure by an owner to expend funds within the parameters required within the previous proviso shall result in a redistribution of these funds by a housing credit agency to a more deserving project in such State, except any funds not expended after 3 years from enactment shall be redistributed by the Secretary to other States that have fully utilized the funds made available to them: *Provided further,* That projects awarded low income housing tax credits under section 42(h) of the IRC of 1986 in fiscal years 2007, 2008, or 2009 shall be eligible for funding under this heading: *Provided further,* That housing credit agencies shall give priority to projects that are expected to be completed within 3 years of enactment: *Provided further,* That any assistance provided to an eligible low income housing tax credit project under this heading shall be made in the same manner and be subject to the same limitations (including rent, income, and use restrictions, in lieu of corresponding limitations under the HOME program) as required by the state housing

Deadlines.

credit agency with respect to an award of low income housing credits under section 42 of the IRC of 1986: *Provided further,* That the housing credit agency shall perform asset management functions, or shall contract for the performance of such services, in either case, at the owner's expense, to ensure compliance with section 42 of the IRC of 1986, and the long term viability of buildings funded by assistance under this heading: *Provided further,* That the term eligible basis (as such term is defined in such section 42) of a qualified low-income housing tax credit building receiving assistance under this heading shall not be reduced by the amount of any grant described under this heading: *Provided further,* That the Secretary shall be given access upon reasonable notice to a State housing credit agency to information related to the award of Federal funds from such housing credit agency pursuant to this heading and shall establish an Internet site that shall identify all projects selected for an award, including the amount of the award and such site shall provide linkage to the housing credit agency allocation plan which describes the process that was used to make the award decision: *Provided further,* That in administering funds under this heading, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements imposed by this heading and requirements related to fair housing, non-discrimination, labor standards and the environment, upon a finding that such waiver is required to expedite the use of such funds: *Provided further,* That for purposes of environmental compliance review, funds under this heading that are made available to State housing credit agencies for distribution to projects awarded low income housing tax credits shall be treated as funds under the HOME program and shall be subject to Section 288 of the HOME Investment Partnership Act.

Contracts.

Web site.

Waiver authority.

HOMELESSNESS PREVENTION FUND

For homelessness prevention and rapid re-housing activities, $1,500,000,000, to remain available until September 30, 2011: *Provided,* That funds provided under this heading shall be used for the provision of short-term or medium-term rental assistance; 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 appropriate activities for homelessness prevention and rapid re-housing of persons who have become homeless: *Provided further,* That grantees receiving such assistance shall collect data on the use of the funds awarded and persons served with this assistance in the HUD Homeless Management Information System ("HMIS") or other comparable database: *Provided further,* That grantees may use up to 5 percent of any grant for administrative costs: *Provided further,* That funding made available under this heading shall be allocated to eligible grantees (as defined and designated in sections 411 and 412 of subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, (the "Act")) pursuant to the formula authorized by section 413 of the Act: *Provided further,* That the Secretary may establish a minimum grant size: *Provided further,* That grantees shall expend at least 60 percent

Deadlines.

of funds within 2 years of the date that funds became available to them for obligation, and 100 percent of funds within 3 years of such date, and the Secretary may recapture unexpended funds in violation of the 2-year expenditure requirement and reallocate such funds to grantees in compliance with that requirement: *Provided further,* That the Secretary may waive statutory or regulatory provisions (except provisions for fair housing, nondiscrimination, labor standards, and the environment) necessary to facilitate the timely expenditure of funds: *Provided further,* That the Secretary shall publish a notice to establish such requirements as may be necessary to carry out the provisions of this section within 30 days of enactment of this Act and that this notice shall take effect upon issuance: *Provided further,* That of the funds provided under this heading, up to .5 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further,* That funds set aside under the previous proviso shall remain available until September 30, 2012: *Provided further,* That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Community Planning and Development Personnel Compensation and Benefits" and shall retain the terms and conditions of this account including reprogramming provisions except that the period of availability set forth in the previous proviso shall govern such transferred funds: *Provided further,* That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to "Administration, Operations, and Management" for non-personnel expenses of the Department of Housing and Urban Development: *Provided further,* That any funding made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund."

Waiver authority.

Publication.
Notice.
Deadline.
Effective date.

HOUSING PROGRAMS

ASSISTED HOUSING STABILITY AND ENERGY AND GREEN RETROFIT INVESTMENTS

For assistance to owners of properties receiving project-based assistance pursuant to section 202 of the Housing Act of 1959 (12 U.S.C. 17012), section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), or section 8 of the United States Housing Act of 1937 as amended (42 U.S.C. 1437f), $2,250,000,000, of which $2,000,000,000 shall be for an additional amount for paragraph (1) under the heading "Project-Based Rental Assistance" in Public Law 110–161 for payments to owners for 12-month periods, and of which $250,000,000 shall be for grants or loans for energy retrofit and green investments in such assisted housing: *Provided,* That projects funded with grants or loans provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further,* That such grants or loans shall be provided through the policies, procedures, contracts, and transactional infrastructure of the authorized programs administered by the Office of Affordable Housing Preservation of the Department of Housing and Urban Development, on such terms and conditions as the Secretary of Housing and Urban Development deems appropriate to ensure the

maintenance and preservation of the property, the continued operation and maintenance of energy efficiency technologies, and the timely expenditure of funds: *Provided further,* That the Secretary may provide incentives to owners to undertake energy or green retrofits as a part of such grant or loan terms, including, but not limited to, fees to cover investment oversight and implementation by said owner, or to encourage job creation for low-income or very low-income individuals: *Provided further,* That the Secretary may share in a portion of future property utility savings resulting from improvements made by grants or loans made available under this heading: *Provided further,* That the grants or loans shall include a financial assessment and physical inspection of such property: *Provided further,* That eligible owners must have at least a satisfactory management review rating, be in substantial compliance with applicable performance standards and legal requirements, and commit to an additional period of affordability determined by the Secretary, but of not fewer than 15 years: *Provided further,* That the Secretary shall undertake appropriate underwriting and oversight with respect to grant and loan transactions and may set aside up to 5 percent of the funds made available under this heading for grants or loans for such purpose: *Provided further,* That the Secretary shall take steps necessary to ensure that owners receiving funding for energy and green retrofit investments under this heading shall expend such funding within 2 years of the date they received the funding: *Provided further,* That in administering funds appropriated or otherwise made available under this heading, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds: *Provided further,* That of the funds provided under this heading for grants and loans, up to 1 percent shall be available for staffing, training, technical assistance, technology, monitoring, research and evaluation activities: *Provided further,* That funds set aside in the previous proviso shall remain available until September 30, 2012: *Provided further,* That funding made available under this heading and used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Housing Personnel Compensation and Benefits" and shall retain the terms and conditions of this account including reprogramming provisos except that the period of availability set forth in the previous proviso shall govern such transferred funds: *Provided further,* That any funding made available under this heading used by the Secretary for training and other administrative expenses shall be transferred to "Administration, Operations and Management" for nonpersonnel expenses of the Department of Housing and Urban Development: *Provided further,* That any funding made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund."

Waiver authority.

OFFICE OF LEAD HAZARD CONTROL AND HEALTHY HOMES

For an additional amount for the "Lead Hazard Reduction Program", as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, and by sections 501

and 502 of the Housing and Urban Development Act of 1974, $100,000,000, to remain available until September 30, 2011: *Provided,* That for purposes of environmental review, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of law that further the purposes of such Act, a grant under the Healthy Homes Initiative, Operation Lead Elimination Action Plan (LEAP), or the Lead Technical Studies program under this heading or under prior appropriations Acts for such purposes under this heading, shall be considered to be funds for a special project for purposes of section 305(e) of the Multifamily Housing Property Disposition Reform Act of 1994: *Provided further,* That funds shall be awarded first to applicants which had applied under the Lead Hazard Reduction Program Notices of Funding Availability for fiscal year 2008, and were found in the application review to be qualified for award, but were not awarded because of funding limitations, and that any funds which remain after reservation of funds for such grants shall be added to the amount of funds to be awarded under the Lead Hazard Reduction Program Notices of Funding Availability for fiscal year 2009: *Provided further,* That each applicant for the Lead Hazard Program Notices of Funding Availability for fiscal year 2009 shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary to carry out the proposed use of funds: *Provided further,* That recipients of funds under this heading shall expend at least 50 percent of such funds within 2 years of the date on which funds become available to such jurisdictions for obligation, and expend 100 percent of such funds within 3 years of such date: *Provided further,* That if a recipient fails to comply with the 2-year expenditure requirement, the Secretary shall recapture all remaining funds awarded to the recipient and reallocate such funds to recipients that are in compliance with those requirements: *Provided further,* That if a recipient fails to comply with the 3-year expenditure requirement, the Secretary shall recapture the balance of the funds awarded to the recipient: *Provided further,* That in administering funds appropriated or otherwise made available under this heading, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of these funds (except for requirements related to fair housing, nondiscrimination, labor standards and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds: *Provided further,* That of the funds made available under this heading, up to .5 percent shall be available for staffing, training, technical assistance, technology, monitoring, travel, enforcement, research and evaluation activities: *Provided further,* That funds set aside in the previous proviso shall remain available until September 30, 2012: *Provided further,* That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Personnel Compensation and Benefits, Office of Lead Hazard Control and Healthy Homes" and shall retain the terms and conditions of this account, including reprogramming provisions, except that the period of availability set forth in the previous proviso shall govern such transferred funds: *Provided further,* That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred

Plans.
Strategy.

Deadlines.

Waiver authority.

to "Administration, Operations, and Management", for non-personnel expenses of the Department of Housing and Urban Development: *Provided further,* That any funds made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund".

MANAGEMENT AND ADMINISTRATION

OFFICE OF INSPECTOR GENERAL

For an additional amount for the necessary salaries and expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $15,000,000, to remain available until September 30, 2013: *Provided,* That the Inspector General shall have independent authority over all personnel issues within this office.

GENERAL PROVISIONS—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 1202. FHA LOAN LIMITS FOR 2009. (a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—For mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, if the dollar amount limitation on the principal obligation of a mortgage determined under section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) for any size residence for any area is less than such dollar amount limitation that was in effect for such size residence for such area for 2008 pursuant to section 202 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 620), notwithstanding any other provision of law, the maximum dollar amount limitation on the principal obligation of a mortgage for such size residence for such area for purposes of such section 203(b)(2) shall be considered (except for purposes of section 255(g) of such Act (12 U.S.C. 1715z–20(g))) to be such dollar amount limitation in effect for such size residence for such area for 2008.

(b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—Notwithstanding any other provision of law, if the Secretary of Housing and Urban Development determines, for any geographic area that is smaller than an area for which dollar amount limitations on the principal obligation of a mortgage are determined under section 203(b)(2) of the National Housing Act, that a higher such maximum dollar amount limitation is warranted for any particular size or sizes of residences in such sub-area by higher median home prices in such sub-area, the Secretary may, for mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, increase the maximum dollar amount limitation for such size or sizes of residences for such sub-area that is otherwise in effect (including pursuant to subsection (a) of this section), but in no case to an amount that exceeds the amount specified in section 202(a)(2) of the Economic Stimulus Act of 2008.

SEC. 1203. GSE CONFORMING LOAN LIMITS FOR 2009. (a) LOAN LIMIT FLOOR BASED ON 2008 LEVELS.—For mortgages originated during calendar year 2009, if the limitation on the maximum original principal obligation of a mortgage that may be purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation determined under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C.

1717(b)(2)) or section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1754(a)(2)), respectively, for any size residence for any area is less than such maximum original principal obligation limitation that was in effect for such size residence for such area for 2008 pursuant to section 201 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 619), notwithstanding any other provision of law, the limitation on the maximum original principal obligation of a mortgage for such Association and Corporation for such size residence for such area shall be such maximum limitation in effect for such size residence for such area for 2008.

(b) DISCRETIONARY AUTHORITY FOR SUB-AREAS.—Notwithstanding any other provision of law, if the Director of the Federal Housing Finance Agency determines, for any geographic area that is smaller than an area for which limitations on the maximum original principal obligation of a mortgage are determined for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, that a higher such maximum original principal obligation limitation is warranted for any particular size or sizes of residences in such sub-area by higher median home prices in such sub-area, the Director may, for mortgages originated during 2009, increase the maximum original principal obligation limitation for such size or sizes of residences for such sub-area that is otherwise in effect (including pursuant to subsection (a) of this section) for such Association and Corporation, but in no case to an amount that exceeds the amount specified in the matter following the comma in section 201(a)(1)(B) of the Economic Stimulus Act of 2008.

SEC. 1204. FHA REVERSE MORTGAGE LOAN LIMITS FOR 2009. For mortgages for which the mortgagee issues credit approval for the borrower during calendar year 2009, the second sentence of section 255(g) of the National Housing Act (12 U.S.C. 1715z–20(g)) shall be considered to require that in no case may the benefits of insurance under such section 255 exceed 150 percent of the maximum dollar amount in effect under the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)).

Health Information Technology for Economic and Clinical Health Act.

TITLE XIII—HEALTH INFORMATION TECHNOLOGY

SEC. 13001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.

42 USC 201 note.

(a) SHORT TITLE.—This title (and title IV of division B) may be cited as the "Health Information Technology for Economic and Clinical Health Act" or the "HITECH Act".

(b) TABLE OF CONTENTS OF TITLE.—The table of contents of this title is as follows:

EXHIBIT 20

4/21/09

Integrity Committee

Council of the Inspectors General for Integrity and Efficiency

935 Pennsylvania Ave., NW, Room 3973
Washington, D.C. 20535-0001

April 17, 2009

Personal and Confidential

Fred Weiderhold
Inspector General
Amtrak
Office of Inspector General
Suite 3W-300
10 G Street, N.E.
Washington, DC 210002-4285

Re: IC 609

Dear Mr. Weiderhold:

As you may be aware, the Integrity Committee (IC) of the Council of Inspectors General is charged with receiving, reviewing, and investigating, where appropriate, allegations of administrative misconduct made against Inspectors General (IGs) and designated members of an IG's staff. As part of these responsibilities, the IC recently received a complaint from an anonymous source alleging abuse of authority.

The purpose of this letter is to offer you the opportunity to provide a written response. This notice to you and request for response is a customary first step in the IC's review process. It allows an affected IG to provide context to the allegations and additional information so that the IC may make a better determination as to the necessity of any further action.

The complaint examined by the IC alleges that as IG, you failed to report vacation time usage in 2007 and 2008 and, during that same time frame, you failed to submit approved travel expense requests. Specifically, it is alleged that during calendar year 2008, you were absent from your office, telling numerous Amtrak officers and employees that you were in North Carolina working on a beach house owned jointly with your brother. Nevertheless, annual leave records do not show time off during this period. The complaint further alleges that you have not documented official travel expenses in the normal course, although you may have received payments for these travel expenses.

Fred Weiderhold

The IC requests that you provide clarification and any additional information, documentation, or written comments that you believe will be relevant and appropriate for consideration by the IC for this matter. After your response, the IC will review the complaint, along with the information you provide, and under its operating policy and procedures, determine whether it can resolve the matter based on the available information or if additional investigation is warranted.

The IC requests that you provide a written response within thirty days to the attention of the Integrity Committee, 935 Pennsylvania Avenue, NW, Room 3973, Washington, DC 20535. If you have questions, please contact the IC Program Manager, Supervisory Special Agent Scott Cheney, telephone (202) 324-5067.

Sincerely,

Kenneth W. Kaiser

Kenneth W. Kaiser
Chair, Integrity Committee

EXHIBIT 21

Integrity Committee

Council of the Inspectors General for Integrity and Efficiency

935 Pennsylvania Ave., NW, Room 3973
Washington, D.C. 20535-0001

June 12, 2009

Personal and Confidential

Fred Weiderhold
Inspector General
Amtrak
Office of Inspector General
Suite 3W-300
10 G Street, N.E.
Washington, DC 210002-4285

Re: IC 609

Dear Mr. Weiderhold:

The purpose of this letter is to notify you of the closure of the captioned Integrity Committee (IC) matter. The IC received a complaint in March 2009 from an anonymous source who alleged abuse of authority by you, as Inspector General, in time and attendance policies as well as travel expense improprieties. On May 18, 2009, you provided a response to the allegations, which along with the original complaint, were reviewed by the IC during its June 2009 meeting. The determination to close this case was based upon an IC finding that the facts, as set forth in the complaint, lacked the substantial likelihood of a violation of a law, rule or regulation, or gross mismanagement, gross waste of funds or abuse of authority by the Inspector General or designated staff member.

Thank you for bringing this matter to the IC's attention.

Sincerely,

Kenneth W. Kaiser
Chair, Integrity Committee

EXHIBIT 22

SEPARATION AGREEMENT AND
GENERAL WAIVER AND RELEASE OF CLAIMS

This Separation Agreement and General Waiver and Release of Claims (the "***Agreement***") is entered into by and between National Railroad Passenger Corporation (the "***Company***") and Fred E. Weiderhold, Jr., an individual residing at [redacted] ("***Executive***").

RECITALS

A. The Executive has resigned as an employee and as the Inspector General of the Company and any and all of its subsidiaries, effective June 19, 2009, hereinafter the "***Termination Date.***"

AGREEMENT

In consideration of the mutual covenants and obligations set forth below, the parties hereto agree as follows:

1. Benefits Executive Receives.

a. Executive shall receive his final paycheck for his work performed through his last day of employment with the Company (June 19, 2009), less standard withholding and deductions. This paycheck will contain a payment of $28,220 for all accrued but unused vacation. Consistent with Company policy, carryover vacation amounts from prior years of service shall not be paid.

b. So long as Executive does not revoke this Agreement within seven days of execution, and subject to Section 1(f) below, he will receive a severance payment of $244,573 paid out in equal installments over a twelve month period. The severance payments will begin on the first full month following the Termination Date and will continue each month for the 11 subsequent months (the "***Severance Period***").

c. So long as Executive does not revoke this Agreement within seven days of execution, he will receive an additional lump-sum payment of $38,090.

d. Subject to Section 1(f) below, Executive shall receive reasonable outplacement assistance services from an outplacement agency selected by the Company for six months, beginning on the first full month following the Termination Date. Executive will receive vouchers for train travel in connection with Executive's search for new employment for up to six months.

e. Provided that Executive elects COBRA benefit continuation by completing his election forms and submitting them within the required timeframe, the Company shall pay Executive's COBRA premiums for 18 months from the effective date of his resignation or until he receives comparable benefits, as described in Section 1(f) below, whichever is earlier.

f. Executive acknowledges that he is obligated to notify the Company's Vice President of Human Resources immediately upon obtaining new employment and to provide confirmation of annual salary, benefits, and the start date of the new employment. If the Executive's new employment starts within the Severance Period, the Company will pay Executive the pro-rated difference between Executive's annual salary in the new employment and his Company annual salary for the remaining months of the Severance Period. If the annual salary in the Executive's new employment exceeds his Company annual salary, he will receive no additional severance payments. If Executive's new employment begins within the first six months of the Severance Period, all benefits under Section 1(c) above will cease. If Executive is eligible for comparable benefits in his new employment, Company paid COBRA benefits will cease as soon as Executive becomes eligible for such benefits under his new employment. The comparability of benefits will be determined by the Company in its sole discretion.

g. If the Company becomes aware that Executive is incompetent by reason of physical or mental disability, age or some other cause, it may cause all payments thereafter becoming due to Executive to be made in trust or to any other person with power of attorney or other authority to make decisions for the Executive's benefit, without responsibility to account for the application of amounts so paid, and such payments will completely discharge the obligations of the Company under this Agreement.

h. If the Company is unable to make payment to Executive because it cannot ascertain the whereabouts of Executive after reasonable efforts have been made to locate Executive (including a notice of payment so due sent certified mail to the last known address of Executive as shown on the records of the Company), such payment and all subsequent payments otherwise due to Executive will be forfeited 18 months after the date such payment first became due.

2. Release.

a. Executive for himself, his attorneys, heirs, executors, administrators, and assigns does hereby fully, finally, and forever release and discharge the Company, its subsidiaries, related companies, and its and their successors, assigns, officers, employees, directors, agents, and representatives (the "***Released Parties***"), of and from all claims, demands, actions, causes of actions, suits, damages, losses, expenses, attorneys' fees and controversies of any and every nature whatsoever arising at any time prior to the execution of this Agreement ("***Claims***"). The Company for itself and its agents and representatives does hereby fully, finally, and forever release and discharge the Executive and his heirs, executors, administrators, and assigns of and from all Claims. This release includes, but is not limited to, any claims for wages, bonuses, employment benefits, or damages of any kind whatsoever, arising out of any common law torts, any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, any theory of wrongful discharge, any theory of negligence, any theory of retaliation, any theory of discrimination or harassment in any form, any legal restriction on the Company's

right to terminate employees, or any federal, state, or other governmental statute, executive order, or ordinance or any other legal limitation on or regulation of the employment relationship. Executive understands and agrees that the released Claims include, but are not limited to, any and all Claims against the Company or the Released Parties for any matter arising under the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans With Disabilities Act, the Employee Retirement Income Security Act, and any other federal, state, or local statute/ordinance/ regulation or common law, including, but not limited to, the District of Columbia Human Rights Act, and Sections 503 and 504 of the Rehabilitation Act of 1973. This waiver and release shall not waive or release Claims where the events in dispute first arise after execution of this Agreement, or any Claims that cannot be released by law, and it shall not preclude either party from filing a lawsuit for the exclusive purpose of enforcing its rights under this Agreement.

b. The Released Parties agree not to bring any Claims against the Executive or his heirs, executors, administrators, and assigns, and the Executive agrees not to bring any Claims against the Released Parties, either individually or collectively. Executive further agrees not to assist in any litigation or investigation against the Company, except as may be required by law or requested by the Company. Nothing in this Section 2(b) shall interfere with Executive's right to file a charge with, or cooperate or participate in an investigation or proceeding conducted by, the Equal Employment Opportunity Commission ("***EEOC***") or other federal or state regulatory or law enforcement agency. However, the consideration provided to Executive in this Agreement shall be the sole relief provided for the Claims and Executive shall not be entitled to recover from, and Executive agrees to waive any monetary benefits or recovery against, the Released Parties in connection with any such charge or proceeding without regard to who has brought such charge or proceeding.

c. Executive agrees that if Executive breaches this Agreement and brings a Claim against any of the Released Parties or otherwise breaches this Agreement, Executive shall be liable for any and all expenses incurred by the person or entity who defends the action, including reasonable attorneys' fees; provided, however, that this Section 2(c) shall not apply to charges filed by Executive with the EEOC or other federal or state regulatory or law enforcement agency.

3. Additional Representations and Warranties of Executive. Executive hereby further agrees, represents, and warrants:

a. That, on or before the date that is seven days from the date of this Agreement, Executive has returned to the Company all Company property, including but not limited to any keys, computerized access cards, records, reports, proposals, lists, correspondence, laptops, computer disks, Company documents (except for a copy of Executive's performance reviews), and Executive does not have knowledge of any Company property having been misappropriated by Executive or any other party.

b. That Executive will reasonably cooperate, subject to reimbursement by the Company of reasonable out-of-pocket costs and expenses (including attorneys' fees if Executive reasonably believes that counsel is necessary in connection with such cooperation), and with due regard for Executive's other obligations if he has obtained new employment, with the Company and its counsel with respect to any matter (including any litigation, investigation, or

governmental proceeding) that relates to matters with which Executive was involved or acquired knowledge during his employment with the Company. Such cooperation includes appearing from time to time at meetings for conferences and interviews (to the extent reasonably requested by the Company) and in general providing the Company, its officers and its counsel with the full benefit of his knowledge with respect to any matter related to the Company. Executive agrees to render such cooperation in a timely fashion and at such times as reasonably requested by the Company, with due regard for Executive's other obligations if he has obtained new employment.

c. Not to disparage, publicly or privately, the Company, its employees, services, prospects or products. Except for statements approved in writing in advance by the Company and except as required by law, Executive agrees that he will make no internal or external statement regarding his resignation, whether orally or by electronic or hard copy written communication (including but not limited to email), without providing the Company an opportunity to review the communication in advance.

d. That Executive shall not, for his own benefit or the benefit of any person or entity other than the Company, use or disclose any of the trade secrets or other confidential information of the Company or its affiliates. The term "trade secrets or other confidential information" includes, by way of example and not by way of limitation, matters of a technical nature, "know-how," inventions, computer programs and/or software (including documentation of such programs and/or software) and research projects, and matters of a business nature, such as proprietary information about costs, profits, markets, sales, lists of customers, vendor lists, designs, plans, financial reserves, memoranda or letters between Executive and other Company personnel, including members of the Company's Board, and other information related to the Company's current or future business activities to the extent not available to the public, and all information to which Executive had access during his employment with the Company which belongs or relates to a third party and which would constitute "trade secrets or other confidential information" if it belonged or related to the Company. This obligation continues unless such information becomes a part of the public domain other than through a breach of this Agreement or is disclosed to Executive by a third party who is entitled to receive and disclose such information.

e. That Executive will provide to the Company's officers, directors and employees information in his possession and related to the appropriate transition of his work at the Company.

The parties hereto agree that any breach of Executive's obligations, representations or warranties under any provision of this Section 3 will cause irreparable damage to the Company and therefore, in addition to any other remedies at law or in equity or under this Agreement available to the Company for Executive's breach or threatened breach of this Agreement, the Company is entitled to specific performance or injunctive relief against Executive to prevent such damage or breach.

4. The Company agrees that it will not disparage, publicly or privately, Executive. For purposes of this Section 4, the term "disparage" means any statements made by the Company's executive officers or members of its Board, or any statements made officially by the

Company, as applicable, that adversely affect Executive's personal or professional reputation. Except as required by law, Company agrees that it will make no internal or external statement regarding Executive's resignation, whether orally or by electronic or hard copy written communication (including but not limited to email), without providing the Executive an opportunity to review the communication in advance.

5. Executive acknowledges and understands that he:

a. has carefully read and fully understands all of the provisions of this Agreement;

b. knowingly and voluntarily agrees to all of the terms set forth in this Agreement and to be bound by this Agreement;

c. is hereby advised in writing to consult with an attorney and tax advisor of his choice prior to executing this Agreement and has had the opportunity and sufficient time to seek such advice;

d. is not waiving any rights or claims that may arise after the date this Agreement is executed;

e. agrees that the separation payment provided in this Agreement is in addition to any consideration to which he may already be entitled; and

f. may take up to 21 days to consider whether he desires to execute this Agreement and that he has a period of seven days after executing this Agreement to revoke any waiver of his claims under the Age Discrimination in Employment Act. If Executive revokes this Agreement, this Agreement shall automatically become null and void and Executive shall not receive the benefits described in this Agreement.

Any notice of revocation of this Agreement shall not be effective unless given in writing and received by the Company via personal delivery, overnight courier or U.S. Mail, postage prepaid, to each of the following: National Railroad Passenger Corporation, 60 Massachusetts Avenue, N.E., Washington, DC 20002. Attention: Thomas C. Carper, Chair of the Board; with a copy to J. Steven Patterson, Hunton & Williams LLP, 1900 K Street, N.W., Washington, DC 20006.

6. This Agreement shall not be construed as an admission by the Company of any violation of law, wrongful act, unlawful discrimination, or breach of contract, and the Company specifically disclaims any liability to or discrimination against Executive or any other person on the part of the Released Parties.

7. Executive represents and warrants that, in connection with his decision to execute this Agreement, he has not relied on any representations, promises, or agreements of any kind except for those set forth in this Agreement.

8. This Agreement shall constitute the entire and exclusive agreement between the parties hereto with respect to the matters addressed herein and, unless otherwise specified herein, supersedes any prior agreements or understandings, express or implied, pertaining to the terms of Executive's employment with the Company and the employment relationship. This Agreement may not be modified except in writing signed by both parties.

9. Both Executive and the Company further agree that neither will make public or publicize in any manner the terms, nature of scope of this Agreement or the fact this Agreement exists, and that both Executive and the Company will keep such information strictly confidential, except as may be necessary to enforce this Agreement or as required by law.

10. The provisions of this Agreement shall be regarded as divisible and separate; if any of the provisions should be declared invalid or unenforceable by a court or arbitration body of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby. This Agreement shall be construed and the legal relations of the parties hereto shall be determined in accordance with the laws of the District of Columbia without reference to the law regarding conflicts of law.

Executive agrees that Executive has carefully read and fully understands all aspects of this Agreement including the fact that this Agreement releases any Claims, including all claims arising under the Age Discrimination in Employment Act, that Executive might have against the Company. Executive agrees that Executive has been advised to consult with an attorney prior to executing the Agreement, and that Executive has either done so or knowingly waived the right to do so, and now enters into this Agreement without duress or coercion from any source. Executive agrees that Executive has been provided the opportunity to consider for 21 days whether to enter into this Agreement, and has voluntarily chosen to enter into it on this date.

IN WITNESS WHEREOF, the parties hereto have entered into this Separation Agreement and General Release of Claims.

Fred E. Weiderhold, Jr.

Date: JUNE 18, 2009

National Railroad Passenger Corporation

By: _____
Thomas C. Carper
Chairman of the Board

Date: June 18, 2009

OPTIONAL ELECTION TO EXECUTE PRIOR
TO EXPIRATION OF 21-DAY CONSIDERATION PERIOD

I, Fred E. Weiderhold, Jr., understand that I have 21 days within which to consider and execute the attached Separation Agreement. However, after having an opportunity to consult counsel, I have freely and voluntarily elected to execute the Agreement before such 21-day period has expired.

JUNE 18, 2009
Date

Fred E. Weiderhold, Jr.

EXHIBIT 23

AMENDMENT TO
SEPARATION AGREEMENT AND
GENERAL WAIVER AND RELEASE OF CLAIMS

This Amendment (the "***Amendment***") to the Separation Agreement and General Waiver and Release of Claims executed June 18, 2009 (the ***"Agreement")***, is dated July 13, 2009, and is entered into by and between National Railroad Passenger Corporation (the "***Company***") and Fred E. Weiderhold, Jr. ("***Executive***"), collectively the "***Parties***."

RECITALS

The Parties have agreed that it is to their mutual benefit to respond to inquiries from the United States Congress regarding Executive's departure from the Company and the terms of the Agreement.

AGREEMENT

In consideration of the mutual covenants and obligations set forth in the Agreement and this Amendment, the Parties agree as follows:

1. Paragraph 3(c) of the Agreement is amended by inserting the following sentence at the end of such paragraph: "Executive may make statements regarding his resignation and retirement in response to inquiries from Congress without advance review. Such statements to Congress will not be considered disparagement under the terms of this paragraph."

2. Paragraph 4 of the Agreement is amended by inserting the following sentence at the end of such paragraph: "The Company may make statements regarding Executive's resignation and retirement in response to inquiries from Congress without advance review. Such statements to Congress will not be considered disparagement under the terms of this paragraph."

3. Paragraph 9 of the Agreement is amended by inserting the following language at the end of the sentence after "as required by law": "or in response to inquiries from Congress."

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment to the Separation Agreement and General Release of Claims.

Fred E. Weiderhold, Jr.

Date: July 13, 2009

National Railroad Passenger Corp.
By: Thomas C. Carper
Chairman of the Board

Date: July 14, 2009

EXHIBIT 24

Congress of the United States

Washington, DC 20510

November 6, 2009

Via Electronic Transmission

The Honorable Lorraine Green
Interim Inspector General
Amtrak
National Railroad Passenger Corporation
10 G Street, NE
Washington, DC 20525

Dear Interim Inspector General Green:

In their letter dated July 28, 2009, the Chair and Ranking Member of the Committee on Oversight and Government Reform shared their concerns with Chairman Carper about your appointment to the position of Interim Inspector General on the grounds that it gives an appearance that the independence of the OIG had been compromised, given your prior and likely future position of Vice President of Human Resources and Diversity Initiatives at Amtrak. We appreciated the fact that you recused yourself from decisions involving the Human Resources Department in response to that letter and believe that was a valuable step to preserving the independence of the Office of the Inspector General.

However, it has come to our attention that you reversed a previously approved milestone salary increase for Catherine Smith, the OIG employee responsible for evaluating the Human Resources department. As you know, Ms. Smith had a large role to play in the May 15, 2009 OIG report that included a series of criticisms of the Human Resources Department under your leadership. This creates at the very least the appearance of reprisal and raises questions concerning the independence of the OIG in respect to the Human Resources Department. An adverse personnel action under these circumstances gives rise to an appearance of reprisal for faithfully carrying out the mission of the OIG. In this case, it is especially troubling given the fact that Ms. Smith's supervisor had already approved the raise prior to you assuming the position of Interim Inspector General and given assurances that as Interim OIG you had planned to take no personnel actions.

Please provide us with a detailed written explanation as to why Ms. Smith was denied her previously approved raise and why this should not be seen as a retaliatory action taken against an employee of the OIG. Please respond to this request by no later than November 13, 2009. Thank you for your cooperation and assistance in this matter. If you have any questions concerning this matter, please contact Jason Foster at (202) 224-4515 or at Jason_Foster@finance-rep.senate.gov for Senator Grassley and Stephen Castor at (202) 225-5074 or at Stephen.Castor@mail.house.gov for Congressman Issa.

Sincerely,

Charles E. Grassley
Ranking Member
U.S. Senate Committee on Finance

Darrell Issa
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

Cc: The Honorable Thomas C. Carper
Chairman of the Board
Amtrak
National Railroad Passenger Corporation

The Honorable Theodore P. Alves
Inspector General
Amtrak
National Railroad Passenger Corporation

EXHIBIT 25

H. R. 3288

One Hundred Eleventh Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the sixth day of January, two thousand and nine

An Act

Making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consolidated Appropriations Act, 2010".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to "this Act" contained in any division of this Act shall be treated as referring only to the provisions of that division.

SEC. 4. STATEMENT OF APPROPRIATIONS.

The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010.

DIVISION A—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

TITLE I

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

For necessary expenses of the Office of the Secretary, $102,686,000, of which not to exceed $2,631,000 shall be available for the immediate Office of the Secretary; not to exceed $986,000 shall be available for the immediate Office of the Deputy Secretary; not to exceed $20,359,000 shall be available for the Office of the General Counsel; not to exceed $11,100,000 shall be available for the Office of the Under Secretary of Transportation for Policy; not to exceed $10,559,000 shall be available for the Office of the Assistant Secretary for Budget and Programs; not to exceed $2,504,000 shall be available for the Office of the Assistant Secretary for Governmental Affairs; not to exceed $25,520,000 shall be available for the Office of the Assistant Secretary for Administration; not to exceed $2,055,000 shall be available for the Office of Public Affairs; not to exceed $1,658,000 shall be available for the Office of the Executive Secretariat; not to exceed $1,499,000 shall be available for the Office of Small and Disadvantaged Business Utilization; not to exceed $10,600,000 for the Office of Intelligence, Security, and Emergency Response; and not to exceed $13,215,000 shall be available for the Office of the Chief Information

Officer: *Provided*, That the Secretary of Transportation is authorized to transfer funds appropriated for any office of the Office of the Secretary to any other office of the Office of the Secretary: *Provided further*, That no appropriation for any office shall be increased or decreased by more than 5 percent by all such transfers: *Provided further*, That notice of any change in funding greater than 5 percent shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further*, That not to exceed $60,000 shall be for allocation within the Department for official reception and representation expenses as the Secretary may determine: *Provided further*, That notwithstanding any other provision of law, excluding fees authorized in Public Law 107–71, there may be credited to this appropriation up to $2,500,000 in funds received in user fees: *Provided further*, That none of the funds provided in this Act shall be available for the position of Assistant Secretary for Public Affairs.

NATIONAL INFRASTRUCTURE INVESTMENTS

For capital investments in surface transportation infrastructure, $600,000,000, to remain available through September 30, 2012: *Provided,* That the Secretary of Transportation shall distribute funds provided under this heading as discretionary grants to be awarded to a State, local government, transit agency, or a collaboration among such entities on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region: *Provided further,* That projects eligible for funding provided under this heading shall include, but not be limited to, highway or bridge projects eligible under title 23, United States Code; public transportation projects eligible under chapter 53 of title 49, United States Code; passenger and freight rail transportation projects; and port infrastructure investments: *Provided further,* That in distributing funds provided under this heading, the Secretary shall take such measures so as to ensure an equitable geographic distribution of funds, an appropriate balance in addressing the needs of urban and rural areas, and the investment in a variety of transportation modes: *Provided further,* That a grant funded under this heading shall be not less than $10,000,000 and not greater than $200,000,000: *Provided further,* That not more than 25 percent of the funds made available under this heading may be awarded to projects in a single State: *Provided further,* That the Federal share of the costs for which an expenditure is made under this heading shall be, at the option of the recipient, up to 80 percent: *Provided further,* That the Secretary shall give priority to projects that require a contribution of Federal funds in order to complete an overall financing package: *Provided further,* That not less than $140,000,000 of the funds provided under this heading shall be for projects located in rural areas: *Provided further,* That for projects located in rural areas, the minimum grant size shall be $1,000,000 and the Secretary may increase the Federal share of costs above 80 percent: *Provided further,* That of the amount made available under this heading, the Secretary may use an amount not to exceed $150,000,000 for the purpose of paying the subsidy and administrative costs of projects eligible for federal credit assistance under chapter 6 of title 23, United States Code, if the Secretary finds that such use of the funds would advance the purposes of this paragraph: *Provided further,* That of the

amount made available under this heading, the Secretary may use an amount not to exceed $35,000,000 for the planning, preparation or design of projects eligible for funding under this heading: *Provided further,* That projects conducted using funds provided under this heading must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code: *Provided further,* That the Secretary shall publish criteria on which to base the competition for any grants awarded under this heading no sooner than 60 days after enactment of this Act, require applications for funding provided under this heading to be submitted no sooner than 120 days after the publication of such criteria, and announce all projects selected to be funded from funds provided under this heading no sooner than September 15, 2010: *Provided further*, That the Secretary may retain up to $25,000,000 of the funds provided under this heading, and may transfer portions of those funds to the Administrators of the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration and the Federal Maritime Administration, to fund the award and oversight of grants made under this heading.

FINANCIAL MANAGEMENT CAPITAL

For necessary expenses for upgrading and enhancing the Department of Transportation's financial systems and reengineering business processes, $5,000,000, to remain available until expended.

OFFICE OF CIVIL RIGHTS

For necessary expenses of the Office of Civil Rights, $9,667,000.

TRANSPORTATION PLANNING, RESEARCH, AND DEVELOPMENT

For necessary expenses for conducting transportation planning, research, systems development, development activities, and making grants, to remain available until expended, $16,168,000.

WORKING CAPITAL FUND

For necessary expenses for operating costs and capital outlays of the Working Capital Fund, not to exceed $147,596,000, shall be paid from appropriations made available to the Department of Transportation: *Provided*, That such services shall be provided on a competitive basis to entities within the Department of Transportation: *Provided further*, That the above limitation on operating expenses shall not apply to non-DOT entities: *Provided further*, That no funds appropriated in this Act to an agency of the Department shall be transferred to the Working Capital Fund without the approval of the agency modal administrator: *Provided further*, That no assessments may be levied against any program, budget activity, subactivity or project funded by this Act unless notice of such assessments and the basis therefor are presented to the House and Senate Committees on Appropriations and are approved by such Committees.

MINORITY BUSINESS RESOURCE CENTER PROGRAM

For the cost of guaranteed loans, $353,000, as authorized by 49 U.S.C. 332: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $18,367,000. In addition, for administrative expenses to carry out the guaranteed loan program, $570,000.

MINORITY BUSINESS OUTREACH

For necessary expenses of Minority Business Resource Center outreach activities, $3,074,000, to remain available until September 30, 2011: *Provided*, That notwithstanding 49 U.S.C. 332, these funds may be used for business opportunities related to any mode of transportation.

PAYMENTS TO AIR CARRIERS

(AIRPORT AND AIRWAY TRUST FUND)

(INCLUDING TRANSFER OF FUNDS)

In addition to funds made available from any other source to carry out the essential air service program under 49 U.S.C. 41731 through 41742, $150,000,000, to be derived from the Airport and Airway Trust Fund, to remain available until expended: *Provided*, That, in determining between or among carriers competing to provide service to a community, the Secretary may consider the relative subsidy requirements of the carriers: *Provided further*, That, if the funds under this heading are insufficient to meet the costs of the essential air service program in the current fiscal year, the Secretary shall transfer such sums as may be necessary to carry out the essential air service program from any available amounts appropriated to or directly administered by the Office of the Secretary for such fiscal year.

ADMINISTRATIVE PROVISIONS—OFFICE OF THE SECRETARY OF TRANSPORTATION

SEC. 101. None of the funds made available in this Act to the Department of Transportation may be obligated for the Office of the Secretary of Transportation to approve assessments or reimbursable agreements pertaining to funds appropriated to the modal administrations in this Act, except for activities underway on the date of enactment of this Act, unless such assessments or agreements have completed the normal reprogramming process for Congressional notification.

SEC. 102. None of the funds made available under this Act may be obligated or expended to establish or implement a program under which essential air service communities are required to assume subsidy costs commonly referred to as the EAS local participation program.

SEC. 103. The Secretary or his designee may engage in activities with States and State legislators to consider proposals related to the reduction of motorcycle fatalities.

SEC. 104. The Secretary of Transportation is authorized to transfer the unexpended balances available for the bonding assistance program from "Office of the Secretary, Salaries and expenses" to "Minority Business Outreach".

SEC. 105. Such amounts as are required from amounts provided in this Act to the Office of the Secretary of Transportation for the Transportation Planning, Research and Development program may be used for the development, coordination, and analysis of data collection procedures and national performance measures.

FEDERAL AVIATION ADMINISTRATION

OPERATIONS

(AIRPORT AND AIRWAY TRUST FUND)

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Federal Aviation Administration, not otherwise provided for, including operations and research activities related to commercial space transportation, administrative expenses for research and development, establishment of air navigation facilities, the operation (including leasing) and maintenance of aircraft, subsidizing the cost of aeronautical charts and maps sold to the public, lease or purchase of passenger motor vehicles for replacement only, in addition to amounts made available by Public Law 108–176, $9,350,028,000, of which $4,000,000,000 shall be derived from the Airport and Airway Trust Fund, of which not to exceed $7,299,299,000 shall be available for air traffic organization activities; not to exceed $1,234,065,000 shall be available for aviation safety activities; not to exceed $15,237,000 shall be available for commercial space transportation activities; not to exceed $113,681,000 shall be available for financial services activities; not to exceed $100,428,000 shall be available for human resources program activities; not to exceed $341,977,000 shall be available for region and center operations and regional coordination activities; not to exceed $196,063,000 shall be available for staff offices; and not to exceed $49,278,000 shall be available for information services: *Provided*, That the Secretary utilize not less than $17,084,000 of the funds provided for aviation safety activities to pay for staff increases in the Office of Aviation Flight Standards and the Office of Aircraft Certification: *Provided further*, That none of the funds provided for increases to the staffs of the aviation flight standards and aircraft certification offices shall be used for other purposes: *Provided further*, That not to exceed 2 percent of any budget activity, except for aviation safety budget activity, may be transferred to any budget activity under this heading: *Provided further*, That no transfer may increase or decrease any appropriation by more than 2 percent: *Provided further*, That any transfer in excess of 2 percent shall be treated as a reprogramming of funds under section 405 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section: *Provided further*, That not later than March 31 of each fiscal year hereafter, the Administrator of the Federal Aviation Administration shall transmit to Congress an annual update to the report submitted to Congress in December 2004 pursuant to section 221 of Public Law 108–176: *Provided further*, That the amount herein appropriated shall be reduced

by $100,000 for each day after March 31 that such report has not been submitted to the Congress: *Provided further*, That not later than March 31 of each fiscal year hereafter, the Administrator shall transmit to Congress a companion report that describes a comprehensive strategy for staffing, hiring, and training flight standards and aircraft certification staff in a format similar to the one utilized for the controller staffing plan, including stated attrition estimates and numerical hiring goals by fiscal year: *Provided further*, That the amount herein appropriated shall be reduced by $100,000 per day for each day after March 31 that such report has not been submitted to Congress: *Provided further*, That funds may be used to enter into a grant agreement with a nonprofit standard-setting organization to assist in the development of aviation safety standards: *Provided further*, That none of the funds in this Act shall be available for new applicants for the second career training program: *Provided further*, That none of the funds in this Act shall be available for the Federal Aviation Administration to finalize or implement any regulation that would promulgate new aviation user fees not specifically authorized by law after the date of the enactment of this Act: *Provided further*, That there may be credited to this appropriation funds received from States, counties, municipalities, foreign authorities, other public authorities, and private sources, for expenses incurred in the provision of agency services, including receipts for the maintenance and operation of air navigation facilities, and for issuance, renewal or modification of certificates, including airman, aircraft, and repair station certificates, or for tests related thereto, or for processing major repair or alteration forms: *Provided further*, That of the funds appropriated under this heading, not less than $9,500,000 shall be for the contract tower cost-sharing program: *Provided further*, That none of the funds in this Act for aeronautical charting and cartography are available for activities conducted by, or coordinated through, the Working Capital Fund: *Provided further*, That of the funds available under this heading not to exceed $500,000 shall be provided to the Department of Transportation's Office of Inspector General through reimbursement to conduct the annual audits of financial statements in accordance with section 3521 of title 31, United States Code, and not to exceed $120,000 shall be provided to that office through reimbursement to conduct the annual Enterprise Services Center Statement on Auditing Standards 70 audit.

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for acquisition, establishment, technical support services, improvement by contract or purchase, and hire of national airspace systems and experimental facilities and equipment, as authorized under part A of subtitle VII of title 49, United States Code, including initial acquisition of necessary sites by lease or grant; engineering and service testing, including construction of test facilities and acquisition of necessary sites by lease or grant; construction and furnishing of quarters and related accommodations for officers and employees of the Federal Aviation Administration stationed at remote localities where such accommodations are not available; and the purchase,

lease, or transfer of aircraft from funds available under this heading, including aircraft for aviation regulation and certification; to be derived from the Airport and Airway Trust Fund, $2,936,203,000, of which $2,466,203,000 shall remain available until September 30, 2012, and of which $470,000,000 shall remain available until September 30, 2010: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred in the establishment and modernization of air navigation facilities: *Provided further*, That upon initial submission to the Congress of the fiscal year 2011 President's budget, the Secretary of Transportation shall transmit to the Congress a comprehensive capital investment plan for the Federal Aviation Administration which includes funding for each budget line item for fiscal years 2011 through 2015, with total funding for each year of the plan constrained to the funding targets for those years as estimated and approved by the Office of Management and Budget.

RESEARCH, ENGINEERING, AND DEVELOPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for research, engineering, and development, as authorized under part A of subtitle VII of title 49, United States Code, including construction of experimental facilities and acquisition of necessary sites by lease or grant, $190,500,000, to be derived from the Airport and Airway Trust Fund and to remain available until September 30, 2012: *Provided*, That there may be credited to this appropriation as offsetting collections, funds received from States, counties, municipalities, other public authorities, and private sources, which shall be available for expenses incurred for research, engineering, and development.

GRANTS-IN-AID FOR AIRPORTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(AIRPORT AND AIRWAY TRUST FUND)

(INCLUDING TRANSFER OF FUNDS)

For liquidation of obligations incurred for grants-in-aid for airport planning and development, and noise compatibility planning and programs as authorized under subchapter I of chapter 471 and subchapter I of chapter 475 of title 49, United States Code, and under other law authorizing such obligations; for procurement, installation, and commissioning of runway incursion prevention devices and systems at airports of such title; for grants authorized under section 41743 of title 49, United States Code; and for inspection activities and administration of airport safety programs, including those related to airport operating certificates under section 44706 of title 49, United States Code, $3,000,000,000 to be derived from the Airport and Airway Trust Fund and to remain available until expended: *Provided*, That none of the funds under this heading shall be available for the planning or execution of

programs the obligations for which are in excess of $3,515,000,000 in fiscal year 2010, notwithstanding section 47117(g) of title 49, United States Code: *Provided further*, That none of the funds under this heading shall be available for the replacement of baggage conveyor systems, reconfiguration of terminal baggage areas, or other airport improvements that are necessary to install bulk explosive detection systems: *Provided further*, That notwithstanding any other provision of law, of funds limited under this heading, not more than $93,422,000 shall be obligated for administration, not less than $15,000,000 shall be available for the airport cooperative research program, not less than $22,472,000 shall be for Airport Technology Research and $6,000,000, to remain available until expended, shall be available and transferred to "Office of the Secretary, Salaries and Expenses" to carry out the Small Community Air Service Development Program.

(RESCISSION)

Of the amounts authorized for the fiscal year ending September 30, 2009, and prior years under sections 48103 and 48112 of title 49, United States Code, $394,000,000 are permanently rescinded.

ADMINISTRATIVE PROVISIONS—FEDERAL AVIATION ADMINISTRATION

SEC. 110. None of the funds in this Act may be used to compensate in excess of 600 technical staff-years under the federally funded research and development center contract between the Federal Aviation Administration and the Center for Advanced Aviation Systems Development during fiscal year 2010.

SEC. 111. None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation, or weather reporting: *Provided*, That the prohibition of funds in this section does not apply to negotiations between the agency and airport sponsors to achieve agreement on "below-market" rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for air traffic control facilities.

SEC. 112. The Administrator of the Federal Aviation Administration may reimburse amounts made available to satisfy 49 U.S.C. 41742(a)(1) from fees credited under 49 U.S.C. 45303: *Provided*, That during fiscal year 2010, 49 U.S.C. 41742(b) shall not apply, and any amount remaining in such account at the close of that fiscal year may be made available to satisfy section 41742(a)(1) for the subsequent fiscal year.

SEC. 113. Amounts collected under section 40113(e) of title 49, United States Code, shall be credited to the appropriation current at the time of collection, to be merged with and available for the same purposes of such appropriation.

SEC. 114. (a) Section 44302(f)(1) of title 49, United States Code, is amended—

(1) by striking "September 30, 2009," and inserting "September 30, 2010,"; and

(2) by striking "December 31, 2009," and inserting "December 31, 2010,".

(b) Section 44303(b) of such title is amended by striking "December 31, 2009," and inserting "December 31, 2010,".

SEC. 115. None of the funds appropriated or limited by this Act may be used to change weight restrictions or prior permission rules at Teterboro airport in Teterboro, New Jersey.

SEC. 116. None of the funds limited by this Act for grants under the Airport Improvement Program shall be made available to the sponsor of a commercial service airport if such sponsor fails to agree to a request from the Secretary of Transportation for cost-free space in a non-revenue producing, public use area of the airport terminal or other airport facilities for the purpose of carrying out a public service air passenger rights and consumer outreach campaign.

SEC. 117. None of the funds in this Act shall be available for paying premium pay under subsection 5546(a) of title 5, United States Code, to any Federal Aviation Administration employee unless such employee actually performed work during the time corresponding to such premium pay.

SEC. 118. None of the funds in this Act may be obligated or expended for an employee of the Federal Aviation Administration to purchase a store gift card or gift certificate through use of a Government-issued credit card.

SEC. 119. The Secretary shall apportion to the sponsor of an airport that received scheduled or unscheduled air service from a large certified air carrier (as defined in part 241 of title 14 Code of Federal Regulations, or such other regulations as may be issued by the Secretary under the authority of section 41709) an amount equal to the minimum apportionment specified in 49 U.S.C. 47114(c), if the Secretary determines that airport had more than 10,000 passenger boardings in the preceding calendar year, based on data submitted to the Secretary under part 241 of title 14, Code of Federal Regulations.

FEDERAL HIGHWAY ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

(INCLUDING TRANSFER OF FUNDS)

Not to exceed $413,533,000, together with advances and reimbursements received by the Federal Highway Administration, shall be paid in accordance with law from appropriations made available by this Act to the Federal Highway Administration for necessary expenses for administration and operation. In addition, not to exceed $3,524,000 shall be paid from appropriations made available by this Act and transferred to the Department of Transportation's Office of Inspector General for costs associated with audits and investigations of projects and programs of the Federal Highway Administration, and not to exceed $285,000 shall be paid from appropriations made available by this Act and provided to that office through reimbursement to conduct the annual audits of financial statements in accordance with section 3521 of title 31, United States Code. In addition, not to exceed $3,220,000 shall be paid from appropriations made available by this Act and transferred to the Appalachian Regional Commission in accordance with section 104 of title 23, United States Code.

FEDERAL-AID HIGHWAYS

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

None of the funds in this Act shall be available for the implementation or execution of programs, the obligations for which are in excess of $41,107,000,000 for Federal-aid highways and highway safety construction programs for fiscal year 2010: *Provided*, That within the $41,107,000,000 obligation limitation on Federal-aid highways and highway safety construction programs, not more than $429,800,000 shall be available for the implementation or execution of programs for transportation research (chapter 5 of title 23, United States Code; sections 111, 5505, and 5506 of title 49, United States Code; and title 5 of Public Law 109–59) for fiscal year 2010: *Provided further*, That this limitation on transportation research programs shall not apply to any authority previously made available for obligation: *Provided further*, That the Secretary may, as authorized by section 605(b) of title 23, United States Code, collect and spend fees to cover the costs of services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments and all or a portion of the costs to the Federal Government of servicing such credit instruments: *Provided further*, That such fees are available until expended to pay for such costs: *Provided further*, That such amounts are in addition to administrative expenses that are also available for such purpose, and are not subject to any obligation limitation or the limitation on administrative expenses under section 608 of title 23, United States Code.

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

For carrying out the provisions of title 23, United States Code, that are attributable to Federal-aid highways, not otherwise provided, including reimbursement for sums expended pursuant to the provisions of 23 U.S.C. 308, $41,846,000,000 or so much thereof as may be available in and derived from the Highway Trust Fund (other than the Mass Transit Account), to remain available until expended.

SURFACE TRANSPORTATION PRIORITIES

For the necessary expenses of certain highway and surface transportation projects, $292,829,000, to remain available until expended: *Provided*, That the amount provided under this heading shall be made available for the programs, projects, and activities identified under this heading in the explanatory statement accompanying this Act: *Provided further*, That funds provided under this heading, at the request of a State, shall be transferred by the Secretary to another Federal agency: *Provided further*, That the Federal share payable on account of any program, project, or activity carried out with funds provided under this heading shall be 100 percent: *Provided further*, That none of the funds provided under this heading shall be subject to any limitation

on obligations for Federal-aid highways and highway safety construction programs set forth in this Act or any other Act.

ADMINISTRATIVE PROVISIONS—FEDERAL HIGHWAY ADMINISTRATION

SEC. 120. (a) For fiscal year 2010, the Secretary of Transportation shall—

(1) not distribute from the obligation limitation for Federal-aid highways amounts authorized for administrative expenses and programs by section 104(a) of title 23, United States Code; programs funded from the administrative takedown authorized by section 104(a)(1) of title 23, United States Code (as in effect on the date before the date of enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users); the highway use tax evasion program; and the Bureau of Transportation Statistics;

(2) not distribute an amount from the obligation limitation for Federal-aid highways that is equal to the unobligated balance of amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highways and highway safety programs for previous fiscal years the funds for which are allocated by the Secretary;

(3) determine the ratio that—

(A) the obligation limitation for Federal-aid highways, less the aggregate of amounts not distributed under paragraphs (1) and (2), bears to

(B) the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction programs (other than sums authorized to be appropriated for provisions of law described in paragraphs (1) through (9) of subsection (b) and sums authorized to be appropriated for section 105 of title 23, United States Code, equal to the amount referred to in subsection (b)(10) for such fiscal year), less the aggregate of the amounts not distributed under paragraphs (1) and (2) of this subsection;

(4)(A) distribute the obligation limitation for Federal-aid highways, less the aggregate amounts not distributed under paragraphs (1) and (2), for sections 1301, 1302, and 1934 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; sections 117 (but individually for each project numbered 1 through 3676 listed in the table contained in section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users) and section 144(g) of title 23, United States Code; and section 14501 of title 40, United States Code, so that the amount of obligation authority available for each of such sections is equal to the amount determined by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for that section for the fiscal year; and

(B) distribute $2,000,000,000 for section 105 of title 23, United States Code;

(5) distribute the obligation limitation provided for Federal-aid highways, less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraph (4), for each of the programs that are allocated by the Secretary under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users and title 23,

United States Code (other than to programs to which paragraphs (1) and (4) apply), by multiplying the ratio determined under paragraph (3) by the amounts authorized to be appropriated for each such program for such fiscal year; and

(6) distribute the obligation limitation provided for Federal-aid highways, less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraphs (4) and (5), for Federal-aid highways and highway safety construction programs (other than the amounts apportioned for the equity bonus program, but only to the extent that the amounts apportioned for the equity bonus program for the fiscal year are greater than $2,639,000,000, and the Appalachian development highway system program) that are apportioned by the Secretary under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users and title 23, United States Code, in the ratio that—

(A) amounts authorized to be appropriated for such programs that are apportioned to each State for such fiscal year, bear to

(B) the total of the amounts authorized to be appropriated for such programs that are apportioned to all States for such fiscal year.

(b) EXCEPTIONS FROM OBLIGATION LIMITATION.—The obligation limitation for Federal-aid highways shall not apply to obligations: (1) under section 125 of title 23, United States Code; (2) under section 147 of the Surface Transportation Assistance Act of 1978; (3) under section 9 of the Federal-Aid Highway Act of 1981; (4) under subsections (b) and (j) of section 131 of the Surface Transportation Assistance Act of 1982; (5) under subsections (b) and (c) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987; (6) under sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991; (7) under section 157 of title 23, United States Code, as in effect on the day before the date of the enactment of the Transportation Equity Act for the 21st Century; (8) under section 105 of title 23, United States Code, as in effect for fiscal years 1998 through 2004, but only in an amount equal to $639,000,000 for each of those fiscal years; (9) for Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century or subsequent public laws for multiple years or to remain available until used, but only to the extent that the obligation authority has not lapsed or been used; (10) under section 105 of title 23, United States Code, but only in an amount equal to $639,000,000 for each of fiscal years 2005 through 2010; and (11) under section 1603 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available for obligation.

(c) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsection (a), the Secretary shall, after August 1 of such fiscal year, revise a distribution of the obligation limitation made available under subsection (a) if the amount distributed cannot be obligated during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year, giving priority to those States having large unobligated balances of funds

apportioned under sections 104 and 144 of title 23, United States Code.

(d) APPLICABILITY OF OBLIGATION LIMITATIONS TO TRANSPORTATION RESEARCH PROGRAMS.—The obligation limitation shall apply to transportation research programs carried out under chapter 5 of title 23, United States Code, and title V (research title) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, except that obligation authority made available for such programs under such limitation shall remain available for a period of 3 fiscal years and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(e) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—

(1) IN GENERAL.—Not later than 30 days after the date of the distribution of obligation limitation under subsection (a), the Secretary shall distribute to the States any funds that—

(A) are authorized to be appropriated for such fiscal year for Federal-aid highways programs; and

(B) the Secretary determines will not be allocated to the States, and will not be available for obligation, in such fiscal year due to the imposition of any obligation limitation for such fiscal year.

(2) RATIO.—Funds shall be distributed under paragraph (1) in the same ratio as the distribution of obligation authority under subsection (a)(6).

(3) AVAILABILITY.—Funds distributed under paragraph (1) shall be available for any purposes described in section 133(b) of title 23, United States Code.

(f) SPECIAL LIMITATION CHARACTERISTICS.—Obligation limitation distributed for a fiscal year under subsection (a)(4) for the provision specified in subsection (a)(4) shall—

(1) remain available until used for obligation of funds for that provision; and

(2) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(g) HIGH PRIORITY PROJECT FLEXIBILITY.—

(1) IN GENERAL.—Subject to paragraph (2), obligation authority distributed for such fiscal year under subsection (a)(4) for each project numbered 1 through 3676 listed in the table contained in section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users may be obligated for any other project in such section in the same State.

(2) RESTORATION.—Obligation authority used as described in paragraph (1) shall be restored to the original purpose on the date on which obligation authority is distributed under this section for the next fiscal year following obligation under paragraph (1).

(h) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to limit the distribution of obligation authority under subsection (a)(4)(A) for each of the individual projects numbered greater than 3676 listed in the table contained in section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

SEC. 121. Notwithstanding 31 U.S.C. 3302, funds received by the Bureau of Transportation Statistics from the sale of data products, for necessary expenses incurred pursuant to 49 U.S.C. 111 may be credited to the Federal-aid highways account for the purpose of reimbursing the Bureau for such expenses: *Provided*, That such funds shall be subject to the obligation limitation for Federal-aid highways and highway safety construction.

SEC. 122. There is hereby appropriated to the Secretary of Transportation $650,000,000, to remain available through September 30, 2012: *Provided*, That the funds provided under this section shall be apportioned to the States in the same ratio as the obligation limitation for fiscal year 2010 is distributed among the States in section 120(a)(6) of this Act, and made available for the restoration, repair, construction, and other activities eligible under paragraph (b) of section 133 of title 23, United States Code: *Provided further*, That funds apportioned under this section shall be administered as if apportioned under chapter 1 of title 23, United States Code: *Provided further*, That the Federal share payable on account of any project or activity carried out with funds apportioned under this section shall be 80 percent: *Provided further*, That funding provided under this section shall be in addition to any and all funds provided for fiscal year 2010 in this or any other Act for "Federal-aid Highways" and shall not affect the distribution of funds provided for "Federal-aid Highways" in any other Act: *Provided further*, That the amounts made available under this section shall not be subject to any limitation on obligations for Federal-aid highways or highway safety construction programs set forth in any Act: *Provided further*, That section 1101(b) of Public Law 109–59 shall apply to funds apportioned under this section.

SEC. 123. Not less than 15 days prior to waiving, under his statutory authority, any Buy America requirement for Federal-aid highway projects, the Secretary of Transportation shall make an informal public notice and comment opportunity on the intent to issue such waiver and the reasons therefor: *Provided*, That the Secretary shall provide an annual report to the Appropriations Committees of the Congress on any waivers granted under the Buy America requirements.

SEC. 124. (a) IN GENERAL.—Except as provided in subsection (b), none of the funds made available, limited, or otherwise affected by this Act shall be used to approve or otherwise authorize the imposition of any toll on any segment of highway located on the Federal-aid system in the State of Texas that—

(1) as of the date of enactment of this Act, is not tolled;

(2) is constructed with Federal assistance provided under title 23, United States Code; and

(3) is in actual operation as of the date of enactment of this Act.

(b) EXCEPTIONS.—

(1) NUMBER OF TOLL LANES.—Subsection (a) shall not apply to any segment of highway on the Federal-aid system described in that subsection that, as of the date on which a toll is imposed on the segment, will have the same number of non-toll lanes as were in existence prior to that date.

(2) HIGH-OCCUPANCY VEHICLE LANES.—A high-occupancy vehicle lane that is converted to a toll lane shall not be subject to this section, and shall not be considered to be a non-toll

lane for purposes of determining whether a highway will have fewer non-toll lanes than prior to the date of imposition of the toll, if—

(A) high-occupancy vehicles occupied by the number of passengers specified by the entity operating the toll lane may use the toll lane without paying a toll, unless otherwise specified by the appropriate county, town, municipal or other local government entity, or public toll road or transit authority; or

(B) each high-occupancy vehicle lane that was converted to a toll lane was constructed as a temporary lane to be replaced by a toll lane under a plan approved by the appropriate county, town, municipal or other local government entity, or public toll road or transit authority.

SEC. 125. (a) In the explanatory statement referenced in section 129 of division K of Public Law 110–161 (121 Stat. 2388), the item relating to "Route 5 Overpass and River Center, St. Mary's County, MD" in the table of projects for such section 129 is deemed to be amended by striking "Route 5 Overpass and River Center, St. Mary's County, MD" and inserting "Safety Improvements and Traffic Calming Measures along Route 5 at St. Mary's County, MD".

(b) In the explanatory statement referenced in section 186 of title I of division I of Public Law 111–8 (123 Stat. 947), the item relating to "US 422 River Crossing Complex Project, King of Prussia, PA" in the table of projects under the heading "Transportation, Community, and System Preservation Program" is deemed to be amended by striking "US 422 River Crossing Complex Project, King of Prussia, PA" and inserting "For closed loop signal control system and other improvements for Trooper Road in Lower Providence and West Norriton Townships, Montgomery County, PA".

(c) In the explanatory statement referenced in section 186 of title I of division I of Public Law 111–8 (123 Stat. 947), the item relating to "Improving the West Bank River Front, IL" in the table of projects under the heading "Transportation, Community, and System Preservation Program" is deemed to be amended by striking "Improving the West Bank River Front, IL" and inserting "East Bank River Front and Bikeway Improvements, IL".

(d) In the explanatory statement referenced in section 186 of title I of division K of Public Law 110–161 (121 Stat. 2406), as amended by section 129(d) of division I of Public Law 111–8 (123 Stat. 947), the item relating to "Repair of Side Streets and Relocation of Water Mains resulting from rerouting of traffic and reconstruction of 159th Street in Harvey, IL" in the table of projects under the heading "Transportation, Community, and System Preservation Program" is deemed to be amended by striking "Repair of Side Streets and Relocation of Water Mains resulting from rerouting of traffic and reconstruction of 159th Street in Harvey, IL" and inserting "Intersection Improvements on Crawford Avenue and 203rd Street in the Village of Olympia Fields, IL".

(e) In the explanatory statement referenced in section 129 of division K of Public Law 110–161 (121 Stat. 2388), the item relating to "Study Improvements to 109th Avenue, Winfield, IN" in the table of projects for such section 129 is deemed to be amended by striking "Winfield, IN" and inserting "Town of Winfield, City of Crown Point, Lake County, IN".

(f) In the explanatory statement referenced in section 186 of title I of division I of Public Law 111–8 (123 Stat. 947), the item relating to "Ronald Reagan Parkway (Middle and Southern segments), Boone County, IN" in the table of projects under the heading "Transportation, Community, and System Preservation Program" is deemed to be amended by striking "Boone County" and inserting "Hendricks County".

(g) In the explanatory statement referenced in section 186 of title I of division I of Public Law 111–8 (123 Stat. 947), the item relating to "Onville Road Intersection and Road-Widening Project, Prince William County, VA" in the table of projects under the heading "Federal Lands" is deemed to be amended by striking "Prince William" and inserting "Stafford".

(h) In the explanatory statement referenced in section 186 of title I of division I of Public Law 111–8 (123 Stat. 947), the item relating to "U.S. 59/Alabama Grade Separation Project, St. Joseph, MO" in the table of projects under the heading "Interstate Maintenance Discretionary" is deemed to be amended by striking "U.S. 59/Alabama Grade Separation Project, St. Joseph, MO" and inserting "I-29 Interchange Reconstruction in St. Joseph, MO".

(i) In the explanatory statement referenced in section 186 of title I of division I of Public Law 111–8 (123 Stat. 947), the item relating to "Decking and Sidewalk Replacement on the Central Avenue Overpass, South Charleston, WV" in the table of projects under the heading "Interstate Maintenance Discretionary" is deemed to be amended by striking "Decking and Sidewalk Replacement on the Central Avenue Overpass, South Charleston, WV" and inserting "General Interstate Maintenance, WV".

(j) In the explanatory statement referenced in section 125 of title I of division I of Public Law 111–8 (123 Stat. 928), the item relating to "Wapsi Great Western Line Trail, Mitchell County, IA" is deemed to be amended by striking "Mitchell County" and inserting "Mitchell and Howard Counties".

(k) In the explanatory statement referenced in section 125 of title I of division I of Public Law 111–8 (123 Stat. 928), the item relating to "Highway 169 Corridor Project Environmental Assessment, Preliminary Engineering and Planning, Humboldt, IA" is deemed to be amended by striking "Corridor Project Environmental Assessment, Preliminary Engineering and Planning, Humboldt, IA" and inserting "Construction, Humboldt and Webster Counties, IA".

(l) In the explanatory statement referenced in section 125 of title I of division I of Public Law 111–8 (123 Stat. 928), the item relating to "Highway 53 Interchanges, WI" is deemed to be amended by striking "Interchanges" and inserting "Intersections".

SEC. 126. Item 4866A in the table contained in section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59) is amended by striking "Repair and restore" and inserting "Removal of and enhancements around".

SEC. 127. Item 3923 in the table contained in section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59) is amended by striking "to 4 lanes from I–10 to West U.S. 90".

SEC. 128. Funds made available for "Brentwood Boulevard/SR 4 Improvements, Brentwood, CA" under section 129 of Public

Law 110–161 shall be made available for "John Muir Parkway Project, Brentwood, CA".

SEC. 129. The table contained in section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (119 Stat. 1256) is amended in item number 3138 by striking the project description and inserting "Elimination of highway-railway crossings and rehabilitation of rail along the KO railroad to Osborne".

SEC. 130. Funds made available for "City of Tuscaloosa Downtown Revitalization Project—University Blvd and Greensboro Avenue, AL" under section 125 of Public Law 111–8 shall be made available for "City of Tuscaloosa Downtown Revitalization Project—University Blvd".

SEC. 131. The table contained in section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (119 Stat. 1256) is amended by striking the project description for item number 4573 and inserting the following: "Design and construct interchange on I–15 in Mesquite".

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

MOTOR CARRIER SAFETY OPERATIONS AND PROGRAMS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

For payment of obligations incurred in the implementation, execution and administration of motor carrier safety operations and programs pursuant to section 31104(i) of title 49, United States Code, and sections 4127 and 4134 of Public Law 109–59, $239,828,000, to be derived from the Highway Trust Fund (other than the Mass Transit Account), together with advances and reimbursements received by the Federal Motor Carrier Safety Administration, the sum of which shall remain available until expended: *Provided*, That none of the funds derived from the Highway Trust Fund in this Act shall be available for the implementation, execution or administration of programs, the obligations for which are in excess of $239,828,000, for "Motor Carrier Safety Operations and Programs" of which $8,543,000, to remain available for obligation until September 30, 2012, is for the research and technology program and $1,000,000 shall be available for commercial motor vehicle operator's grants to carry out section 4134 of Public Law 109–59: *Provided further*, That notwithstanding any other provision of law, none of the funds under this heading for outreach and education shall be available for transfer: *Provided further*, That the Federal Motor Carrier Safety Administration shall transmit to Congress a report on March 30, 2010, and September 30, 2010, on the agency's ability to meet its requirement to conduct compliance reviews on high-risk carriers.

MOTOR CARRIER SAFETY GRANTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

(INCLUDING RESCISSION)

For payment of obligations incurred in carrying out sections 31102, 31104(a), 31106, 31107, 31109, 31309, 31313 of title 49, United States Code, and sections 4126 and 4128 of Public Law 109–59, $310,070,000, to be derived from the Highway Trust Fund (other than the Mass Transit Account) and to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the implementation or execution of programs, the obligations for which are in excess of $310,070,000, for "Motor Carrier Safety Grants"; of which $212,070,000 shall be available for the motor carrier safety assistance program to carry out sections 31102 and 31104(a) of title 49, United States Code; $25,000,000 shall be available for the commercial driver's license improvements program to carry out section 31313 of title 49, United States Code; $32,000,000 shall be available for the border enforcement grants program to carry out section 31107 of title 49, United States Code; $5,000,000 shall be available for the performance and registration information system management program to carry out sections 31106(b) and 31109 of title 49, United States Code; $25,000,000 shall be available for the commercial vehicle information systems and networks deployment program to carry out section 4126 of Public Law 109–59; $3,000,000 shall be available for the safety data improvement program to carry out section 4128 of Public Law 109–59; and $8,000,000 shall be available for the commercial driver's license information system modernization program to carry out section 31309(e) of title 49, United States Code: *Provided further*, That of the funds made available for the motor carrier safety assistance program, $29,000,000 shall be available for audits of new entrant motor carriers: *Provided further*, That $1,610,661 in unobligated balances are permanently rescinded.

MOTOR CARRIER SAFETY

(HIGHWAY TRUST FUND)

(RESCISSION)

Of the amounts made available under this heading in prior appropriations Acts, $6,415,501 in unobligated balances are permanently rescinded.

NATIONAL MOTOR CARRIER SAFETY PROGRAM

(HIGHWAY TRUST FUND)

(RESCISSION)

Of the amounts made available under this heading in prior appropriations Acts, $3,232,639 in unobligated balances are permanently rescinded.

ADMINISTRATIVE PROVISION—FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

SEC. 135. Funds appropriated or limited in this Act shall be subject to the terms and conditions stipulated in section 350 of Public Law 107–87 and section 6901 of Public Law 110–28, including that the Secretary submit a report to the House and Senate Appropriations Committees annually on the safety and security of transportation into the United States by Mexico-domiciled motor carriers.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OPERATIONS AND RESEARCH

For expenses necessary to discharge the functions of the Secretary, with respect to traffic and highway safety under subtitle C of title X of Public Law 109–59 and chapter 301 and part C of subtitle VI of title 49, United States Code, $140,427,000, of which $35,543,000 shall remain available through September 30, 2011: *Provided*, That none of the funds appropriated by this Act may be obligated or expended to plan, finalize, or implement any rulemaking to add to section 575.104 of title 49 of the Code of Federal Regulations any requirement pertaining to a grading standard that is different from the three grading standards (treadwear, traction, and temperature resistance) already in effect.

OPERATIONS AND RESEARCH

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

For payment of obligations incurred in carrying out the provisions of 23 U.S.C. 403, $105,500,000 to be derived from the Highway Trust Fund (other than the Mass Transit Account) and to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the total obligations for which, in fiscal year 2010, are in excess of $105,500,000 for programs authorized under 23 U.S.C. 403: *Provided further*, That within the $105,500,000 obligation limitation for operations and research, $26,908,000 shall remain available until September 30, 2011 and shall be in addition to the amount of any limitation imposed on obligations for future years.

NATIONAL DRIVER REGISTER

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

For payment of obligations incurred in carrying out chapter 303 of title 49, United States Code, $4,000,000, to be derived from the Highway Trust Fund (other than the Mass Transit Account) and to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the implementation or execution of programs the total obligations for which, in fiscal year 2010, are in excess of $4,000,000 for the National Driver Register authorized under such chapter.

NATIONAL DRIVER REGISTER MODERNIZATION

For an additional amount for the "National Driver Register" as authorized by chapter 303 of title 49, United States Code, $3,350,000, to remain available through September 30, 2011: *Provided*, That the funding made available under this heading shall be used to carry out the modernization of the National Driver Register.

HIGHWAY TRAFFIC SAFETY GRANTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

For payment of obligations incurred in carrying out the provisions of 23 U.S.C. 402, 405, 406, 408, and 410 and sections 2001(a)(11), 2009, 2010, and 2011 of Public Law 109–59, to remain available until expended, $619,500,000 to be derived from the Highway Trust Fund (other than the Mass Transit Account): *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the total obligations for which, in fiscal year 2010, are in excess of $619,500,000 for programs authorized under 23 U.S.C. 402, 405, 406, 408, and 410 and sections 2001(a)(11), 2009, 2010, and 2011 of Public Law 109–59, of which $235,000,000 shall be for "Highway Safety Programs" under 23 U.S.C. 402; $25,000,000 shall be for "Occupant Protection Incentive Grants" under 23 U.S.C. 405; $124,500,000 shall be for "Safety Belt Performance Grants" under 23 U.S.C. 406, and such obligation limitation shall remain available until September 30, 2011 in accordance with subsection (f) of such section 406 and shall be in addition to the amount of any limitation imposed on obligations for such grants for future fiscal years; $34,500,000 shall be for "State Traffic Safety Information System Improvements" under 23 U.S.C. 408; $139,000,000 shall be for "Alcohol-Impaired Driving Countermeasures Incentive Grant Program" under 23 U.S.C. 410; $18,500,000 shall be for "Administrative Expenses" under section 2001(a)(11) of Public Law 109–59; $29,000,000 shall be for "High Visibility Enforcement Program" under section 2009 of Public Law

109–59; $7,000,000 shall be for "Motorcyclist Safety" under section 2010 of Public Law 109–59; and $7,000,000 shall be for "Child Safety and Child Booster Seat Safety Incentive Grants" under section 2011 of Public Law 109–59: *Provided further*, That none of these funds shall be used for construction, rehabilitation, or remodeling costs, or for office furnishings and fixtures for State, local or private buildings or structures: *Provided further*, That not to exceed $500,000 of the funds made available for section 410 "Alcohol-Impaired Driving Countermeasures Grants" shall be available for technical assistance to the States: *Provided further*, That not to exceed $750,000 of the funds made available for the "High Visibility Enforcement Program" shall be available for the evaluation required under section 2009(f) of Public Law 109–59.

ADMINISTRATIVE PROVISIONS—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

(INCLUDING RESCISSIONS)

SEC. 140. Notwithstanding any other provision of law or limitation on the use of funds made available under section 403 of title 23, United States Code, an additional $130,000 shall be made available to the National Highway Traffic Safety Administration, out of the amount limited for section 402 of title 23, United States Code, to pay for travel and related expenses for State management reviews and to pay for core competency development training and related expenses for highway safety staff.

SEC. 141. The limitations on obligations for the programs of the National Highway Traffic Safety Administration set in this Act shall not apply to obligations for which obligation authority was made available in previous public laws for multiple years but only to the extent that the obligation authority has not lapsed or been used.

SEC. 142. Of the amounts made available under the heading "Operations and Research (Liquidation of Contract Authorization) (Limitation on Obligations) (Highway Trust Fund)" in prior appropriations Acts, $2,299,000 in unobligated balances are permanently rescinded.

SEC. 143. Of the amounts made available under the heading "Highway Traffic Safety Grants (Liquidation of Contract Authorization) (Limitation on Obligations) (Highway Trust Fund)" in prior appropriations Acts, $14,004,000 in unobligated balances are permanently rescinded.

FEDERAL RAILROAD ADMINISTRATION

SAFETY AND OPERATIONS

For necessary expenses of the Federal Railroad Administration, not otherwise provided for, $172,270,000, of which $12,300,000 shall remain available until expended.

RAILROAD RESEARCH AND DEVELOPMENT

For necessary expenses for railroad research and development, $37,613,000, to remain available until expended.

RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM

The Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210), as amended, in such amounts and at such times as may be necessary to pay any amounts required pursuant to the guarantee of the principal amount of obligations under sections 511 through 513 of such Act, such authority to exist as long as any such guaranteed obligation is outstanding: *Provided*, That pursuant to section 502 of such Act, as amended, no new direct loans or loan guarantee commitments shall be made using Federal funds for the credit risk premium during fiscal year 2010.

RAIL LINE RELOCATION AND IMPROVEMENT PROGRAM

For necessary expenses of carrying out section 20154 of title 49, United States Code, $34,532,000, to remain available until expended.

RAILROAD SAFETY TECHNOLOGY PROGRAM

For necessary expenses of carrying out section 20158 of title 49, United States Code, $50,000,000, to remain available until expended: *Provided*, That to be eligible for assistance under this heading, an entity need not have developed plans required under subsection 20156(e)(2) of title 49, United States Code, and section 20157 of such title.

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

To enable the Secretary of Transportation to make grants for high-speed rail projects as authorized under section 26106 of title 49, United States Code, capital investment grants to support intercity passenger rail service as authorized under section 24406 of title 49, United States Code, and congestion grants as authorized under section 24105 of title 49, United States Code, and to enter into cooperative agreements for these purposes as authorized, $2,500,000,000, to remain available until expended: *Provided*, That $50,000,000 of funds provided under this paragraph are available to the Administrator of the Federal Railroad Administration to fund the award and oversight by the Administrator of grants and cooperative agreements for intercity and high-speed rail: *Provided further*, That up to $30,000,000 of the funds provided under this paragraph are available to the Administrator for the purposes of conducting research and demonstrating technologies supporting the development of high-speed rail in the United States, including the demonstration of next-generation rolling stock fleet technology and the implementation of the Rail Cooperative Research Program authorized by section 24910 of title 49, United States Code: *Provided further*, That up to $50,000,000 of the funds provided under this paragraph may be used for planning activities that lead directly to the development of a passenger rail corridor investment plan consistent with the requirements established by the Administrator or a state rail plan consistent with chapter 227 of title 49, United States Code: *Provided further*, That the Secretary may retain a

portion of the funds made available for planning activities under the previous proviso to facilitate the preparation of a service development plan and related environmental impact statement for high-speed corridors located in multiple States: *Provided further*, That the Secretary shall issue interim guidance to applicants covering application procedures and administer the grants provided under this heading pursuant to that guidance until final regulations are issued: *Provided further*, That not less than 85 percent of the funds provided under this heading shall be for cooperative agreements that lead to the development of entire segments or phases of intercity or high-speed rail corridors: *Provided further*, That the Secretary shall submit to Congress the national rail plan required by section 103(j) of title 49, United States Code, no later than September 15, 2010: *Provided further*, That at least 30 days prior to issuing a letter of intent or cooperative agreement pursuant to Section 24402(f) of title 49, United States Code, for a major corridor development program, the Secretary shall provide to the House and Senate Committees on Appropriations written notification consisting of a business and public investment case for the proposed corridor program which shall include: a comprehensive analysis of the monetary and non-monetary costs and benefits of the corridor development program; an assessment of ridership, passenger travel time reductions, congestion relief benefits, environmental benefits, economic benefits, and other public benefits; operating financial forecasts for the program; a full capital cost estimation for the entire project, including the amount, source and security of non-Federal funds to complete the project; a summary of the grants management plan and an evaluation of the grantee's ability to sustain the project: *Provided further*, That the Federal share payable of the costs for which a grant or cooperative agreements is made under this heading shall not exceed 80 percent: *Provided further*, That in addition to the provisions of title 49, United States Code, that apply to each of the individual programs funded under this heading, subsections 24402(a)(2), 24402(f), 24402(i), and 24403(a) and (c) of title 49, United States Code, shall also apply to the provision of funds provided under this heading: *Provided further*, That a project need not be in a State rail plan developed under Chapter 227 of title 49, United States Code, to be eligible for assistance under this heading: *Provided further*, That recipients of grants under this paragraph shall conduct all procurement transactions using such grant funds in a manner that provides full and open competition, as determined by the Secretary, in compliance with existing labor agreements.

OPERATING GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

To enable the Secretary of Transportation to make quarterly grants to the National Railroad Passenger Corporation for the operation of intercity passenger rail, as authorized by section 101 of the Passenger Rail Investment and Improvement Act of 2008 (division B of Public Law 110–432), $563,000,000, to remain available until expended: *Provided*, That the Secretary shall not make the grants for the third and fourth quarter of the fiscal year available to the Corporation until an Inspector General who is a member of the Council of the Inspectors General on Integrity and Efficiency determines that the Corporation and the Corporation's Inspector

General have agreed upon a set of policies and procedures for interacting with each other that are consistent with the letter and the spirit of the Inspector General Act of 1978, as amended: *Provided further*, That 1 year after such determination is made, the Council of the Inspectors General on Integrity and Efficiency shall appoint another member to evaluate the current operational independence of the Amtrak Inspector General: *Provided further*, That the Corporation shall reimburse each Inspector General for all costs incurred in conducting the determination and the evaluation required by the preceding two provisos: *Provided further*, That the amounts available under this paragraph shall be available for the Secretary to approve funding to cover operating losses for the Corporation only after receiving and reviewing a grant request for each specific train route: *Provided further*, That each such grant request shall be accompanied by a detailed financial analysis, revenue projection, and capital expenditure projection justifying the Federal support to the Secretary's satisfaction: *Provided further*, That not later than 60 days after enactment of this Act, the Corporation shall transmit to the Secretary, the Inspector General of the Department of Transportation, and the House and Senate Committees on Appropriations a plan to achieve savings through operating efficiencies including, but not limited to, modifications to food and beverage service and first class service: *Provided further*, That the Inspector General of the Department of Transportation shall provide semiannual reports to the House and Senate Committees on Appropriations on the estimated savings accrued as a result of all operational reforms instituted by the Corporation and estimations of possible future savings: *Provided further*, That not later than 60 days after enactment of this Act, the Corporation shall transmit, in electronic format, to the Secretary, the Inspector General of Department of Transportation, the House and Senate Committees on Appropriations, the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation the annual budget and business plan and the 5-Year Financial Plan for fiscal year 2010 required under section 204 of the Passenger Rail Investment and Improvement Act of 2008: *Provided further*, That the budget, business plan, and the 5-Year Financial Plan shall also include a separate accounting of ridership, revenues, and capital and operating expenses for the Northeast Corridor; commuter service; long-distance Amtrak service; State-supported service; each intercity train route, including Autotrain; and commercial activities including contract operations: *Provided further*, That the budget, business plan and the 5-Year Financial Plan shall include a description of work to be funded, along with cost estimates and an estimated timetable for completion of the projects covered by these plans: *Provided further*, That the Corporation shall provide semiannual reports in electronic format regarding the pending business plan, which shall describe the work completed to date, any changes to the business plan, and the reasons for such changes, and shall identify all sole source contract awards which shall be accompanied by a justification as to why said contract was awarded on a sole-source basis, as well as progress against the milestones and target dates of the 2009 performance improvement plan: *Provided further*, That the Corporation's budget, business plan, 5-Year Financial Plan, and all subsequent supplemental plans shall be displayed

on the Corporation's website within a reasonable timeframe following their submission to the appropriate entities: *Provided further*, That these plans shall be accompanied by a comprehensive fleet plan for all Amtrak rolling stock which shall address the Corporation's detailed plans and timeframes for the maintenance, refurbishment, replacement, and expansion of the Amtrak fleet: *Provided further*, That said fleet plan shall establish year-specific goals and milestones and discuss potential, current, and preferred financing options for all such activities: *Provided further*, That none of the funds under this heading may be obligated or expended until the Corporation agrees to continue abiding by the provisions of paragraphs 1, 2, 5, 9, and 11 of the summary of conditions for the direct loan agreement of June 28, 2002, in the same manner as in effect on the date of enactment of this Act: *Provided further*, That concurrent with the President's budget request for fiscal year 2011, the Corporation shall submit to the House and Senate Committees on Appropriations a budget request for fiscal year 2011 in similar format and substance to those submitted by executive agencies of the Federal Government.

CAPITAL AND DEBT SERVICE GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

To enable the Secretary of Transportation to make grants to the National Railroad Passenger Corporation for capital investments as authorized by section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 (division B of Public Law 110–432), $1,001,625,000, to remain available until expended, of which not to exceed $264,000,000 shall be for debt service obligations as authorized by section 102 of such Act: *Provided*, That grants after an initial allocation of $200,000,000 shall be provided to the Corporation only on a reimbursable basis: *Provided further*, That the Secretary may retain up to one-half of 1 percent of the funds provided under this heading to fund the costs of project management oversight of capital projects funded by grants provided under this heading, as authorized by subsection 101(d) of division B of Public Law 110–432: *Provided further*, That the Secretary shall approve funding for capital expenditures, including advance purchase orders of materials, for the Corporation only after receiving and reviewing a grant request for each specific capital project justifying the Federal support to the Secretary's satisfaction: *Provided further*, That none of the funds under this heading may be used to subsidize operating losses of the Corporation: *Provided further*, That none of the funds under this heading may be used for capital projects not approved by the Secretary of Transportation or on the Corporation's fiscal year 2010 business plan: *Provided further*, That in addition to the project management oversight funds authorized under section 101(d) of of division B of Public Law 110–432, the Secretary may retain up to an additional one-half of one percent of the funds provided under this heading to fund expenses associated with implementing section 212 of of division B of Public Law 110–432, including the amendments made by section 212 to section 24905 of title 49, United States Code.

ADMINISTRATIVE PROVISIONS—FEDERAL RAILROAD ADMINISTRATION

SEC. 151. The Secretary may purchase promotional items of nominal value for use in public outreach activities to accomplish

the purposes of 49 U.S.C. 20134: *Provided*, That the Secretary shall prescribe guidelines for the administration of such purchases and use.

SEC. 152. Hereafter, notwithstanding any other provision of law, funds provided in this Act for the National Railroad Passenger Corporation shall immediately cease to be available to said Corporation in the event that the Corporation contracts to have services provided at or from any location outside the United States. For purposes of this section, the word "services" shall mean any service that was, as of July 1, 2006, performed by a full-time or part-time Amtrak employee whose base of employment is located within the United States.

SEC. 153. The Secretary of Transportation may receive and expend cash, or receive and utilize spare parts and similar items, from non-United States Government sources to repair damages to or replace United States Government owned automated track inspection cars and equipment as a result of third party liability for such damages, and any amounts collected under this section shall be credited directly to the Safety and Operations account of the Federal Railroad Administration, and shall remain available until expended for the repair, operation and maintenance of automated track inspection cars and equipment in connection with the automated track inspection program.

SEC. 154. The Administrator of the Federal Railroad Administration shall submit a report on April 1, 2010, and quarterly reports thereafter, to the House and Senate Committees on Appropriations detailing the Administrator's efforts at improving the on-time performance of Amtrak intercity rail service operating on non-Amtrak owned property. Such reports shall compare the most recent actual on-time performance data to pre-established on-time performance goals that the Administrator shall set for each rail service, identified by route. Such reports shall also include whatever other information and data regarding the on-time performance of Amtrak trains the Administrator deems to be appropriate.

SEC. 155. In the Explanatory Statement referenced in division I of Public Law 111–8 under the heading Railroad Research and Development the item relating to "San Gabriel trench grade separation project, Alameda Corridor, CA" is deemed to be amended by inserting "Alameda Corridor East Construction Authority Grade Separations, CA.".

SEC. 156. In the Explanatory Statement referenced in division K of Public Law 110–161 under the heading Rail Line Relocation and Improvement Program the item relating to "Mt. Vernon railroad cut, NY" is deemed to be amended by inserting "Rail Line and Station Improvement and Rehabilitation, Mount Vernon, NY.".

SEC. 157. Notwithstanding any other provision of law, funds provided in Public Law 111–8 for "Lincoln Avenue Grade Separation, Port of Tacoma, Washington" shall be made available for this project as therein described.

SEC. 158. The Administrator of the Federal Railroad Administration, in cooperation with the Illinois Department of Transportation (IDOT), may provide technical and financial assistance to IDOT and local and county officials to study the feasibility of 10th Street, or other alternatives, in Springfield, Illinois, as a route for consolidated freight rail operations and/or combined freight and passenger rail operations within the city of Springfield.

SEC. 159. (a) AMTRAK SECURITY EVALUATION.—No later than 180 days after the enactment of this Act, Amtrak, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall submit a report to Congress that contains—

(1) a comprehensive, system-wide, security evaluation; and

(2) proposed guidance and procedures necessary to implement a new checked firearms program.

(b) DEVELOPEMENT AND IMPLEMENTATION OF GUIDANCE AND PROCEDURES.—

(1) IN GENERAL.—Not later than one year after the enactment of this Act, Amtrak, in consultation with the Assistant Secretary, shall develop and implement guidance and procedures to carry out the duties and responsibilities of firearm storage and carriage in checked baggage cars and at Amtrak stations that accept checked baggage.

(2) SCOPE.—The guidance and procedures developed under paragraph (1) shall—

(A) permit Amtrak passengers holding a ticket for a specific Amtrak route to place an unloaded firearm or starter pistol in a checked bag on such route if—

(i) the Amtrak station accepts checked baggage for such route;

(ii) the passenger declares to Amtrak, either orally or in writing, at the time the reservation is made or not later than 24 hours before departure, that the firearm will be placed in his or her bag and will be unloaded;

(iii) the firearm is in a hard-sided container;

(iv) such container is locked; and

(v) only the passenger has the key or combination for such container;

(B) permit Amtrak passengers holding a ticket for a specific Amtrak route to place small arms ammunition for personal use in a checked bag on such route if the ammunition is securely packed—

(i) in fiber, wood, or metal boxes; or

(ii) in other packaging specifically designed to carry small amounts of ammunition; and

(C) include any other measures needed to ensure the safety and security of Amtrak employees, passengers, and infrastructure, including—

(i) in fiber, wood, or metal boxes; or

(ii) in other packaging specifically designed to carry small amounts of ammunition; and

(c) DEFINITIONS.—

(1) For purposes of this section, the term "checked baggage" refers to baggage transported that is accessible only to select Amtrak employees.

FEDERAL TRANSIT ADMINISTRATION

ADMINISTRATIVE EXPENSES

For necessary administrative expenses of the Federal Transit Administration's programs authorized by chapter 53 of title 49, United States Code, $98,911,000: *Provided*, That of the funds available under this heading, not to exceed $1,809,000 shall be available

for travel: *Provided further*, That none of the funds provided or limited in this Act may be used to create a permanent office of transit security under this heading: *Provided further*, That of the amounts made available under this heading not to exceed $75,000 shall be paid from appropriations made available by this Act and provided to the Department of Transportation Office of Inspector General through reimbursement to conduct the annual audits of financial statements in accordance with section 3521 of title 31, United States Code: *Provided further*, That upon submission to the Congress of the fiscal year 2011 President's budget, the Secretary of Transportation shall transmit to Congress the annual report on new starts, including proposed allocations of funds for fiscal year 2011.

FORMULA AND BUS GRANTS

(LIQUIDATION OF CONTRACT AUTHORITY)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

For payment of obligations incurred in carrying out the provisions of 49 U.S.C. 5305, 5307, 5308, 5309, 5310, 5311, 5316, 5317, 5320, 5335, 5339, and 5340 and section 3038 of Public Law 105–178, as amended, $9,400,000,000 to be derived from the Mass Transit Account of the Highway Trust Fund and to remain available until expended: *Provided*, That funds available for the implementation or execution of programs authorized under 49 U.S.C. 5305, 5307, 5308, 5309, 5310, 5311, 5316, 5317, 5320, 5335, 5339, and 5340 and section 3038 of Public Law 105–178, as amended, shall not exceed total obligations of $8,343,171,000 in fiscal year 2010.

RESEARCH AND UNIVERSITY RESEARCH CENTERS

For necessary expenses to carry out 49 U.S.C. 5306, 5312–5315, 5322, and 5506, $65,670,000, to remain available until expended: *Provided*, That $10,000,000 is available to carry out the transit cooperative research program under section 5313 of title 49, United States Code, $4,300,000 is available for the National Transit Institute under section 5315 of title 49, United States Code, and $7,000,000 is available for university transportation centers program under section 5506 of title 49, United States Code: *Provided further*, That $44,370,000 is available to carry out national research programs under sections 5312, 5313, 5314, and 5322 of title 49, United States Code: *Provided further*, That of the funds available to carry out section 5312 of title 49, United States Code, $5,000,000 shall be available to the Secretary to develop standards for asset management plans, provide technical assistance to recipients engaged in the development or implementation of an asset management plan, improve data collection through the National Transit Database, and conduct a pilot program designed to identify the best practices of asset management.

CAPITAL INVESTMENT GRANTS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out section 5309 of title 49, United States Code, $2,000,000,000, to remain available until expended, of which no less than $200,000,000 is for section 5309(e) of such title: *Provided*, That $2,000,000 shall be transferred to the Department of Transportation Office of Inspector General from funds set aside for the execution of oversight contracts pursuant to section 5327(c) of title 49, United States Code, for costs associated with audits and investigations of transit-related issues, including reviews of new fixed guideway systems.

GRANTS FOR ENERGY EFFICIENCY AND GREENHOUSE GAS REDUCTIONS

For grants to public transit agencies for capital investments that will reduce the energy consumption or greenhouse gas emissions of their public transportation systems, $75,000,000, to remain available through September 30, 2012: *Provided*, That priority shall be given to projects based on the total energy savings that are projected to result from the investments, and the projected energy savings as a percentage of the total energy usage of the public transit agency: *Provided further*, That the Secretary shall public criteria on which to base the competition for any grants awarded under this heading no sooner than 90 days after the enactment of this Act, require applications for funding provided under this heading to be submitted no sooner than 120 days after the publication of such criteria, and announce all projects selected to be funded from funds provided under this heading no sooner than September 15, 2010.

GRANTS TO THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

For grants to the Washington Metropolitan Area Transit Authority as authorized under section 601 of division B of Public Law 110–432, $150,000,000, to remain available until expended: *Provided*, That the Secretary shall approve grants for capital and preventive maintenance expenditures for the Washington Metropolitan Area Transit Authority only after receiving and reviewing a request for each specific project: *Provided further*, That prior to approving such grants, the Secretary shall determine that the Washington Metropolitan Area Transit Authority has placed the highest priority on those investments that will improve the safety of the system, including but not limited to fixing the track signal system, replacing the 1000 series cars, installing guarded turnouts, buying equipment for wayside worker protection, and installing rollback protection on cars that are not equipped with this safety feature.

ADMINISTRATIVE PROVISIONS—FEDERAL TRANSIT ADMINISTRATION

SEC. 160. The limitations on obligations for the programs of the Federal Transit Administration shall not apply to any authority under 49 U.S.C. 5338, previously made available for obligation, or to any other authority previously made available for obligation.

SEC. 161. Notwithstanding any other provision of law, funds appropriated or limited by this Act under "Federal Transit Administration, Capital Investment Grants" and for bus and bus facilities under "Federal Transit Administration, Formula and Bus Grants" for projects specified in this Act or identified in reports accompanying this Act not obligated by September 30, 2012, and other recoveries, shall be directed to projects eligible to use the funds for the purposes for which they were originally provided.

SEC. 162. Notwithstanding any other provision of law, any funds appropriated before October 1, 2009, under any section of chapter 53 of title 49, United States Code, that remain available for expenditure, may be transferred to and administered under the most recent appropriation heading for any such section.

SEC. 163. Notwithstanding any other provision of law, unobligated funds made available for new fixed guideway system projects under the heading "Federal Transit Administration, Capital investment grants" in any appropriations Act prior to this Act may be used during this fiscal year to satisfy expenses incurred for such projects.

SEC. 164. During fiscal year 2010, each Federal Transit Administration grant for a project that involves the acquisition or rehabilitation of a bus to be used in public transportation shall be funded for 90 percent of the net capital costs of a biodiesel bus or a factory-installed or retrofitted hybrid electric propulsion system and any equipment related to such a system: *Provided*, That the Secretary shall have the discretion to determine, through practicable administrative procedures, the costs attributable to the system and related-equipment.

SEC. 165. Notwithstanding any other provision of law, unobligated funds or recoveries under section 5309 of title 49, United States Code, that are available to the Secretary of Transportation for reallocation shall be directed to projects eligible to use the funds for the purposes for which they were originally provided.

SEC. 166. (a) In the explanatory statement referenced in section 186 of title I of division K of Public Law 110–161 (121 Stat. 2406), the item relating to "Broward County Southwest Transit Facility" in the table of projects under the heading "Bus and Bus Facilities" is deemed to be amended by striking "Southwest" and inserting "Ravenswood".

(b) The explanatory statement referenced in section 186 of title I of division I of Public Law 111–8 for "Alternatives analysis" under "Federal Transit Administration–Formula and Bus Grants" is deemed to be amended by striking "Hudson–Bergen Light Rail Extension Route 440, North Bergen, NJ" and inserting "Hudson–Bergen Light Rail Extension Route 440, Jersey City, NJ".

(c) Funds made available for the "Phoenix/Regional Heavy Maintenance Facility, AZ", "Dial-a-Ride facility, Phoenix, AZ" and the "Phoenix Regional Heavy Bus Maintenance Facility, Arizona" through the Department of Transportation Appropriations Acts for Fiscal Years 2004, 2005 and 2008 that remain unobligated or unexpended shall be made available to the East Baseline Park-and-Ride Facility in Phoenix, Arizona.

SEC. 167. Funds made available for Alaska or Hawaii ferry boats or ferry terminal facilities pursuant to 49 U.S.C. 5309(m)(2)(B) may be used to construct new vessels and facilities, or to improve existing vessels and facilities, including both the passenger and vehicle-related elements of such vessels and facilities, and for repair

facilities: *Provided*, That not more than $4,000,000 of the funds made available pursuant to 49 U.S.C. 5309(m)(2)(B) may be used by the City and County of Honolulu to operate a passenger ferry boat service demonstration project to test the viability of different intra-island ferry boat routes and technologies.

SEC. 168. In determining the local share of the cost of the project authorized to be carried out under section 3043(c)(70) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59; 119 Stat. 1644) for purposes of the rating process for New Starts projects, the Secretary shall consider any portion of the corridor advanced entirely with non-Federal funds.

SEC. 169. The Secretary of Transportation shall provide recommendations to Congress, including legislative proposals, on how to strengthen its role in regulating the safety of transit agencies operating heavy rail on fixed guideway: *Provided*, That the Secretary shall include actions the Department of Transportation will take and what additional legislative authorities it may need in order to fully implement recommendations of the National Transportation Safety Board directed at the Federal Transit Administration, including but not limited to recommendations related to crashworthiness, emergency access and egress, event recorders, and hours of service: *Provided further*, That the Secretary shall transmit to the House and Senate Committees on Appropriations, the House Committee on Transportation and Infrastructure, and the Senate Committee on Banking, Housing, and Urban Affairs a report outlining these recommendations and a plan for their implementation by the Department of Transportation no later than 45 days after enactment of this Act.

SEC. 170. Notwithstanding any other provision of law, the Secretary of Transportation shall not reallocate any funding made available for items 523, 267, and 131 of section 3044 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59).

SEC. 171. Notwithstanding any other provision of law, for fiscal year 2010, the total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding full funding grant agreements entered into on or before September 30, 2009, and all outstanding letters of intent and early systems work agreements under subsection 5309(g) of Title 49, United States Code, for major new fixed guideway capital projects may be not more than the sum of the amount authorized under subsections 5338(a)(3)(iv) and 5338(c) of such title for such projects and an amount equivalent to the last 3 fiscal years of funding allocated under subsections 5309(m)(1)(A) and (m)(2)(A)(ii) of such title, for such projects, less an amount the Secretary reasonably estimates is necessary for grants under subsection 5309(b)(1) of such title for those of such projects that are not covered by a letter or agreement: *Provided*, That the Secretary may enter into full funding grant agreements under subsection 5309(g)(2) of such title for major new fixed guideway capital projects that contain contingent commitments to incur obligations in such amounts as the Secretary determines are appropriate.

SEC. 172. None of the funds provided or limited under this Act may be used to enforce regulations related to charter bus service under part 604 of title 49, Code of Federal Regulations, for any transit agency who during fiscal year 2008 was both initially

granted a 60-day period to come into compliance with part 604, and then was subsequently granted an exception from said part.

SEC. 173. Hereafter, for interstate multi-modal projects which are in Interstate highway corridors, the Secretary shall base the rating under section 5309(d) of title 49, United States Code, of the non-New Starts share of the public transportation element of the project on the percentage of non-New Starts funds in the unified finance plan for the multi-modal project: *Provided*, That the Secretary shall base the accounting of local matching funds on the total amount of all local funds incorporated in the unified finance plan for the multi-modal project for the purposes of funding under chapter 53 of title 49, United States Code and title 23, United States Code: *Provided further*, That the Secretary shall evaluate the justification for the project under section 5309(d) of title 49, United States Code, including cost effectiveness, on the public transportation costs and public transportation benefits.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to the Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the Corporation's budget for the current fiscal year.

OPERATIONS AND MAINTENANCE

(HARBOR MAINTENANCE TRUST FUND)

For necessary expenses for operations, maintenance, and capital asset renewal of those portions of the Saint Lawrence Seaway owned, operated, and maintained by the Saint Lawrence Seaway Development Corporation, $32,324,000, to be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662.

MARITIME ADMINISTRATION

MARITIME SECURITY PROGRAM

For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $174,000,000, to remain available until expended.

OPERATIONS AND TRAINING

For necessary expenses of operations and training activities authorized by law, $149,750,000, of which $11,240,000 shall remain available until expended for maintenance and repair of training ships at State Maritime Academies, and of which $15,000,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy, and of which $59,057,000 shall be available for operations at the United States Merchant Marine Academy: *Provided*, That amounts apportioned for the United States Merchant Marine Academy shall be available only upon allotments made personally by the Secretary of Transportation

or the Assistant Secretary for Budget and Programs: *Provided further*, That the Superintendent, Deputy Superintendent and the Director of the Office of Resource Management of the United States Merchant Marine Academy may not be allotment holders for the United States Merchant Marine Academy, and the Administrator of Maritime Administration shall hold all allotments made by the Secretary of Transportation or the Assistant Secretary for Budget and Programs under the previous proviso: *Provided further*, That 50 percent of the funding made available for the United States Merchant Marine Academy under this heading shall be available only after the Secretary, in consultation with the Superintendent and the Maritime Administration, completes a plan detailing by program or activity and by object class how such funding will be expended at the Academy, and this plan is submitted to the House and Senate Committees on Appropriations.

SHIP DISPOSAL

For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, $15,000,000, to remain available until expended.

ASSISTANCE TO SMALL SHIPYARDS

To make grants to qualified shipyards as authorized under section 3508 of Public Law 110–417 or section 54101 of title 46, United States Code, $15,000,000, to remain available until expended: *Provided*, That to be considered for assistance, a qualified shipyard shall submit an application for assistance no later than 60 days after enactment of this Act: *Provided further*, That from applications submitted under the previous proviso, the Secretary of Transportation shall make grants no later than 120 days after enactment of this Act in such amounts as the Secretary determines: *Provided further*, That not to exceed 2 percent of the funds appropriated under this heading shall be available for necessary costs of grant administration.

MARITIME GUARANTEED LOAN (TITLE XI) PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized, $9,000,000, of which $5,000,000 shall remain available until expended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That not to exceed $4,000,000 shall be available for administrative expenses to carry out the guaranteed loan program, which shall be transferred to and merged with the appropriation for "Operations and Training", Maritime Administration.

ADMINISTRATIVE PROVISIONS—MARITIME ADMINISTRATION

SEC. 175. Notwithstanding any other provision of this Act, the Maritime Administration is authorized to furnish utilities and services and make necessary repairs in connection with any lease, contract, or occupancy involving Government property under control of the Maritime Administration, and payments received therefor

shall be credited to the appropriation charged with the cost thereof: *Provided*, That rental payments under any such lease, contract, or occupancy for items other than such utilities, services, or repairs shall be covered into the Treasury as miscellaneous receipts.

SEC. 176. Section 51314 of title 46, United States Code, is amended in subsection (b) by inserting at the end "Such fees shall be credited to the Maritime Administration's Operations and Training appropriation, to remain available until expended, for those expenses directly related to the purposes of the fees. Fees collected in excess of actual expenses may be refunded to the Midshipmen through a mechanism approved by the Secretary. The Academy shall maintain a separate and detailed accounting of fee revenue and all associated expenses.".

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

OPERATIONAL EXPENSES

(PIPELINE SAFETY FUND)

(INCLUDING TRANSFER OF FUNDS)

For necessary operational expenses of the Pipeline and Hazardous Materials Safety Administration, $21,132,000, of which $639,000 shall be derived from the Pipeline Safety Fund: *Provided*, That $1,000,000 shall be transferred to "Pipeline Safety" in order to fund "Pipeline Safety Information Grants to Communities" as authorized under section 60130 of title 49, United States Code.

HAZARDOUS MATERIALS SAFETY

For expenses necessary to discharge the hazardous materials safety functions of the Pipeline and Hazardous Materials Safety Administration, $37,994,000, of which $1,699,000 shall remain available until September 30, 2012: *Provided*, That up to $800,000 in fees collected under 49 U.S.C. 5108(g) shall be deposited in the general fund of the Treasury as offsetting receipts: *Provided further*, That there may be credited to this appropriation, to be available until expended, funds received from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training, for reports publication and dissemination, and for travel expenses incurred in performance of hazardous materials exemptions and approvals functions.

PIPELINE SAFETY

(PIPELINE SAFETY FUND)

(OIL SPILL LIABILITY TRUST FUND)

For expenses necessary to conduct the functions of the pipeline safety program, for grants-in-aid to carry out a pipeline safety program, as authorized by 49 U.S.C. 60107, and to discharge the pipeline program responsibilities of the Oil Pollution Act of 1990, $105,239,000, of which $18,905,000 shall be derived from the Oil Spill Liability Trust Fund and shall remain available until September 30, 2012; and of which $86,334,000 shall be derived from

the Pipeline Safety Fund, of which $47,332,000 shall remain available until September 30, 2012: *Provided*, That not less than $1,048,000 of the funds provided under this heading shall be for the one-call State grant program.

EMERGENCY PREPAREDNESS GRANTS

(EMERGENCY PREPAREDNESS FUND)

For necessary expenses to carry out 49 U.S.C. 5128(b), $188,000, to be derived from the Emergency Preparedness Fund, to remain available until September 30, 2011: *Provided*, That not more than $28,318,000 shall be made available for obligation in fiscal year 2010 from amounts made available by 49 U.S.C. 5116(I) and 5128(b)–(c): *Provided further*, That none of the funds made available by 49 U.S.C. 5116(I), 5128(b), or 5128(c) shall be made available for obligation by individuals other than the Secretary of Transportation, or his designee.

RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION

RESEARCH AND DEVELOPMENT

For necessary expenses of the Research and Innovative Technology Administration, $13,007,000, of which $6,036,000 shall remain available until September 30, 2012: *Provided*, That there may be credited to this appropriation, to be available until expended, funds received from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General to carry out the provisions of the Inspector General Act of 1978, as amended, $75,114,000: *Provided*, That the Inspector General shall have all necessary authority, in carrying out the duties specified in the Inspector General Act, as amended (5 U.S.C. App. 3), to investigate allegations of fraud, including false statements to the government (18 U.S.C. 1001), by any person or entity that is subject to regulation by the Department: *Provided further*, That the funds made available under this heading shall be used to investigate, pursuant to section 41712 of title 49, United States Code: (1) unfair or deceptive practices and unfair methods of competition by domestic and foreign air carriers and ticket agents; and (2) the compliance of domestic and foreign air carriers with respect to item (1) of this proviso.

SURFACE TRANSPORTATION BOARD

SALARIES AND EXPENSES

For necessary expenses of the Surface Transportation Board, including services authorized by 5 U.S.C. 3109, $29,066,000: *Provided*, That notwithstanding any other provision of law, not to exceed $1,250,000 from fees established by the Chairman of the

Surface Transportation Board shall be credited to this appropriation as offsetting collections and used for necessary and authorized expenses under this heading: *Provided further*, That the sum herein appropriated from the general fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are received during fiscal year 2010, to result in a final appropriation from the general fund estimated at no more than $27,816,000.

GENERAL PROVISIONS—DEPARTMENT OF TRANSPORTATION

SEC. 180. During the current fiscal year applicable appropriations to the Department of Transportation shall be available for maintenance and operation of aircraft; hire of passenger motor vehicles and aircraft; purchase of liability insurance for motor vehicles operating in foreign countries on official department business; and uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901–5902).

SEC. 181. Appropriations contained in this Act for the Department of Transportation shall be available for services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for an Executive Level IV.

SEC. 182. None of the funds in this Act shall be available for salaries and expenses of more than 110 political and Presidential appointees in the Department of Transportation: *Provided*, That none of the personnel covered by this provision may be assigned on temporary detail outside the Department of Transportation.

SEC. 183. None of the funds in this Act shall be used to implement section 404 of title 23, United States Code.

SEC. 184. (a) No recipient of funds made available in this Act shall disseminate personal information (as defined in 18 U.S.C. 2725(3)) obtained by a State department of motor vehicles in connection with a motor vehicle record as defined in 18 U.S.C. 2725(1), except as provided in 18 U.S.C. 2721 for a use permitted under 18 U.S.C. 2721.

(b) Notwithstanding subsection (a), the Secretary shall not withhold funds provided in this Act for any grantee if a State is in noncompliance with this provision.

SEC. 185. Funds received by the Federal Highway Administration, Federal Transit Administration, and Federal Railroad Administration from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training may be credited respectively to the Federal Highway Administration's "Federal-Aid Highways" account, the Federal Transit Administration's "Research and University Research Centers" account, and to the Federal Railroad Administration's "Safety and Operations" account, except for State rail safety inspectors participating in training pursuant to 49 U.S.C. 20105.

SEC. 186. Funds provided or limited in this Act under the appropriate accounts within the Federal Highway Administration, the Federal Railroad Administration and the Federal Transit Administration shall be for the eligible programs, projects and activities in the corresponding amounts identified in the committee report accompanying this Act for "Ferry Boats and Ferry Terminal Facilities", "Federal Lands", "Interstate Maintenance Discretionary", "Transportation, Community and System Preservation Program", "Delta Region Transportation Development Program", "Rail Line Relocation and Improvement Program", "Rail-highway

crossing hazard eliminations", "Capital Investment Grants", "Alternatives analysis", and "Bus and bus facilities".

SEC. 187. Notwithstanding any other provisions of law, rule or regulation, the Secretary of Transportation is authorized to allow the issuer of any preferred stock heretofore sold to the Department to redeem or repurchase such stock upon the payment to the Department of an amount determined by the Secretary.

SEC. 188. None of the funds in this Act to the Department of Transportation may be used to make a grant unless the Secretary of Transportation notifies the House and Senate Committees on Appropriations not less than 3 full business days before any discretionary grant award, letter of intent, or full funding grant agreement totaling $1,000,000 or more is announced by the department or its modal administrations from: (1) any discretionary grant program of the Federal Highway Administration including the emergency relief program; (2) the airport improvement program of the Federal Aviation Administration; (3) any grant from the Federal Railroad Administration; or (4) any program of the Federal Transit Administration other than the formula grants and fixed guideway modernization programs: *Provided*, That the Secretary gives concurrent notification to the House and Senate Committees on Appropriations for any "quick release" of funds from the emergency relief program: *Provided further*, That no notification shall involve funds that are not available for obligation.

SEC. 189. Rebates, refunds, incentive payments, minor fees and other funds received by the Department of Transportation from travel management centers, charge card programs, the subleasing of building space, and miscellaneous sources are to be credited to appropriations of the Department of Transportation and allocated to elements of the Department of Transportation using fair and equitable criteria and such funds shall be available until expended.

SEC. 190. Amounts made available in this or any other Act that the Secretary determines represent improper payments by the Department of Transportation to a third-party contractor under a financial assistance award, which are recovered pursuant to law, shall be available—

(1) to reimburse the actual expenses incurred by the Department of Transportation in recovering improper payments; and

(2) to pay contractors for services provided in recovering improper payments or contractor support in the implementation of the Improper Payments Information Act of 2002: *Provided*, That amounts in excess of that required for paragraphs (1) and (2)—

(A) shall be credited to and merged with the appropriation from which the improper payments were made, and shall be available for the purposes and period for which such appropriations are available; or

(B) if no such appropriation remains available, shall be deposited in the Treasury as miscellaneous receipts: *Provided further*, That prior to the transfer of any such recovery to an appropriations account, the Secretary shall notify to the House and Senate Committees on Appropriations of the amount and reasons for such transfer: *Provided further*, That for purposes of this section, the term

"improper payments", has the same meaning as that provided in section 2(d)(2) of Public Law 107–300.

SEC. 191. Notwithstanding any other provision of law, if any funds provided in or limited by this Act are subject to a reprogramming action that requires notice to be provided to the House and Senate Committees on Appropriations, said reprogramming action shall be approved or denied solely by the Committees on Appropriations: *Provided*, That the Secretary may provide notice to other congressional committees of the action of the Committees on Appropriations on such reprogramming but not sooner than 30 days following the date on which the reprogramming action has been approved or denied by the House and Senate Committees on Appropriations.

SEC. 192. None of the funds appropriated or otherwise made available under this Act may be used by the Surface Transportation Board of the Department of Transportation to charge or collect any filing fee for rate complaints filed with the Board in an amount in excess of the amount authorized for district court civil suit filing fees under section 1914 of title 28, United States Code.

SEC. 193. Notwithstanding section 3324 of Title 31, United States Code, in addition to authority provided by section 327 of title 49, United States Code, the Department's Working Capital fund is hereby authorized to provide payments in advance to vendors that are necessary to carry out the Federal transit pass transportation fringe benefit program under Executive Order 13150 and section 3049 of Public Law 109–59: *Provided*, that the Department shall include adequate safeguards in the contract with the vendors to ensure timely and high quality performance under the contract.

SEC. 194. (a) IN GENERAL.—Section 127(a)(11) of title 23, United States Code, is amended by striking "that portion of the Maine Turnpike designated Route 95 and 495, and that portion of Interstate Route 95 from the southern terminus of the Maine Turnpike to the New Hampshire State line, laws (including regulations)" and inserting "all portions of the Interstate Highway System in the State, laws (including regulations)".

(b) PERIOD OF EFFECTIVENESS.—The amendment made by subsection (a) shall be in effect during the 1-year period beginning on the date of enactment of this Act.

(c) REVERSION.—Effective as of the date that is 366 days after the date of enactment of this Act, section 127(a)(11) of title 23, United States Code, is amended by striking "all portions of the Interstate Highway System in the State, laws (including regulations)" and inserting "that portion of the Maine Turnpike designated Route 95 and 495, and that portion of Interstate Route 95 from the southern terminus of the Maine Turnpike to the New Hampshire State line, laws (including regulations)".

(d) VERMONT PILOT PROGRAM.—Section 127(a) of title 23, United States Code, is amended by adding at the end the following:

"(13) VERMONT PILOT PROGRAM.—

"(A) IN GENERAL.—With respect to Interstate Routes 89, 91, and 93 in the State of Vermont, laws (including regulations) of that State concerning vehicle weight limitations applicable to State highways other than the Interstate system shall be applicable in lieu of the requirements of this subsection.".

(e) PERIOD OF EFFECTIVENESS FOR THE VERMONT PILOT PROGRAM.—The amendment made by subsection (d) shall be in effect during the 1-year period beginning on the date of enactment of this Act.

(f) REVERSION FOR THE VERMONT PILOT PROGRAM.—Effective as of the date that is 366 days after the date of enactment of this Act, section 127(a) of title 23, United States Code, is amended by striking paragraph (13).

(g) REPORT ON THE VERMONT PILOT PROGRAM.—Not later than 2 years after the date of enactment of this paragraph, the Secretary shall complete and submit to Congress a report on the effects of the pilot program under this paragraph on highway safety, bridge and road durability, commerce, truck volumes, and energy use within the State of Vermont.

SEC. 195. The Secretary shall initiate an independent and comprehensive study and analysis to supplement that authorized under section 108, division C, of Public Law 111–8: *Provided*, That the Department of Transportation shall work with and coordinate with the Departments of Energy, Commerce and Agriculture to develop a comprehensive understanding of the full value of river flow support to users in the Mississippi and Missouri Rivers: *Provided further*, That subjects of analysis shall include energy (including hydropower and generation cooling), and water transport (including water-compelled rates, projected total transportation congestion considerations, transportation energy efficiency, air quality and carbon emissions) and water users (including the number and distribution of people, households, municipalities, and business throughout the Missouri and Mississippi River basins who use river water for multiple purposes): *Provided further*, That in addition to understanding current value, the Department is directed to work with appropriate Federal partners to develop recommendations on how to minimize impediments to growth and maximize water value of benefits related to energy production and efficiency, congestion relief, trade and transport efficiency, and air quality: *Provided further*, That the Department of Transportation shall provide its analysis and recommendations to the U.S. Army Corps of Engineers, the White House, and the Congress: *Provided further*, That $2,000,000 is available until expended for such purposes.

SEC. 196. Notwithstanding any other provision of law, funds made available under section 330 of the Fiscal Year 2002 Department of Transportation and Related Agencies Appropriations Act (Public Law 107–87) for the Las Vegas, Nevada Monorail Project, funds made available under section 115 of the Fiscal Year 2004 Transportation, Treasury and Independent Agencies Appropriations Act (Public Law 108–199) for the North Las Vegas Intermodal Transit Hub, and funds made available for the CATRAIL RTC Rail Project, Nevada in the Fiscal Year 2005 Transportation, Treasury, Independent Agencies and General Government Appropriations Act (Public Law 108–447), as well as any unexpended funds in the Federal Transit Administration grant numbers NV–03–0024 and NV–03–0027, shall be made available until expended to the Regional Transportation Commission of Southern Nevada for bus and bus-related projects and bus rapid transit projects: *Provided*, That the funds made available for a project in accordance with this section shall be administered under the terms and conditions set forth in 49 U.S.C. 5307, to the extent applicable.

This title may be cited as the "Department of Transportation Appropriations Act, 2010".

TITLE II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MANAGEMENT AND ADMINISTRATION

EXECUTIVE DIRECTION

For necessary salaries and expenses for Executive Direction, $26,855,000, of which not to exceed $4,619,000 shall be available for the immediate Office of the Secretary and Deputy Secretary; not to exceed $1,703,000 shall be available for the Office of Hearings and Appeals; not to exceed $778,000 shall be available for the Office of Small and Disadvantaged Business Utilization; not to exceed $727,000 shall be available for the immediate Office of the Chief Financial Officer; not to exceed $1,474,000 shall be available for the immediate Office of the General Counsel; not to exceed $2,912,000 shall be available to the Office of the Assistant Secretary for Congressional and Intergovernmental Relations; not to exceed $3,996,000 shall be available for the Office of the Assistant Secretary for Public Affairs; not to exceed $1,218,000 shall be available for the Office of the Assistant Secretary for Administration; not to exceed $2,125,000 shall be available to the Office of the Assistant Secretary for Public and Indian Housing; not to exceed $1,781,000 shall be available to the Office of the Assistant Secretary for Community Planning and Development; not to exceed $3,497,000 shall be available to the Office of the Assistant Secretary for Housing, Federal Housing Commissioner; not to exceed $1,097,000 shall be available to the Office of the Assistant Secretary for Policy Development and Research; and not to exceed $928,000 shall be available to the Office of the Assistant Secretary for Fair Housing and Equal Opportunity: *Provided*, That the Secretary of the Department of Housing and Urban Development is authorized to transfer funds appropriated for any office funded under this heading to any other office funded under this heading following the written notification to the House and Senate Committees on Appropriations: *Provided further*, That no appropriation for any office shall be increased or decreased by more than 5 percent by all such transfers: *Provided further*, That notice of any change in funding greater than 5 percent shall be submitted for prior approval to the House and Senate Committees on Appropriations: *Provided further*, That the Secretary shall provide the Committees on Appropriations quarterly written notification regarding the status of pending congressional reports: *Provided further*, That the Secretary shall provide all signed reports required by Congress electronically: *Provided further*, That not to exceed $25,000 of the amount made available under this paragraph for the immediate Office of the Secretary shall be available for official reception and representation expenses as the Secretary may determine.

ADMINISTRATION, OPERATIONS AND MANAGEMENT

For necessary salaries and expenses for administration, operations and management for the Department of Housing and Urban Development, $537,011,000, of which not to exceed $76,958,000

shall be available for the personnel compensation and benefits of the Office of Administration; not to exceed $9,623,000 shall be available for the personnel compensation and benefits of the Office of Departmental Operations and Coordination; not to exceed $51,275,000 shall be available for the personnel compensation and benefits of the Office of Field Policy and Management; not to exceed $14,649,000 shall be available for the personnel compensation and benefits of the Office of the Chief Procurement Officer; not to exceed $35,197,000 shall be available for the personnel compensation and benefits of the remaining staff in the Office of the Chief Financial Officer; not to exceed $89,062,000 shall be available for the personnel compensation and benefits of the remaining staff in the Office of the General Counsel; not to exceed $3,296,000 shall be available for the personnel compensation and benefits of the Office of Departmental Equal Employment Opportunity; not to exceed $1,393,000 shall be available for the personnel compensation and benefits for the Center for Faith-Based and Community Initiatives; not to exceed $2,400,000 shall be available for the personnel compensation and benefits for the Office of Sustainability; not to exceed $3,288,000 shall be available for the personnel compensation and benefits for the Office of Strategic Planning and Management; and not to exceed $249,870,000 shall be available for non-personnel expenses of the Department of Housing and Urban Development: *Provided*, That, funds provided under this heading may be used for necessary administrative and non-administrative expenses of the Department of Housing and Urban Development, not otherwise provided for, including purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109: *Provided further*, That notwithstanding any other provision of law, funds appropriated under this heading may be used for advertising and promotional activities that support the housing mission area: *Provided further*, That the Secretary of Housing and Urban Development is authorized to transfer funds appropriated for any office included in Administration, Operations and Management to any other office included in Administration, Operations and Management only after such transfer has been submitted to, and received prior written approval by, the House and Senate Committees on Appropriations: *Provided further*, That no appropriation for any office shall be increased or decreased by more than 10 percent by all such transfers.

PERSONNEL COMPENSATION AND BENEFITS

PUBLIC AND INDIAN HOUSING

For necessary personnel compensation and benefits expenses of the Office of Public and Indian Housing, $197,074,000.

COMMUNITY PLANNING AND DEVELOPMENT

For necessary personnel compensation and benefits expenses of the Office of Community Planning and Development mission area, $98,989,000.

HOUSING

For necessary personnel compensation and benefits expenses of the Office of Housing, $374,887,000.

OFFICE OF THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

For necessary personnel compensation and benefits expenses of the Office of the Government National Mortgage Association, $11,095,000, to be derived from the GNMA guarantees of mortgage backed securities guaranteed loan receipt account.

POLICY DEVELOPMENT AND RESEARCH

For necessary personnel compensation and benefits expenses of the Office of Policy Development and Research, $21,138,000.

FAIR HOUSING AND EQUAL OPPORTUNITY

For necessary personnel compensation and benefits expenses of the Office of Fair Housing and Equal Opportunity, $71,800,000.

OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL

For necessary personnel compensation and benefits expenses of the Office of Healthy Homes and Lead Hazard Control, $7,151,000.

PUBLIC AND INDIAN HOUSING

TENANT-BASED RENTAL ASSISTANCE

(INCLUDING TRANSFER OF FUNDS)

For activities and assistance for the provision of tenant-based rental assistance authorized under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) ("the Act" herein), not otherwise provided for, $14,184,200,000, to remain available until expended, shall be available on October 1, 2009 (in addition to the $4,000,000,000 previously appropriated under this heading that will become available on October 1, 2009), and $4,000,000,000, to remain available until expended, shall be available on October 1, 2010: *Provided*, That of the amounts made available under this heading are provided as follows:

(1) $16,339,200,000 shall be available for renewals of expiring section 8 tenant-based annual contributions contracts (including renewals of enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act) and including renewal of other special purpose vouchers initially funded in fiscal year 2008 and 2009 such as Family Unification, Veterans Affairs Supportive Housing Vouchers and Non-elderly Disabled Vouchers): *Provided*, That notwithstanding any other provision of law, from amounts provided under this paragraph and any carryover, the Secretary for the calendar year 2010 funding cycle shall provide renewal funding for each public housing agency based on voucher management system (VMS) leasing and cost data for the most recent Federal fiscal year and by applying the most recent Annual Adjustment Factor as established by the Secretary,

and by making any necessary adjustments for the costs associated with deposits to family self-sufficiency program escrow accounts or first-time renewals including tenant protection or HOPE VI vouchers: *Provided further*, That none of the funds provided under this paragraph may be used to fund a total number of unit months under lease which exceeds a public housing agency's authorized level of units under contract, except for public housing agencies participating in the Moving to Work demonstration, which are instead governed by the terms and conditions of their MTW agreements: *Provided further*, That the Secretary shall, to the extent necessary to stay within the amount specified under this paragraph (except as otherwise modified under this Act), pro rate each public housing agency's allocation otherwise established pursuant to this paragraph: *Provided further*, That except as provided in the last two provisos, the entire amount specified under this paragraph (except as otherwise modified under this Act) shall be obligated to the public housing agencies based on the allocation and pro rata method described above, and the Secretary shall notify public housing agencies of their annual budget not later than 60 days after enactment of this Act: *Provided further*, That the Secretary may extend the 60-day notification period with the prior written approval of the House and Senate Committees on Appropriations: *Provided further*, That public housing agencies participating in the Moving to Work demonstration shall be funded pursuant to their Moving to Work agreements and shall be subject to the same pro rata adjustments under the previous provisos: *Provided further*, That up to $150,000,000 shall be available only: (1) to adjust the allocations for public housing agencies, after application for an adjustment by a public housing agency that experienced a significant increase, as determined by the Secretary, in renewal costs of tenant-based rental assistance resulting from unforeseen circumstances or from portability under section 8(r) of the Act; (2) for adjustments for public housing agencies with voucher leasing rates at the end of the calendar year that exceed the average leasing for the 12-month period used to establish the allocation; (3) for adjustments for the costs associated with VASH vouchers; or (4) for vouchers that were not in use during the 12-month period in order to be available to meet a commitment pursuant to section 8(o)(13) of the Act: *Provided further*, That the Secretary shall allocate amounts under the previous proviso based on need as determined by the Secretary: *Provided further*, That of the amounts made available under this paragraph, up to $100,000,000 may be transferred to and merged with the appropriation for "Transformation Initiative";

(2) $120,000,000 shall be for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134), conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, HOPE VI vouchers,

mandatory and voluntary conversions, and tenant protection assistance including replacement and relocation assistance or for project based assistance to prevent the displacement of unassisted elderly tenants currently residing in section 202 properties financed between 1959 and 1974 that are refinanced pursuant to Public Law 106–569, as amended, or under the authority as provided under this Act: *Provided*, That the Secretary shall provide replacement vouchers for all units that were occupied within the previous 24 months that cease to be available as assisted housing, subject only to the availability of funds;

(3) $1,575,000,000 shall be for administrative and other expenses of public housing agencies in administering the section 8 tenant-based rental assistance program, of which up to $50,000,000 shall be available to the Secretary to allocate to public housing agencies that need additional funds to administer their section 8 programs, including fees associated with section 8 tenant protection rental assistance, the administration of disaster related vouchers, Veterans Affairs Supportive Housing vouchers, and other incremental vouchers: *Provided*, That no less than $1,525,000,000 of the amount provided in this paragraph shall be allocated to public housing agencies for the calendar year 2010 funding cycle based on section 8(q) of the Act (and related Appropriation Act provisions) as in effect immediately before the enactment of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276): *Provided further*, That if the amounts made available under this paragraph are insufficient to pay the amounts determined under the previous proviso, the Secretary may decrease the amounts allocated to agencies by a uniform percentage applicable to all agencies receiving funding under this paragraph or may, to the extent necessary to provide full payment of amounts determined under the previous proviso, utilize unobligated balances, including recaptures and carryovers, remaining from funds appropriated to the Department of Housing and Urban Development under this heading, for fiscal year 2009 and prior fiscal years, notwithstanding the purposes for which such amounts were appropriated: *Provided further*, That amounts provided under this paragraph shall be only for activities related to the provision of tenant-based rental assistance authorized under section 8, including related development activities;

(4) $60,000,000 shall be available for family self-sufficiency coordinators under section 23 of the Act;

(5) $15,000,000 for incremental voucher assistance through the Family Unification Program: *Provided*, That the assistance made available under this paragraph shall continue to remain available for family unification upon turnover: *Provided further*, That the Secretary of Housing and Urban Development shall make such funding available, notwithstanding section 204 (competition provision) of this title, to entities with demonstrated experience and resources for supportive services;

(6) $75,000,000 for incremental rental voucher assistance for use through a supported housing program administered in conjunction with the Department of Veterans Affairs as authorized under section 8(o)(19) of the United States Housing Act of 1937: *Provided*, That the Secretary of Housing and

Urban Development shall make such funding available, notwithstanding section 204 (competition provision) of this title, to public housing agencies that partner with eligible VA Medical Centers or other entities as designated by the Secretary of the Department of Veterans Affairs, based on geographical need for such assistance as identified by the Secretary of the Department of Veterans Affairs, public housing agency administrative performance, and other factors as specified by the Secretary of Housing and Urban Development in consultation with the Secretary of the Department of Veterans Affairs: *Provided further*, That the Secretary of Housing and Urban Development may waive, or specify alternative requirements for (in consultation with the Secretary of the Department of Veterans Affairs), any provision of any statute or regulation that the Secretary of Housing and Urban Development administers in connection with the use of funds made available under this paragraph (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective delivery and administration of such voucher assistance: *Provided further*, That assistance made available under this paragraph shall continue to remain available for homeless veterans upon turn-over.

HOUSING CERTIFICATE FUND

Unobligated balances, including recaptures and carryover, remaining from funds appropriated to the Department of Housing and Urban Development under this heading, the heading "Annual Contributions for Assisted Housing" and the heading "Project-Based Rental Assistance", for fiscal year 2010 and prior years may be used for renewal of or amendments to section 8 project-based contracts and for performance-based contract administrators, notwithstanding the purposes for which such funds were appropriated: *Provided*, That any obligated balances of contract authority from fiscal year 1974 and prior that have been terminated shall be cancelled: *Provided further*, That amounts heretofore recaptured, or recaptured during the current fiscal year, from project-based Section 8 contracts from source years fiscal year 1975 through fiscal year 1987 are hereby rescinded, and an amount of additional new budget authority, equivalent to the amount rescinded is hereby appropriated, to remain available until expended, for the purposes set forth under this heading, in addition to amounts otherwise available.

PUBLIC HOUSING CAPITAL FUND

For the Public Housing Capital Fund Program to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (the "Act") $2,500,000,000, to remain available until September 30, 2013: *Provided*, That notwithstanding any other provision of law or regulation, during fiscal year 2010 the Secretary of Housing and Urban Development may not delegate to any Department official other than the Deputy Secretary and the Assistant Secretary for Public and Indian Housing any authority under paragraph (2) of section 9(j) regarding the extension of the time periods under such section: *Provided further*, That for purposes

of such section 9(j), the term "obligate" means, with respect to amounts, that the amounts are subject to a binding agreement that will result in outlays, immediately or in the future: *Provided further*, That up to $15,345,000 shall be to support the ongoing Public Housing Financial and Physical Assessment activities of the Real Estate Assessment Center (REAC): *Provided further*, That of the total amount provided under this heading, not to exceed $20,000,000 shall be available for the Secretary to make grants, notwithstanding section 204 of this Act, to public housing agencies for emergency capital needs including safety and security measures necessary to address crime and drug-related activity as well as needs resulting from unforeseen or unpreventable emergencies and natural disasters excluding Presidentially declared emergencies and natural disasters under the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 et seq.) occurring in fiscal year 2010: *Provided further*, That of the amounts provided under this heading up to $40,000,000 may be for grants to be competitively awarded to public housing agencies for the construction, rehabilitation or purchase of facilities to be used to provide early education, adult education, job training or other appropriate services to public housing residents: *Provided further*, That grantees shall demonstrate an ability to leverage other Federal, State, local or private resources for the construction, rehabilitation or acquisition of such facilities, and that selected grantees shall demonstrate a capacity to pay the long-term costs of operating such facilities: *Provided further*, That of the total amount provided under this heading, $50,000,000 shall be for supportive services, service coordinators and congregate services as authorized by section 34 of the Act (42 U.S.C. 1437z–6) and the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.): *Provided further*, That of the total amount provided under this heading up to $8,820,000 is to support the costs of administrative and judicial receiverships: *Provided further*, That from the funds made available under this heading, the Secretary shall provide bonus awards in fiscal year 2010 to public housing agencies that are designated high performers.

PUBLIC HOUSING OPERATING FUND

(INCLUDING TRANSFER OF FUNDS)

For 2010 payments to public housing agencies for the operation and management of public housing, as authorized by section 9(e) of the United States Housing Act of 1937 (42 U.S.C. 1437g(e)), $4,775,000,000: *Provided*, That, in fiscal year 2009 and all fiscal years hereafter, no amounts under this heading in any appropriations Act may be used for payments to public housing agencies for the costs of operation and management of public housing for any year prior to the current year of such Act: *Provided further*, That of the amounts made available under this heading, up to $15,000,000 may be transferred to and merged with the appropriation for "Transformation Initiative".

REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING (HOPE VI)

For grants to public housing agencies for demolition, site revitalization, replacement housing, and tenant-based assistance grants to projects as authorized by section 24 of the United States

Housing Act of 1937 (42 U.S.C. 1437v), $200,000,000, to remain available until September 30, 2011, of which the Secretary of Housing and Urban Development may use up to $10,000,000 for technical assistance and contract expertise, to be provided directly or indirectly by grants, contracts or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of the department and of public housing agencies and to residents: *Provided*, That none of such funds shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgments, unless expressly permitted herein: *Provided further*, That of the amounts provided under this heading, up to $65,000,000 may be available for a demonstration of the Choice Neighborhoods Initiative (subject to such section 24 except as otherwise specified under the provisos for this demonstration under this heading) for the transformation, rehabilitation and replacement housing needs of both public and HUD-assisted housing and to transform neighborhoods of poverty into functioning, sustainable mixed income neighborhoods with appropriate services, public assets, transportation and access to jobs, and schools, including public schools, community schools, and charter schools: *Provided further*, That for this demonstration, funding may also be used for the conversion of vacant or foreclosed properties to affordable housing: *Provided further*, That use of funds made available for this demonstration under this heading shall not be deemed to be public housing notwithstanding section 3(b)(1) of such Act: *Provided further*, That grantees shall commit to an additional period of affordability determined by the Secretary, but not fewer than 20 years: *Provided further*, That grantees shall undertake comprehensive local planning with input from residents and the community: *Provided further*, That for the purposes of this demonstration, applicants may include local governments, public housing authorities, nonprofits, and for-profit developers that apply jointly with a public entity: *Provided further*, That such grantees shall create partnerships with other local organizations including assisted housing owners, service agencies and resident organizations: *Provided further*, That the Secretary shall develop and publish a Notice of Funding Availability for the allocation and use of such competitive funds in this demonstration, including but not limited to eligible activities, program requirements, protections and services for affected residents, and performance metrics.

NATIVE AMERICAN HOUSING BLOCK GRANTS

For the Native American Housing Block Grants program, as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4111 et seq.), $700,000,000, to remain available until expended: *Provided*, That, notwithstanding the Native American Housing Assistance and Self-Determination Act of 1996, to determine the amount of the allocation under title I of such Act for each Indian tribe, the Secretary shall apply the formula under section 302 of such Act with the need component based on single-race Census data and with the need component based on multi-race Census data, and the amount of the allocation for each Indian tribe shall be the greater of the two resulting allocation amounts: *Provided further*, That of the amounts made available under this heading, $3,500,000

shall be contracted for assistance for a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities and tribally designated housing entities as authorized under NAHASDA; and $4,250,000 shall be to support the inspection of Indian housing units, contract expertise, training, and technical assistance in the training, oversight, and management of such Indian housing and tenant-based assistance, including up to $300,000 for related travel: *Provided further*, That of the amount provided under this heading, $2,000,000 shall be made available for the cost of guaranteed notes and other obligations, as authorized by title VI of NAHASDA: *Provided further*, That such costs, including the costs of modifying such notes and other obligations, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize the total principal amount of any notes and other obligations, any part of which is to be guaranteed, not to exceed $18,000,000.

NATIVE HAWAIIAN HOUSING BLOCK GRANT

For the Native Hawaiian Housing Block Grant program, as authorized under title VIII of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111 et seq.), $13,000,000, to remain available until expended: *Provided*, That of this amount, $300,000 shall be for training and technical assistance activities, including up to $100,000 for related travel by Hawaii-based HUD employees.

INDIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

For the cost of guaranteed loans, as authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z), $7,000,000, to remain available until expended: *Provided*, That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, up to $919,000,000: *Provided further*, That up to $750,000 shall be for administrative contract expenses including management processes and systems to carry out the loan guarantee program.

NATIVE HAWAIIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

For the cost of guaranteed loans, as authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z), $1,044,000, to remain available until expended: *Provided*, That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $41,504,255.

COMMUNITY PLANNING AND DEVELOPMENT

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

For carrying out the Housing Opportunities for Persons with AIDS program, as authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.), $335,000,000, to remain available until September 30, 2011, except that amounts allocated pursuant to section 854(c)(3) of such Act shall remain available until September 30, 2012: *Provided*, That the Secretary shall renew all expiring contracts for permanent supportive housing that were funded under section 854(c)(3) of such Act that meet all program requirements before awarding funds for new contracts and activities authorized under this section.

COMMUNITY DEVELOPMENT FUND

For assistance to units of State and local government, and to other entities, for economic and community development activities, and for other purposes, $4,450,000,000, to remain available until September 30, 2012, unless otherwise specified: *Provided*, That of the total amount provided, $3,990,068,480 is for carrying out the community development block grant program under title I of the Housing and Community Development Act of 1974, as amended (the "Act" herein) (42 U.S.C. 5301 et seq.): *Provided further*, That unless explicitly provided for under this heading (except for planning grants provided in the second paragraph and amounts made available under the third paragraph), not to exceed 20 percent of any grant made with funds appropriated under this heading shall be expended for planning and management development and administration: *Provided further*, That $65,000,000 shall be for grants to Indian tribes notwithstanding section 106(a)(1) of such Act, of which, notwithstanding any other provision of law (including section 204 of this Act), up to $3,960,000 may be used for emergencies that constitute imminent threats to health and safety.

Of the amount made available under this heading, $172,843,570 shall be available for grants for the Economic Development Initiative (EDI) to finance a variety of targeted economic investments in accordance with the terms and conditions specified in the explanatory statement accompanying this Act: *Provided*, That none of the funds provided under this paragraph may be used for program operations: *Provided further*, That, for fiscal years 2008, 2009 and 2010, no unobligated funds for EDI grants may be used for any purpose except acquisition, planning, design, purchase of equipment, revitalization, redevelopment or construction.

Of the amount made available under this heading, $22,087,950 shall be available for neighborhood initiatives that are utilized to improve the conditions of distressed and blighted areas and neighborhoods, to stimulate investment, economic diversification, and community revitalization in areas with population outmigration or a stagnating or declining economic base, or to determine whether housing benefits can be integrated more effectively with welfare reform initiatives: *Provided*, That amounts made available under this paragraph shall be provided in accordance with the terms and conditions specified in the explanatory statement accompanying this Act.

The referenced explanatory statement under this heading in title II of division K of Public Law 110–161 is deemed to be amended

by striking "Old Town Boys and Girls Club, Albuquerque, NM, for renovation of the existing Old Town Boys and Girls Club accompanied by construction of new areas for the Club" and inserting "Old Town Boys and Girls Club, Albuquerque, NM, for renovation of the Heights Boys and Girls Club".

The referenced statement of the managers under this heading "Community Planning and Development" in title II of division K of Public Law 110–161 is deemed to be amended by striking "Custer County, ID for acquisition of an unused middle school building" and inserting "Custer County, ID, to construct a community center".

The referenced explanatory statement under this heading in division I of Public Law 111–8 is deemed to be amended with respect to "Hawaii County Office of Housing and Community Development, HI" by striking "Senior Housing Renovation Project" and inserting "Transitional Housing Project".

The referenced statement of the managers under this heading "Community Planning and Development" in title II of division I of Public Law 111–8 is deemed to be amended by striking "Custer County, ID, to purchase a middle school building" and inserting "Custer County, ID, to construct a community center".

The referenced explanatory statement under the heading "Community Development Fund" in title II of division K of Public Law 110–161 is deemed to be amended with respect to "Emergency Housing Consortium in San Jose, CA" by striking "for construction of the Sobrato Transitional Center, a residential facility for homeless individuals and families" and inserting "for improvements to homeless services and prevention facilities".

Of the amounts made available under this heading, $150,000,000 shall be made available for a Sustainable Communities Initiative to improve regional planning efforts that integrate housing and transportation decisions, and increase the capacity to improve land use and zoning: *Provided*, That $100,000,000 shall be for Regional Integrated Planning Grants to support the linking of transportation and land use planning: *Provided further*, That not less than $25,000,000 of the funding made available for Regional Integrated Planning Grants shall be awarded to metropolitan areas of less than 500,000: *Provided further*, That $40,000,000 shall be for Community Challenge Planning Grants to foster reform and reduce barriers to achieve affordable, economically vital, and sustainable communities: *Provided further*, That before funding is made available for Regional Integrated Planning Grants or Community Challenge Planning Grants, the Secretary, in coordination with the Secretary of Transportation, shall submit a plan to the House and Senate Committees on Appropriations, the Senate Committee on Banking and Urban Affairs, and the House Committee on Financial Services establishing grant criteria as well as performance measures by which the success of grantees will be measured: *Provided further*, That the Secretary will consult with the Secretary of Transportation in evaluating grant proposals: *Provided further*, That up to $10,000,000 shall be for a joint Department of Housing and Urban Development and Department of Transportation research effort that shall include a rigorous evaluation of the Regional Integrated Planning Grants and Community Challenge Planning Grants programs: *Provided further*, That of the amounts made available under this heading, $25,000,000 shall be made available for the Rural Innovation Fund for grants to Indian tribes, State housing finance agencies, State community and/or economic

development agencies, local rural nonprofits and community development corporations to address the problems of concentrated rural housing distress and community poverty: *Provided further*, That of the funding made available under the previous proviso, at least $5,000,000 shall be made available to promote economic development and entrepreneurship for federally recognized Indian Tribes, through activities including the capitalization of revolving loan programs and business planning and development, funding is also made available for technical assistance to increase capacity through training and outreach activities: *Provided further*, That of the amounts made available under this heading, $25,000,000 is for grants pursuant to section 107 of the Housing and Community Development Act of 1974 (42 U.S.C. 5307).

COMMUNITY DEVELOPMENT LOAN GUARANTEES PROGRAM ACCOUNT

For the cost of guaranteed loans, $6,000,000, to remain available until September 30, 2011, as authorized by section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. 5308): *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $275,000,000, notwithstanding any aggregate limitation on outstanding obligations guaranteed in section 108(k) of the Housing and Community Development Act of 1974, as amended.

BROWNFIELDS REDEVELOPMENT

For competitive economic development grants, as authorized by section 108(q) of the Housing and Community Development Act of 1974, as amended, for Brownfields redevelopment projects, $17,500,000, to remain available until September 30, 2011: *Provided*, That no funds made available under this heading may be used to establish loan loss reserves for the section 108 Community Development Loan Guarantee program.

HOME INVESTMENT PARTNERSHIPS PROGRAM

For the HOME investment partnerships program, as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, $1,825,000,000, to remain available until September 30, 2012: *Provided*, That, funds provided in prior appropriations Acts for technical assistance, that were made available for Community Housing Development Organizations technical assistance, and that still remain available, may be used for HOME technical assistance notwithstanding the purposes for which such amounts were appropriated.

SELF-HELP AND ASSISTED HOMEOWNERSHIP OPPORTUNITY PROGRAM

For the Self-Help and Assisted Homeownership Opportunity Program, as authorized under section 11 of the Housing Opportunity Program Extension Act of 1996, as amended, $82,000,000, to remain available until September 30, 2012: *Provided*, That of the total amount provided under this heading, $27,000,000 shall be made available to the Self-Help and Assisted Homeownership Opportunity

Program as authorized under section 11 of the Housing Opportunity Program Extension Act of 1996, as amended: *Provided further*, That $50,000,000 shall be made available for the second, third and fourth capacity building activities authorized under section 4(a) of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note), of which not less than $5,000,000 may be made available for rural capacity building activities: *Provided further*, That $5,000,000 shall be made available for capacity building activities as authorized in sections 6301 through 6305 of Public Law 110–246.

HOMELESS ASSISTANCE GRANTS

(INCLUDING TRANSFER OF FUNDS)

For the emergency shelter grants program as authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, as amended; the supportive housing program as authorized under subtitle C of title IV of such Act; the section 8 moderate rehabilitation single room occupancy program as authorized under the United States Housing Act of 1937, as amended, to assist homeless individuals pursuant to section 441 of the McKinney-Vento Homeless Assistance Act; and the shelter plus care program as authorized under subtitle F of title IV of such Act, $1,865,000,000, of which $1,860,000,000 shall remain available until September 30, 2012, and of which $5,000,000 shall remain available until expended for rehabilitation projects with 10-year grant terms: *Provided*, That not less than 30 percent of funds made available, excluding amounts provided for renewals under the Shelter Plus Care Program and emergency shelter grants, shall be used for permanent housing for individuals and families: *Provided further*, That all funds awarded for services shall be matched by not less than 25 percent in funding by each grantee: *Provided further*, That for all match requirements applicable to funds made available under this heading for this fiscal year and prior years, a grantee may use (or could have used) as a source of match funds other funds administered by the Secretary and other Federal agencies unless there is (or was) a specific statutory prohibition on any such use of any such funds: *Provided further*, That the Secretary shall renew on an annual basis expiring contracts or amendments to contracts funded under the shelter plus care program if the program is determined to be needed under the applicable continuum of care and meets appropriate program requirements and financial standards, as determined by the Secretary: *Provided further*, That all awards of assistance under this heading shall be required to coordinate and integrate homeless programs with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health and Substance Abuse Block Grant, Workforce Investment Act, and the Welfare-to-Work grant program: *Provided further*, That up to $6,000,000 of the funds appropriated under this heading shall be available for the national homeless data analysis project: *Provided further*, That up to $12,650,000 of the funds made available under this heading may be transferred to and merged with the appropriation for "Transformation Initiative": *Provided further*, That all balances for Shelter Plus Care renewals previously funded

from the Shelter Plus Care Renewal account and transferred to this account shall be available, if recaptured, for Shelter Plus Care renewals in fiscal year 2010.

HOUSING PROGRAMS

PROJECT-BASED RENTAL ASSISTANCE

For activities and assistance for the provision of project-based subsidy contracts under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) ("the Act"), not otherwise provided for, $8,157,853,000, to remain available until expended, shall be available on October 1, 2009, and $393,672,000, to remain available until expended, shall be available on October 1, 2010: *Provided*, That the amounts made available under this heading are provided as follows:

(1) Up to $8,325,853,000 shall be available for expiring or terminating section 8 project-based subsidy contracts (including section 8 moderate rehabilitation contracts), for amendments to section 8 project-based subsidy contracts (including section 8 moderate rehabilitation contracts), for contracts entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11401), for renewal of section 8 contracts for units in projects that are subject to approved plans of action under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and for administrative and other expenses associated with project-based activities and assistance funded under this paragraph.

(2) Not less than $232,000,000 but not to exceed $258,000,000 shall be available for performance-based contract administrators for section 8 project-based assistance: *Provided*, That the Secretary of Housing and Urban Development may also use such amounts for performance-based contract administrators for the administration of: interest reduction payments pursuant to section 236(a) of the National Housing Act (12 U.S.C. 1715z–1(a)); rent supplement payments pursuant to section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); section 236(f)(2) rental assistance payments (12 U.S.C. 1715z–1(f)(2)); project rental assistance contracts for the elderly under section 202(c)(2) of the Housing Act of 1959 (12 U.S.C. 1701q); project rental assistance contracts for supportive housing for persons with disabilities under section 811(d)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013(d)(2)); project assistance contracts pursuant to section 202(h) of the Housing Act of 1959 (Public Law 86–372; 73 Stat. 667); and loans under section 202 of the Housing Act of 1959 (Public Law 86–372; 73 Stat. 667).

(3) Amounts recaptured under this heading, the heading "Annual Contributions for Assisted Housing", or the heading "Housing Certificate Fund" may be used for renewals of or amendments to section 8 project-based contracts or for performance-based contract administrators, notwithstanding the purposes for which such amounts were appropriated.

HOUSING FOR THE ELDERLY

For capital advances, including amendments to capital advance contracts, for housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and for project rental assistance for the elderly under section 202(c)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing, $825,000,000, to remain available until September 30, 2013, of which up to $582,000,000 shall be for capital advance and project-based rental assistance awards: *Provided*, That amounts for project rental assistance contracts are to remain available for the liquidation of valid obligations for 10 years following the date of such obligation: *Provided further*, That of the amount provided under this heading, up to $90,000,000 shall be for service coordinators and the continuation of existing congregate service grants for residents of assisted housing projects, and of which up to $40,000,000 shall be for grants under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) for conversion of eligible projects under such section to assisted living or related use and for substantial and emergency capital repairs as determined by the Secretary: *Provided further*, That of the amount made available under this heading, $20,000,000 shall be available to the Secretary of Housing and Urban Development only for making competitive grants to private nonprofit organizations and consumer cooperatives for covering costs of architectural and engineering work, site control, and other planning relating to the development of supportive housing for the elderly that is eligible for assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q): *Provided further*, That amounts under this heading shall be available for Real Estate Assessment Center inspections and inspection-related activities associated with section 202 capital advance projects: *Provided further*, That the Secretary may waive the provisions of section 202 governing the terms and conditions of project rental assistance, except that the initial contract term for such assistance shall not exceed 5 years in duration.

HOUSING FOR PERSONS WITH DISABILITIES

For capital advance contracts, including amendments to capital advance contracts, for supportive housing for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), for project rental assistance for supportive housing for persons with disabilities under section 811(d)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing for persons with disabilities as authorized by section 811(b)(1) of such Act, and for tenant-based rental assistance contracts entered into pursuant to section 811 of such Act, $300,000,000, of which up to $186,000,000 shall be for capital advances and project-based rental assistance contracts, to remain available until September 30, 2013: *Provided*, That amounts for project rental assistance contracts are to remain available for the liquidation of valid obligations for 10 years following the date of such obligation: *Provided further*, That, of the amount provided under this heading, $87,100,000 shall be for amendments or renewal

of tenant-based assistance contracts entered into prior to fiscal year 2005 (only one amendment authorized for any such contract): *Provided further*, That all tenant-based assistance made available under this heading shall continue to remain available only to persons with disabilities: *Provided further*, That the Secretary may waive the provisions of section 811 governing the terms and conditions of project rental assistance and tenant-based assistance, except that the initial contract term for such assistance shall not exceed 5 years in duration: *Provided further*, That amounts made available under this heading shall be available for Real Estate Assessment Center inspections and inspection-related activities associated with section 811 Capital Advance Projects.

HOUSING COUNSELING ASSISTANCE

For contracts, grants, and other assistance excluding loans, as authorized under section 106 of the Housing and Urban Development Act of 1968, as amended, $87,500,000, including up to $2,500,000 for administrative contract services, to remain available until September 30, 2011: *Provided*, That funds shall be used for providing counseling and advice to tenants and homeowners, both current and prospective, with respect to property maintenance, financial management/literacy, and such other matters as may be appropriate to assist them in improving their housing conditions, meeting their financial needs, and fulfilling the responsibilities of tenancy or homeownership; for program administration; and for housing counselor training: *Provided further*, That of the amounts made available under this heading, not less than $13,500,000 shall be awarded to HUD-certified housing counseling agencies located in the 100 metropolitan statistical areas with the highest rate of home foreclosures for the purpose of assisting homeowners with inquiries regarding mortgage-modification assistance and mortgage scams.

ENERGY INNOVATION FUND

For an Energy Innovation Fund to enable the Federal Housing Administration and the new Office of Sustainability to catalyze innovations in the residential energy efficiency sector that have promise of replicability and help create a standardized home energy efficient retrofit market, $50,000,000, to remain available until September 30, 2013: *Provided*, That $25,000,000 shall be for the Energy Efficient Mortgage Innovation pilot program, directed at the single family housing market: *Provided further*, That $25,000,000 shall be for the Multifamily Energy Pilot, directed at the multifamily housing market.

OTHER ASSISTED HOUSING PROGRAMS

RENTAL HOUSING ASSISTANCE

For amendments to contracts under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) and section 236(f)(2) of the National Housing Act (12 U.S.C. 1715z–1) in State-aided, non-insured rental housing projects, $40,000,000, to remain available until expended.

RENT SUPPLEMENT

(RESCISSION)

Of the amounts recaptured from terminated contracts under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) and section 236 of the National Housing Act (12 U.S.C. 1715z–1) $72,036,000 are rescinded: *Provided*, That no amounts may be rescinded from amounts that were designated by the Congress as an emergency requirement pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

PAYMENT TO MANUFACTURED HOUSING FEES TRUST FUND

For necessary expenses as authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.), up to $16,000,000, to remain available until expended, of which $7,000,000 is to be derived from the Manufactured Housing Fees Trust Fund: *Provided*, That not to exceed the total amount appropriated under this heading shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund pursuant to section 620 of such Act: *Provided further*, That the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year 2010 so as to result in a final fiscal year 2010 appropriation from the general fund estimated at not more than $9,000,000 and fees pursuant to such section 620 shall be modified as necessary to ensure such a final fiscal year 2010 appropriation: *Provided further*, That for the dispute resolution and installation programs, the Secretary of Housing and Urban Development may assess and collect fees from any program participant: *Provided further*, That such collections shall be deposited into the Fund, and the Secretary, as provided herein, may use such collections, as well as fees collected under section 620, for necessary expenses of such Act: *Provided further*, That notwithstanding the requirements of section 620 of such Act, the Secretary may carry out responsibilities of the Secretary under such Act through the use of approved service providers that are paid directly by the recipients of their services.

FEDERAL HOUSING ADMINISTRATION

MUTUAL MORTGAGE INSURANCE PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

During fiscal year 2010, commitments to guarantee single family loans insured under the Mutual Mortgage Insurance Fund shall not exceed a loan principal of $400,000,000,000: *Provided*, That for new loans guaranteed pursuant to section 255 of the National Housing Act (12 U.S.C. 1715z–20), the Secretary shall adjust the factors used to calculate the principal limit (as such term is defined in HUD Handbook 4235.1) that were assumed in the President's Budget Request for 2010 for such loans, as necessary to ensure that the program operates at a net zero subsidy rate: *Provided further*, That during fiscal year 2010, obligations

to make direct loans to carry out the purposes of section 204(g) of the National Housing Act, as amended, shall not exceed $50,000,000: *Provided further*, That the foregoing amount shall be for loans to nonprofit and governmental entities in connection with sales of single family real properties owned by the Secretary and formerly insured under the Mutual Mortgage Insurance Fund. For administrative contract expenses of the Federal Housing Administration, $188,900,000, of which up to $70,794,000 may be transferred to the Working Capital Fund, and of which up to $7,500,000 shall be for education and outreach of FHA single family loan products: *Provided further*, That to the extent guaranteed loan commitments exceed $200,000,000,000 on or before April 1, 2010, an additional $1,400 for administrative contract expenses shall be available for each $1,000,000 in additional guaranteed loan commitments (including a pro rata amount for any amount below $1,000,000), but in no case shall funds made available by this proviso exceed $30,000,000.

GENERAL AND SPECIAL RISK PROGRAM ACCOUNT

For the cost of guaranteed loans, as authorized by sections 238 and 519 of the National Housing Act (12 U.S.C. 1715z–3 and 1735c), including the cost of loan guarantee modifications, as that term is defined in section 502 of the Congressional Budget Act of 1974, as amended, $8,600,000, to remain available until expended: *Provided,* That commitments to guarantee loans shall not exceed $15,000,000,000 in total loan principal, any part of which is to be guaranteed.

Gross obligations for the principal amount of direct loans, as authorized by sections 204(g), 207(l), 238, and 519(a) of the National Housing Act, shall not exceed $20,000,000, which shall be for loans to nonprofit and governmental entities in connection with the sale of single-family real properties owned by the Secretary and formerly insured under such Act.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

GUARANTEES OF MORTGAGE-BACKED SECURITIES LOAN GUARANTEE PROGRAM ACCOUNT

New commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act, as amended (12 U.S.C. 1721(g)), shall not exceed $500,000,000,000, to remain available until September 30, 2011.

POLICY DEVELOPMENT AND RESEARCH

RESEARCH AND TECHNOLOGY

For contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 et seq.), including carrying out the functions of the Secretary of Housing and Urban Development under section 1(a)(1)(I) of Reorganization Plan No. 2 of 1968, $48,000,000, to remain available until September 30, 2011.

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ACTIVITIES

For contracts, grants, and other assistance, not otherwise provided for, as authorized by title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and section 561 of the Housing and Community Development Act of 1987, as amended, $72,000,000, to remain available until September 30, 2011, of which $42,500,000 shall be to carry out activities pursuant to such section 561: *Provided*, That notwithstanding 31 U.S.C. 3302, the Secretary may assess and collect fees to cover the costs of the Fair Housing Training Academy, and may use such funds to provide such training: *Provided further*, That no funds made available under this heading shall be used to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan: *Provided further*, That of the funds made available under this heading, $500,000 shall be available to the Secretary of Housing and Urban Development for the creation and promotion of translated materials and other programs that support the assistance of persons with limited English proficiency in utilizing the services provided by the Department of Housing and Urban Development.

OFFICE OF LEAD HAZARD CONTROL AND HEALTHY HOMES

LEAD HAZARD REDUCTION

For the Lead Hazard Reduction Program, as Authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, $140,000,000, to remain available until September 30, 2011, of which not less than $20,000,000 shall be for the Healthy Homes Initiative, pursuant to sections 501 and 502 of the Housing and Urban Development Act of 1970 that shall include research, studies, testing, and demonstration efforts, including education and outreach concerning lead-based paint poisoning and other housing-related diseases and hazards: *Provided*, That for purposes of environmental review, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of the law that further the purposes of such Act, a grant under the Healthy Homes Initiative, Operation Lead Elimination Action Plan (LEAP), or the Lead Technical Studies program under this heading or under prior appropriations Acts for such purposes under this heading, shall be considered to be funds for a special project for purposes of section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994: *Provided further*, That of the total amount made available under this heading, $48,000,000 shall be made available on a competitive basis for areas with the highest lead paint abatement needs: *Provided further*, That each recipient of funds provided under the second proviso shall make a matching contribution in an amount not less than 25 percent: *Provided further*, That the Secretary may waive the matching requirement cited in the preceding proviso on a case by case basis if the Secretary determines that such a waiver is necessary to advance the purposes of this program: *Provided further*, That each applicant shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary to carry out the proposed use of funds pursuant to a notice of funding availability: *Provided*

further, That amounts made available under this heading in this or prior appropriations Acts, and that still remain available, may be used for any purpose under this heading notwithstanding the purpose for which such amounts were appropriated if a program competition is undersubscribed and there are other program competitions under this heading that are oversubscribed.

MANAGEMENT AND ADMINISTRATION

WORKING CAPITAL FUND

(INCLUDING TRANSFER OF FUNDS)

For additional capital for the Working Capital Fund (42 U.S.C. 3535) for the maintenance of infrastructure for Department-wide information technology systems, for the continuing operation and maintenance of both Department-wide and program-specific information systems, and for program-related maintenance activities, $200,000,000, to remain available until September 30, 2011: *Provided*, That any amounts transferred to this Fund under this Act shall remain available until expended: *Provided further*, That any amounts transferred to this Fund from amounts appropriated by previously enacted appropriations Acts or from within this Act may be used only for the purposes specified under this Fund, in addition to the purposes for which such amounts were appropriated: *Provided further*, That up to $15,000,000 may be transferred to this account from all other accounts in this title (except for the Office of the Inspector General account) that make funds available for salaries and expenses.

OFFICE OF INSPECTOR GENERAL

For necessary salaries and expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $125,000,000: *Provided*, That the Inspector General shall have independent authority over all personnel issues within this office.

TRANSFORMATION INITIATIVE

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for combating mortgage fraud, $20,000,000, to remain available until expended.

In addition, of the amounts made available in this Act under each of the following headings under this title, the Secretary may transfer to, and merge with, this account up to 1 percent from each such account, and such transferred amounts shall be available until September 30, 2012, for (1) research, evaluation, and program metrics; (2) program demonstrations; (3) technical assistance and capacity building; and (4) information technology: "Public Housing Capital Fund", "Revitalization of Severely Distressed Public Housing", "Brownfields Redevelopment", "Section 108 Loan Guarantees", "Energy Innovation Fund", "Housing Opportunities for Persons With AIDS", "Community Development Fund", "HOME Investment Partnerships Program", "Self-Help and Assisted Homeownership Opportunity Program", "Housing for the Elderly", "Housing for Persons With Disabilities", "Housing Counseling Assistance",

"Payment to Manufactured Housing Fees Trust Fund", "Mutual Mortgage Insurance Program Account", "General and Special Risk Program Account", "Research and Technology", "Lead Hazard Reduction", "Rental Housing Assistance", and "Fair Housing Activities": *Provided*, That of the amounts made available under this paragraph, not less than $80,000,000 and not more than $180,000,000 shall be available for information technology modernization, including development and deployment of a Next Generation of Voucher Management System and development and deployment of modernized Federal Housing Administration systems: *Provided further*, That not more than 25 percent of the funds made available for information technology modernization may be obligated until the Secretary submits to the Committees on Appropriations a plan for expenditure that (1) identifies for each modernization project (a) the functional and performance capabilities to be delivered and the mission benefits to be realized, (b) the estimated lifecycle cost, and (c) key milestones to be met; (2) demonstrates that each modernization project is (a) compliant with the department's enterprise architecture, (b) being managed in accordance with applicable lifecycle management policies and guidance, (c) subject to the department's capital planning and investment control requirements, and (d) supported by an adequately staffed project office; and (3) has been reviewed by the Government Accountability Office: *Provided further*, That of the amounts made available under this paragraph, not less than $45,000,000 shall be available for technical assistance and capacity building: *Provided further*, That technical assistance activities shall include, technical assistance for HUD programs, including HOME, Community Development Block Grant, homeless programs, HOPWA, HOPE VI, Public Housing, the Housing Choice Voucher Program, Fair Housing Initiative Program, Housing Counseling, Healthy Homes, Sustainable Communities, Energy Innovation Fund and other technical assistance as determined by the Secretary: *Provided further*, That of the amounts made available for research, evaluation and program metrics and program demonstrations, the Secretary shall include an assessment of the housing needs of Native Americans, including sustainable building practices: *Provided further*, That of the amounts made available for research, evaluation and program metrics and program demonstrations, the Secretary shall include an evaluation of the Moving-to-Work demonstration program: *Provided further*, That the Secretary shall submit a plan to the House and Senate Committees on Appropriations for approval detailing how the funding provided under this heading will be allocated to each of the four categories identified under this heading and for what projects or activities funding will be used: *Provided further*, That following the initial approval of this plan, the Secretary may amend the plan with the approval of the House and Senate Committees on Appropriations.

GENERAL PROVISIONS—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 201. Fifty percent of the amounts of budget authority, or in lieu thereof 50 percent of the cash amounts associated with such budget authority, that are recaptured from projects described in section 1012(a) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 1437 note) shall be rescission

or in the case of cash, shall be remitted to the Treasury, and such amounts of budget authority or cash recaptured and not rescission or remitted to the Treasury shall be used by State housing finance agencies or local governments or local housing agencies with projects approved by the Secretary of Housing and Urban Development for which settlement occurred after January 1, 1992, in accordance with such section. Notwithstanding the previous sentence, the Secretary may award up to 15 percent of the budget authority or cash recaptured and not rescission or remitted to the Treasury to provide project owners with incentives to refinance their project at a lower interest rate.

SEC. 202. None of the amounts made available under this Act may be used during fiscal year 2010 to investigate or prosecute under the Fair Housing Act any otherwise lawful activity engaged in by one or more persons, including the filing or maintaining of a non-frivolous legal action, that is engaged in solely for the purpose of achieving or preventing action by a Government official or entity, or a court of competent jurisdiction.

SEC. 203. (a) Notwithstanding section 854(c)(1)(A) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)(1)(A)), from any amounts made available under this title for fiscal year 2010 that are allocated under such section, the Secretary of Housing and Urban Development shall allocate and make a grant, in the amount determined under subsection (b), for any State that—

(1) received an allocation in a prior fiscal year under clause (ii) of such section; and

(2) is not otherwise eligible for an allocation for fiscal year 2010 under such clause (ii) because the areas in the State outside of the metropolitan statistical areas that qualify under clause (i) in fiscal year 2010 do not have the number of cases of acquired immunodeficiency syndrome (AIDS) required under such clause.

(b) The amount of the allocation and grant for any State described in subsection (a) shall be an amount based on the cumulative number of AIDS cases in the areas of that State that are outside of metropolitan statistical areas that qualify under clause (i) of such section 854(c)(1)(A) in fiscal year 2010, in proportion to AIDS cases among cities and States that qualify under clauses (i) and (ii) of such section and States deemed eligible under subsection (a).

(c) Notwithstanding any other provision of law, the amount allocated for fiscal year 2010 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), to the City of New York, New York, on behalf of the New York-Wayne-White Plains, New York-New Jersey Metropolitan Division (hereafter "metropolitan division") of the New York-Newark-Edison, NY-NJ-PA Metropolitan Statistical Area, shall be adjusted by the Secretary of Housing and Urban Development by: (1) allocating to the City of Jersey City, New Jersey, the proportion of the metropolitan area's or division's amount that is based on the number of cases of AIDS reported in the portion of the metropolitan area or division that is located in Hudson County, New Jersey, and adjusting for the proportion of the metropolitan division's high incidence bonus if this area in New Jersey also has a higher than average per capita incidence of AIDS; and (2) allocating to the City of Paterson, New Jersey, the proportion of the metropolitan area's or division's amount that is based on the number of cases of AIDS reported

in the portion of the metropolitan area or division that is located in Bergen County and Passaic County, New Jersey, and adjusting for the proportion of the metropolitan division's high incidence bonus if this area in New Jersey also has a higher than average per capita incidence of AIDS. The recipient cities shall use amounts allocated under this subsection to carry out eligible activities under section 855 of the AIDS Housing Opportunity Act (42 U.S.C. 12904) in their respective portions of the metropolitan division that is located in New Jersey.

(d) Notwithstanding any other provision of law, the amount allocated for fiscal year 2010 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) to areas with a higher than average per capita incidence of AIDS, shall be adjusted by the Secretary on the basis of area incidence reported over a 3-year period.

SEC. 204. Except as explicitly provided in law, any grant, cooperative agreement or other assistance made pursuant to title II of this Act shall be made on a competitive basis and in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545).

SEC. 205. Funds of the Department of Housing and Urban Development subject to the Government Corporation Control Act or section 402 of the Housing Act of 1950 shall be available, without regard to the limitations on administrative expenses, for legal services on a contract or fee basis, and for utilizing and making payment for services and facilities of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, Federal Reserve banks or any member thereof, Federal Home Loan banks, and any insured bank within the meaning of the Federal Deposit Insurance Corporation Act, as amended (12 U.S.C. 1811–1).

SEC. 206. Unless otherwise provided for in this Act or through a reprogramming of funds, no part of any appropriation for the Department of Housing and Urban Development shall be available for any program, project or activity in excess of amounts set forth in the budget estimates submitted to Congress.

SEC. 207. Corporations and agencies of the Department of Housing and Urban Development which are subject to the Government Corporation Control Act, are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of such Act as may be necessary in carrying out the programs set forth in the budget for 2010 for such corporation or agency except as hereinafter provided: *Provided*, That collections of these corporations and agencies may be used for new loan or mortgage purchase commitments only to the extent expressly provided for in this Act (unless such loans are in support of other forms of assistance provided for in this or prior appropriations Acts), except that this proviso shall not apply to the mortgage insurance or guaranty operations of these corporations, or where loans or mortgage purchases are necessary to protect the financial interest of the United States Government.

SEC. 208. The Secretary of Housing and Urban Development shall provide quarterly reports to the House and Senate Committees

on Appropriations regarding all uncommitted, unobligated, recaptured and excess funds in each program and activity within the jurisdiction of the Department and shall submit additional, updated budget information to these Committees upon request.

SEC. 209. (a) Notwithstanding any other provision of law, the amount allocated for fiscal year 2010 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), to the City of Wilmington, Delaware, on behalf of the Wilmington, Delaware-Maryland-New Jersey Metropolitan Division (hereafter "metropolitan division"), shall be adjusted by the Secretary of Housing and Urban Development by allocating to the State of New Jersey the proportion of the metropolitan division's amount that is based on the number of cases of AIDS reported in the portion of the metropolitan division that is located in New Jersey, and adjusting for the proportion of the metropolitan division's high incidence bonus if this area in New Jersey also has a higher than average per capita incidence of AIDS. The State of New Jersey shall use amounts allocated to the State under this subsection to carry out eligible activities under section 855 of the AIDS Housing Opportunity Act (42 U.S.C. 12904) in the portion of the metropolitan division that is located in New Jersey.

(b) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development shall allocate to Wake County, North Carolina, the amounts that otherwise would be allocated for fiscal year 2010 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) to the City of Raleigh, North Carolina, on behalf of the Raleigh-Cary, North Carolina Metropolitan Statistical Area. Any amounts allocated to Wake County shall be used to carry out eligible activities under section 855 of such Act (42 U.S.C. 12904) within such metropolitan statistical area.

(c) Notwithstanding section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), the Secretary of Housing and Urban Development may adjust the allocation of the amounts that otherwise would be allocated for fiscal year 2010 under section 854(c) of such Act, upon the written request of an applicant, in conjunction with the State(s), for a formula allocation on behalf of a metropolitan statistical area, to designate the State or States in which the metropolitan statistical area is located as the eligible grantee(s) of the allocation. In the case that a metropolitan statistical area involves more than one State, such amounts allocated to each State shall be in proportion to the number of cases of AIDS reported in the portion of the metropolitan statistical area located in that State. Any amounts allocated to a State under this section shall be used to carry out eligible activities within the portion of the metropolitan statistical area located in that State.

SEC. 210. The President's formal budget request for fiscal year 2011, as well as the Department of Housing and Urban Development's congressional budget justifications to be submitted to the Committees on Appropriations of the House of Representatives and the Senate, shall use the identical account and sub-account structure provided under this Act.

SEC. 211. A public housing agency or such other entity that administers Federal housing assistance for the Housing Authority of the county of Los Angeles, California, the States of Alaska, Iowa, and Mississippi shall not be required to include a resident of public housing or a recipient of assistance provided under section 8 of the United States Housing Act of 1937 on the board of directors

or a similar governing board of such agency or entity as required under section (2)(b) of such Act. Each public housing agency or other entity that administers Federal housing assistance under section 8 for the Housing Authority of the county of Los Angeles, California and the States of Alaska, Iowa and Mississippi that chooses not to include a resident of Public Housing or a recipient of section 8 assistance on the board of directors or a similar governing board shall establish an advisory board of not less than six residents of public housing or recipients of section 8 assistance to provide advice and comment to the public housing agency or other administering entity on issues related to public housing and section 8. Such advisory board shall meet not less than quarterly.

SEC. 212. (a) Notwithstanding any other provision of law, subject to the conditions listed in subsection (b), for fiscal years 2010 and 2011, the Secretary of Housing and Urban Development may authorize the transfer of some or all project-based assistance, debt and statutorily required low-income and very low-income use restrictions, associated with one or more multifamily housing project to another multifamily housing project or projects.

(b) The transfer authorized in subsection (a) is subject to the following conditions:

(1) The number of low-income and very low-income units and the net dollar amount of Federal assistance provided by the transferring project shall remain the same in the receiving project or projects.

(2) The transferring project shall, as determined by the Secretary, be either physically obsolete or economically nonviable.

(3) The receiving project or projects shall meet or exceed applicable physical standards established by the Secretary.

(4) The owner or mortgagor of the transferring project shall notify and consult with the tenants residing in the transferring project and provide a certification of approval by all appropriate local governmental officials.

(5) The tenants of the transferring project who remain eligible for assistance to be provided by the receiving project or projects shall not be required to vacate their units in the transferring project or projects until new units in the receiving project are available for occupancy.

(6) The Secretary determines that this transfer is in the best interest of the tenants.

(7) If either the transferring project or the receiving project or projects meets the condition specified in subsection (c)(2)(A), any lien on the receiving project resulting from additional financing obtained by the owner shall be subordinate to any FHA-insured mortgage lien transferred to, or placed on, such project by the Secretary.

(8) If the transferring project meets the requirements of subsection (c)(2)(E), the owner or mortgagor of the receiving project or projects shall execute and record either a continuation of the existing use agreement or a new use agreement for the project where, in either case, any use restrictions in such agreement are of no lesser duration than the existing use restrictions.

(9) Any financial risk to the FHA General and Special Risk Insurance Fund, as determined by the Secretary, would

be reduced as a result of a transfer completed under this section.

(10) The Secretary determines that Federal liability with regard to this project will not be increased.

(c) For purposes of this section—

(1) the terms "low-income" and "very low-income" shall have the meanings provided by the statute and/or regulations governing the program under which the project is insured or assisted;

(2) the term "multifamily housing project" means housing that meets one of the following conditions—

(A) housing that is subject to a mortgage insured under the National Housing Act;

(B) housing that has project-based assistance attached to the structure including projects undergoing mark to market debt restructuring under the Multifamily Assisted Housing Reform and Affordability Housing Act;

(C) housing that is assisted under section 202 of the Housing Act of 1959 as amended by section 801 of the Cranston-Gonzales National Affordable Housing Act;

(D) housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the Cranston-Gonzales National Affordable Housing Act; or

(E) housing or vacant land that is subject to a use agreement;

(3) the term "project-based assistance" means—

(A) assistance provided under section 8(b) of the United States Housing Act of 1937;

(B) assistance for housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of such Act (as such section existed immediately before October 1, 1983);

(C) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

(D) interest reduction payments under section 236 and/or additional assistance payments under section 236(f)(2) of the National Housing Act; and

(E) assistance payments made under section 202(c)(2) of the Housing Act of 1959;

(4) the term "receiving project or projects" means the multifamily housing project or projects to which some or all of the project-based assistance, debt, and statutorily required use low-income and very low-income restrictions are to be transferred;

(5) the term "transferring project" means the multifamily housing project which is transferring some or all of the project-based assistance, debt and the statutorily required low-income and very low-income use restrictions to the receiving project or projects; and

(6) the term "Secretary" means the Secretary of Housing and Urban Development.

SEC. 213. The funds made available for Native Alaskans under the heading "Native American Housing Block Grants" in title III of this Act shall be allocated to the same Native Alaskan housing block grant recipients that received funds in fiscal year 2005.

SEC. 214. No funds provided under this title may be used for an audit of the Government National Mortgage Association that makes applicable requirements under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

SEC. 215. (a) No assistance shall be provided under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) to any individual who—

(1) is enrolled as a student at an institution of higher education (as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002));

(2) is under 24 years of age;

(3) is not a veteran;

(4) is unmarried;

(5) does not have a dependent child;

(6) is not a person with disabilities, as such term is defined in section 3(b)(3)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(3)(E)) and was not receiving assistance under such section 8 as of November 30, 2005; and

(7) is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible, to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(b) For purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.

SEC. 216. Notwithstanding the limitation in the first sentence of section 255(g) of the National Housing Act (12 U.S.C. 1715z–g)), the Secretary of Housing and Urban Development may, until September 30, 2010, insure and enter into commitments to insure mortgages under section 255(g) of the National Housing Act (12 U.S.C. 1715z–20).

SEC. 217. Notwithstanding any other provision of law, in fiscal year 2010, in managing and disposing of any multifamily property that is owned or has a mortgage held by the Secretary of Housing and Urban Development, the Secretary shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 and other programs that are attached to any dwelling units in the property. To the extent the Secretary determines, in consultation with the tenants and the local government, that such a multifamily property owned or held by the Secretary is not feasible for continued rental assistance payments under such section 8 or other programs, based on consideration of (1) the costs of rehabilitating and operating the property and all available Federal, State, and local resources, including rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 ("MAHRAA") and (2) environmental conditions that cannot be remedied in a cost-effective fashion, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties, or provide other rental assistance. The Secretary shall also take appropriate steps

to ensure that project-based contracts remain in effect prior to foreclosure, subject to the exercise of contractual abatement remedies to assist relocation of tenants for imminent major threats to health and safety. After disposition of any multifamily property described under this section, the contract and allowable rent levels on such properties shall be subject to the requirements under section 524 of MAHRAA.

SEC. 218. During fiscal year 2010, in the provision of rental assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) in connection with a program to demonstrate the economy and effectiveness of providing such assistance for use in assisted living facilities that is carried out in the counties of the State of Michigan notwithstanding paragraphs (3) and (18)(B)(iii) of such section 8(o), a family residing in an assisted living facility in any such county, on behalf of which a public housing agency provides assistance pursuant to section 8(o)(18) of such Act, may be required, at the time the family initially receives such assistance, to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such a percentage or amount as the Secretary of Housing and Urban Development determines to be appropriate.

SEC. 219. The Secretary of Housing and Urban Development shall report quarterly to the House of Representatives and Senate Committees on Appropriations on HUD's use of all sole source contracts, including terms of the contracts, cost, and a substantive rationale for using a sole source contract.

SEC. 220. Notwithstanding any other provision of law, the recipient of a grant under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q) after December 26, 2000, in accordance with the unnumbered paragraph at the end of section 202(b) of such Act, may, at its option, establish a single-asset nonprofit entity to own the project and may lend the grant funds to such entity, which may be a private nonprofit organization described in section 831 of the American Homeownership and Economic Opportunity Act of 2000.

SEC. 221. (a) The amounts provided under the subheading "Program Account" under the heading "Community Development Loan Guarantees" may be used to guarantee, or make commitments to guarantee, notes, or other obligations issued by any State on behalf of non-entitlement communities in the State in accordance with the requirements of section 108 of the Housing and Community Development Act of 1974: *Provided*, That, any State receiving such a guarantee or commitment shall distribute all funds subject to such guarantee to the units of general local government in non-entitlement areas that received the commitment.

(b) Not later than 60 days after the date of enactment of this Act, the Secretary of Housing and Urban Development shall promulgate regulations governing the administration of the funds described under subsection (a).

SEC. 222. Section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v) is amended—

(1) in subsection (m)(1), by striking "fiscal year" and all that follows through the period at the end and inserting "fiscal year 2010."; and

(2) in subsection (o), by striking "September" and all that follows through the period at the end and inserting "September 30, 2010.".

SEC. 223. Public housing agencies that own and operate 400 or fewer public housing units may elect to be exempt from any asset management requirement imposed by the Secretary of Housing and Urban Development in connection with the operating fund rule: *Provided*, That an agency seeking a discontinuance of a reduction of subsidy under the operating fund formula shall not be exempt from asset management requirements.

SEC. 224. With respect to the use of amounts provided in this Act and in future Acts for the operation, capital improvement and management of public housing as authorized by sections 9(d) and 9(e) of the United States Housing Act of 1937 (42 U.S.C. 1437g(d) and (e)), the Secretary shall not impose any requirement or guideline relating to asset management that restricts or limits in any way the use of capital funds for central office costs pursuant to section 9(g)(1) or 9(g)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437g(g)(1), (2)): *Provided*, That a public housing agency may not use capital funds authorized under section 9(d) for activities that are eligible under section 9(e) for assistance with amounts from the operating fund in excess of the amounts permitted under section 9(g)(1) or 9(g)(2).

SEC. 225. No official or employee of the Department of Housing and Urban Development shall be designated as an allotment holder unless the Office of the Chief Financial Officer has determined that such allotment holder has implemented an adequate system of funds control and has received training in funds control procedures and directives. The Chief Financial Officer shall ensure that, not later than 90 days after the date of enactment of this Act, a trained allotment holder shall be designated for each HUD subaccount under the headings "Executive Direction" and heading "Administration, Operations, and Management" as well as each account receiving appropriations for "personnel compensation and benefits" within the Department of Housing and Urban Development.

SEC. 226. The Secretary of Housing and Urban Development shall report quarterly to the House of Representatives and Senate Committees on Appropriations on the status of all section 8 project-based housing, including the number of all project-based units by region as well as an analysis of all federally subsidized housing being refinanced under the Mark-to-Market program. The Secretary shall in the report identify all existing units maintained by region as section 8 project-based units and all project-based units that have opted out of section 8 or have otherwise been eliminated as section 8 project-based units. The Secretary shall identify in detail and by project all the efforts made by the Department to preserve all section 8 project-based housing units and all the reasons for any units which opted out or otherwise were lost as section 8 project-based units. Such analysis shall include a review of the impact of the loss of any subsidized units in that housing marketplace, such as the impact of cost and the loss of available subsidized, low-income housing in areas with scarce housing resources for low-income families.

SEC. 227. Payment of attorney fees in program-related litigation must be paid from individual program office personnel benefits and compensation funding. The annual budget submission for program office personnel benefit and compensation funding must include program-related litigation costs for attorney fees as a separate line item request.

SEC. 228. The Secretary of the Department of Housing and Urban Development shall for Fiscal Year 2010 and subsequent fiscal years, notify the public through the Federal Register and other means, as determined appropriate, of the issuance of a notice of the availability of assistance or notice of funding availability (NOFA) for any program or discretionary fund administered by the Secretary that is to be competitively awarded. Notwithstanding any other provision of law, for Fiscal Year 2010 and subsequent fiscal years, the Secretary may make the NOFA available only on the Internet at the appropriate government website or websites or through other electronic media, as determined by the Secretary.

SEC. 229. (a) APPROVAL OF PREPAYMENT OF DEBT.—Upon request of the project sponsor of a project assisted with a loan under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act), for which the Secretary's consent to prepayment is required, the Secretary shall approve the prepayment of any indebtedness to the Secretary relating to any remaining principal and interest under the loan as part of a prepayment plan under which—

(1) the project sponsor agrees to operate the project until the maturity date of the original loan under terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement or any project-based rental assistance payments contract under section 8 of the United States Housing Act of 1937 (or any other project-based rental housing assistance programs of the Department of Housing and Urban Development, including the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)) or any successor project-based rental assistance program, except as provided by subsection (a)(2)(B); and

(2) the prepayment may involve refinancing of the loan if such refinancing results—

(A) in a lower interest rate on the principal of the loan for the project and in reductions in debt service related to such loan; or

(B) in the case of a project that is assisted with a loan under such section 202 carrying an interest rate of 6 percent or lower, a transaction under which—

(i) the project owner shall address the physical needs of the project;

(ii) the prepayment plan for the transaction, including the refinancing, shall meet a cost benefit analysis, as established by the Secretary, that the benefit of the transaction outweighs the cost of the transaction including any increases in rent charged to unassisted tenants;

(iii) the overall cost for providing rental assistance under section 8 for the project (if any) is not increased, except, upon approval by the Secretary to—

(I) mark-up-to-market contracts pursuant to section 524(a)(3) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by nonprofit organizations; or

(II) mark-up-to-budget contracts pursuant to section 524(a)(4) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), as such section is carried out by the Secretary for properties owned by eligible owners (as such term is defined in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k));

(iv) the project owner may charge tenants rent sufficient to meet debt service payments and operating cost requirements, as approved by the Secretary, if project-based rental assistance is not available or is insufficient for the debt service and operating cost of the project after refinancing. Such approval by the Secretary—

(I) shall be the basis for the owner to agree to terminate the project-based rental assistance contract that is insufficient for the debt service and operating cost of the project after refinancing; and

(II) shall be an eligibility event for the project for purposes of section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t));

(v) units to be occupied by tenants assisted under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)) shall, upon termination of the occupancy of such tenants, become eligible for project-based assistance under section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(13)) without regard to the percentage limitations provided in such section; and

(vi) there shall be a use agreement of 20 years from the date of the maturity date of the original 202 loan for all units, including units to be occupied by tenants assisted under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)).

SEC. 230. No property identified by the Secretary of Housing and Urban Development as surplus Federal property for use to assist the homeless shall be made available to any homeless group unless the group is a member in good standing under any of HUD's homeless assistance programs or is in good standing with any other program which receives funds from any other Federal or State agency or entity: *Provided*, That an exception may be made for an entity not involved with Federal homeless programs to use surplus Federal property for the homeless only after the Secretary or another responsible Federal agency has fully and comprehensively reviewed all relevant finances of the entity, the track record of the entity in assisting the homeless, the ability of the entity to manage the property, including all costs, the ability of the entity to administer homeless programs in a manner that is effective to meet the needs of the homeless population that is expected to use the property and any other related issues that demonstrate a commitment to assist the homeless: *Provided further*, That the Secretary shall not require the entity to have cash in hand in order to demonstrate financial ability but may rely on the entity's prior demonstrated fundraising ability or commitments for in-kind donations of goods and services: *Provided further*, That the Secretary shall make all such information and its decision

regarding the award of the surplus property available to the committees of jurisdiction, including a full justification of the appropriateness of the use of the property to assist the homeless as well as the appropriateness of the group seeking to obtain the property to use such property to assist the homeless: *Provided further*, That, this section shall apply to properties in fiscal years 2009 and 2010 made available as surplus Federal property for use to assist the homeless.

SEC. 231. The Secretary of the Department of Housing and Urban Development is authorized to transfer up to 5 percent of funds appropriated for any account under this title under the heading "Personnel Compensation and Benefits" to any other account under this title under the heading "Personnel Compensation and Benefits" only after such transfer has been submitted to, and received prior written approval by, the House and Senate Committees on Appropriations: *Provided*, That, no appropriation for any such account shall be increased or decreased by more than 10 percent by all such transfers.

SEC. 232. The Secretary of Housing and Urban Development may increase, pursuant to this section, the number of Moving-to-Work agencies authorized under section 204, title II, of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (Public Law 104–134; 110 Stat. 1321) by adding to the program three Public Housing Agencies that meet the following requirements: is a High Performing Agency under the Public Housing Assessment System (PHAS). No PHA shall be granted this designation through this section that administers in excess of 5,000 aggregate housing vouchers and public housing units. No PHA granted this designation through this section shall receive more funding under sections 8 or 9 of the United States Housing Act of 1937 than they otherwise would have received absent this designation. In addition to other reporting requirements, all Moving-to-Work agencies shall report financial data to the Department of Housing and Urban Development as specified by the Secretary, so that the effect of Moving-to-Work policy changes can be measured.

SEC. 233. Notwithstanding any other provision of law, in determining the market value of any multifamily real property or multifamily loan for any noncompetitive sale to a State or local government, the Secretary shall in fiscal year 2010 consider, but not be limited to, industry standard appraisal practices, including the cost of repairs needed to bring the property into such condition as to satisfy minimum State and local code standards and the cost of maintaining the affordability restrictions imposed by the Secretary on the multifamily real property or multifamily loan.

SEC. 234. The Disaster Housing Assistance Programs, administered by the Department of Housing and Urban Development, shall be considered a "program of the Department of Housing and Urban Development" under section 904 of the McKinney Act for the purpose of income verifications and matching.

SEC. 235. (a) IN GENERAL.—The Secretary of Housing and Urban Development shall prepare a report, and post such report on the public website of the Department of Housing and Urban Development (in this section referred to as the "Department"), regarding the number of homes owned by the Department and the budget impact of acquiring, maintaining, and selling such homes.

(b) CONTENT.—The report required by this section shall include—

(1) the number of residential homes that the Department owned during the years 2004 through 2009;

(2) an itemized breakdown of the total annual financial impact, including losses and gains from selling homes and maintenance and acquisition of homes, of home ownership by the Department since 2004;

(3) a detailed explanation of the reasons for the ownership by the Department of the homes;

(4) a list of the 10 urban areas in which the Department owns the most homes and the rate of homelessness in each of those areas; and

(5) a list of the 10 States in which the Department owns the most homes and the rate of homelessness in each of those States.

SEC. 236. The matter under the heading "Community Development Fund", under the heading "Community Planning and Development", under the heading "Department of Housing and Urban Development" in chapter 10 of title I of division B of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110–329; 122 Stat. 3601) is amended by striking ": *Provided further*, That none of the funds provided under this heading may be used by a State or locality as a matching requirement, share, or contribution for any other Federal program".

This title may be cited as the "Department of Housing and Urban Development Appropriations Act, 2010".

TITLE III

RELATED AGENCIES

ACCESS BOARD

SALARIES AND EXPENSES

For expenses necessary for the Access Board, as authorized by section 502 of the Rehabilitation Act of 1973, as amended, $7,300,000: *Provided*, That, notwithstanding any other provision of law, there may be credited to this appropriation funds received for publications and training expenses.

FEDERAL MARITIME COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. App. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902, $24,135,000: *Provided*, That not to exceed $2,000 shall be available for official reception and representation expenses.

NATIONAL RAILROAD PASSENGER CORPORATION

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General for the National Railroad Passenger Corporation to carry out the provisions of the Inspector General Act of 1978, as amended, $19,000,000: *Provided*, That the Inspector General shall have all necessary authority, in carrying out the duties specified in the Inspector General Act, as amended (5 U.S.C. App. 3), to investigate allegations of fraud, including false statements to the government (18 U.S.C. 1001), by any person or entity that is subject to regulation by the National Railroad Passenger Corporation: *Provided further*, That the Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, subject to the applicable laws and regulations that govern the obtaining of such services within the National Railroad Passenger Corporation: *Provided further*, That the Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General, subject to the applicable laws and regulations that govern such selections, appointments, and employment within Amtrak: *Provided further*, That concurrent with the President's budget request for fiscal year 2011, the Inspector General shall submit to the House and Senate Committees on Appropriations a budget request for fiscal year 2011 in similar format and substance to those submitted by executive agencies of the Federal Government.

NATIONAL TRANSPORTATION SAFETY BOARD

SALARIES AND EXPENSES

For necessary expenses of the National Transportation Safety Board, including hire of passenger motor vehicles and aircraft; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for a GS–15; uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901–5902) $98,050,000, of which not to exceed $2,000 may be used for official reception and representation expenses: *Provided*, That of the funds provided under this heading, $2,416,000 shall remain available through September 30, 2011: *Provided further*, That of the funds provided, up to $100,000 shall be provided through reimbursement to the Department of Transportation's Office of Inspector General to audit the National Transportation Safety Board's financial statements. The amounts made available to the National Transportation Safety Board in this Act include amounts necessary to make lease payments on an obligation incurred in fiscal year 2001 for a capital lease.

NEIGHBORHOOD REINVESTMENT CORPORATION

PAYMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION

For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by

the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101–8107), $133,000,000, of which $5,000,000 shall be for a multi-family rental housing program: *Provided*, That section 605(a) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8104) is amended by adding at the end of the first sentence, prior to the period, ", except that the board-appointed officers may be paid salary at a rate not to exceed level II of the Executive Schedule": *Provided further*, That in addition, $35,000,000 shall be made available until expended for capital grants to rehabilitate or finance the rehabilitation of affordable housing units, including necessary administrative expenses: *Provided further*, That in addition, $65,000,000 shall be made available until expended to the Neighborhood Reinvestment Corporation for mortgage foreclosure mitigation activities, under the following terms and conditions:

(1) The Neighborhood Reinvestment Corporation ("NRC"), shall make grants to counseling intermediaries approved by the Department of Housing and Urban Development (HUD) (with match to be determined by the NRC based on affordability and the economic conditions of an area; a match also may be waived by the NRC based on the aforementioned conditions) to provide mortgage foreclosure mitigation assistance primarily to States and areas with high rates of defaults and foreclosures to help eliminate the default and foreclosure of mortgages of owner-occupied single-family homes that are at risk of such foreclosure. Other than areas with high rates of defaults and foreclosures, grants may also be provided to approved counseling intermediaries based on a geographic analysis of the Nation by the NRC which determines where there is a prevalence of mortgages that are risky and likely to fail, including any trends for mortgages that are likely to default and face foreclosure. A State Housing Finance Agency may also be eligible where the State Housing Finance Agency meets all the requirements under this paragraph. A HUD-approved counseling intermediary shall meet certain mortgage foreclosure mitigation assistance counseling requirements, as determined by the NRC, and shall be approved by HUD or the NRC as meeting these requirements.

(2) Mortgage foreclosure mitigation assistance shall only be made available to homeowners of owner-occupied homes with mortgages in default or in danger of default. These mortgages shall likely be subject to a foreclosure action and homeowners will be provided such assistance that shall consist of activities that are likely to prevent foreclosures and result in the long-term affordability of the mortgage retained pursuant to such activity or another positive outcome for the homeowner. No funds made available under this paragraph may be provided directly to lenders or homeowners to discharge outstanding mortgage balances or for any other direct debt reduction payments.

(3) The use of Mortgage Foreclosure Mitigation Assistance by approved counseling intermediaries and State Housing Finance Agencies shall involve a reasonable analysis of the borrower's financial situation, an evaluation of the current value of the property that is subject to the mortgage, counseling regarding the assumption of the mortgage by another non-Federal party, counseling regarding the possible purchase of the mortgage by a non-Federal third party, counseling and

advice of all likely restructuring and refinancing strategies or the approval of a work-out strategy by all interested parties.

(4) NRC may provide up to 15 percent of the total funds under this paragraph to its own charter members with expertise in foreclosure prevention counseling, subject to a certification by the NRC that the procedures for selection do not consist of any procedures or activities that could be construed as an unacceptable conflict of interest or have the appearance of impropriety.

(5) HUD-approved counseling entities and State Housing Finance Agencies receiving funds under this paragraph shall have demonstrated experience in successfully working with financial institutions as well as borrowers facing default, delinquency and foreclosure as well as documented counseling capacity, outreach capacity, past successful performance and positive outcomes with documented counseling plans (including post mortgage foreclosure mitigation counseling), loan workout agreements and loan modification agreements. NRC may use other criteria to demonstrate capacity in underserved areas.

(6) Of the total amount made available under this paragraph, up to $3,000,000 may be made available to build the mortgage foreclosure and default mitigation counseling capacity of counseling intermediaries through NRC training courses with HUD-approved counseling intermediaries and their partners, except that private financial institutions that participate in NRC training shall pay market rates for such training.

(7) Of the total amount made available under this paragraph, up to 4 percent may be used for associated administrative expenses for the NRC to carry out activities provided under this section.

(8) Mortgage foreclosure mitigation assistance grants may include a budget for outreach and advertising, and training, as determined by the NRC.

(9) The NRC shall continue to report bi-annually to the House and Senate Committees on Appropriations as well as the Senate Banking Committee and House Financial Services Committee on its efforts to mitigate mortgage default.

UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS

OPERATING EXPENSES

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms, and the employment of experts and consultants under section 3109 of title 5, United States Code) of the United States Interagency Council on Homelessness in carrying out the functions pursuant to title II of the McKinney-Vento Homeless Assistance Act, as amended, $2,450,000.

TITLE IV

GENERAL PROVISIONS—THIS ACT

SEC. 401. Such sums as may be necessary for fiscal year 2010 pay raises for programs funded in this Act shall be absorbed within the levels appropriated in this Act or previous appropriations Acts.

SEC. 402. None of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings funded in this Act.

SEC. 403. None of the funds appropriated in this Act shall remain available for obligation beyond the current fiscal year, nor may any be transferred to other appropriations, unless expressly so provided herein.

SEC. 404. The expenditure of any appropriation under this Act for any consulting service through procurement contract pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 405. Except as otherwise provided in this Act, none of the funds provided in this Act, provided by previous appropriations Acts to the agencies or entities funded in this Act that remain available for obligation or expenditure in fiscal year 2010, or provided from any accounts in the Treasury derived by the collection of fees and available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by either the House or Senate Committees on Appropriations for a different purpose; (5) augments existing programs, projects, or activities in excess of $5,000,000 or 10 percent, whichever is less; (6) reduces existing programs, projects, or activities by $5,000,000 or 10 percent, whichever is less; or (7) creates, reorganizes, or restructures a branch, division, office, bureau, board, commission, agency, administration, or department different from the budget justifications submitted to the Committees on Appropriations or the table accompanying the explanatory statement accompanying this Act, whichever is more detailed, unless prior approval is received from the House and Senate Committees on Appropriations: *Provided*, That not later than 60 days after the date of enactment of this Act, each agency funded by this Act shall submit a report to the Committees on Appropriations of the Senate and of the House of Representatives to establish the baseline for application of reprogramming and transfer authorities for the current fiscal year: *Provided further*, That the report shall include: (1) a table for each appropriation with a separate column to display the President's budget request, adjustments made by Congress, adjustments due to enacted rescissions, if appropriate, and the fiscal year enacted level; (2) a delineation in the table for each appropriation both by object class and program, project, and activity as detailed in the budget appendix for the respective appropriation; and (3) an identification of items of special congressional interest: *Provided further*, That the amount appropriated or limited for salaries and expenses for an agency shall be reduced by $100,000 per day for each day after the required date that the report has not been submitted to the Congress.

SEC. 406. Except as otherwise specifically provided by law, not to exceed 50 percent of unobligated balances remaining available at the end of fiscal year 2010 from appropriations made available

for salaries and expenses for fiscal year 2010 in this Act, shall remain available through September 30, 2011, for each such account for the purposes authorized: *Provided*, That a request shall be submitted to the House and Senate Committees on Appropriations for approval prior to the expenditure of such funds: *Provided further*, That these requests shall be made in compliance with reprogramming guidelines under section 405 of this Act.

SEC. 407. All Federal agencies and departments that are funded under this Act shall issue a report to the House and Senate Committees on Appropriations on all sole source contracts by no later than July 30, 2010. Such report shall include the contractor, the amount of the contract and the rationale for using a sole source contract.

SEC. 408. (a) None of the funds made available in this Act may be obligated or expended for any employee training that—

(1) does not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties;

(2) contains elements likely to induce high levels of emotional response or psychological stress in some participants;

(3) does not require prior employee notification of the content and methods to be used in the training and written end of course evaluation;

(4) contains any methods or content associated with religious or quasi-religious belief systems or "new age" belief systems as defined in Equal Employment Opportunity Commission Notice N–915.022, dated September 2, 1988; or

(5) is offensive to, or designed to change, participants' personal values or lifestyle outside the workplace.

(b) Nothing in this section shall prohibit, restrict, or otherwise preclude an agency from conducting training bearing directly upon the performance of official duties.

SEC. 409. No funds in this Act may be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use: *Provided*, That for purposes of this section, public use shall not be construed to include economic development that primarily benefits private entities: *Provided further*, That any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownsfield as defined in the Small Business Liability Relief and Brownsfield Revitalization Act (Public Law 107–118) shall be considered a public use for purposes of eminent domain.

SEC. 410. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

SEC. 411. No part of any appropriation contained in this Act shall be available to pay the salary for any person filling a position,

other than a temporary position, formerly held by an employee who has left to enter the Armed Forces of the United States and has satisfactorily completed his period of active military or naval service, and has within 90 days after his release from such service or from hospitalization continuing after discharge for a period of not more than 1 year, made application for restoration to his former position and has been certified by the Office of Personnel Management as still qualified to perform the duties of his former position and has not been restored thereto.

SEC. 412. No funds appropriated pursuant to this Act may be expended in contravention of sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c, popularly known as the "Buy American Act").

SEC. 413. No funds appropriated or otherwise made available under this Act shall be made available to any person or entity that has been found to violate the Buy American Act (41 U.S.C. 10a–10c).

SEC. 414. None of the funds made available in this Act may be used for first-class airline accommodations in contravention of sections 301–10.122 and 301–10.123 of title 41, Code of Federal Regulations.

SEC. 415. None of the funds made available in this Act may be used to purchase a light bulb for an office building unless the light bulb has, to the extent practicable, an Energy Star or Federal Energy Management Program designation.

SEC. 416. (a) Any agency receiving funds made available in this Act, shall, subject to subsections (b) and (c), post on the public website of that agency any report required to be submitted by the Congress in this or any other Act, upon the determination by the head of the agency that it shall serve the national interest.

(b) Subsection (a) shall not apply to a report if—

(1) the public posting of the report compromises national security; or

(2) the report contains proprietary information.

(c) The head of the agency posting such report shall do so only after such report has been made available to the requesting Committee or Committees of Congress for no less than 45 days.

SEC. 417. None of the funds made available in this Act may be used to establish, issue, implement, administer, or enforce any prohibition or restriction on the establishment or effectiveness of any occupancy preference for veterans in supportive housing for the elderly that: (1) is provided assistance by the Department of Housing and Urban Development; and (2)(A) is or would be located on property of the Department of Veterans Affairs; or (B) is subject to an enhanced use lease with the Department of Veterans Affairs.

SEC. 418. None of the funds made available under this Act or any prior Act may be provided to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, or allied organizations.

SEC. 419. Specific projects contained in the report of the Committee on Appropriations of the House of Representatives accompanying this Act (H. Rept. 111–218) that are considered congressional earmarks for purposes of clause 9 of rule XXI of the Rules of the House of Representatives, when intended to be awarded to a for-profit entity, shall be awarded under a full and open competition.

This division may be cited as the "Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010".

DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

TITLE I

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

For necessary expenses for international trade activities of the Department of Commerce provided for by law, and for engaging in trade promotional activities abroad, including expenses of grants and cooperative agreements for the purpose of promoting exports of United States firms, without regard to 44 U.S.C. 3702 and 3703; full medical coverage for dependent members of immediate families of employees stationed overseas and employees temporarily posted overseas; travel and transportation of employees of the International Trade Administration between two points abroad, without regard to 49 U.S.C. 40118; employment of Americans and aliens by contract for services; rental of space abroad for periods not exceeding 10 years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed $327,000 for official representation expenses abroad; purchase of passenger motor vehicles for official use abroad, not to exceed $45,000 per vehicle; obtaining insurance on official motor vehicles; and rental of tie lines, $456,204,000, to remain available until September 30, 2011, of which $9,439,000 is to be derived from fees to be retained and used by the International Trade Administration, notwithstanding 31 U.S.C. 3302: *Provided,* That not less than $49,530,000 shall be for Manufacturing and Services; not less than $43,212,000 shall be for Market Access and Compliance; not less than $68,290,000 shall be for the Import Administration; not less than $258,438,000 shall be for the Trade Promotion and United States and Foreign Commercial Service; and not less than $27,295,000 shall be for Executive Direction and Administration: *Provided further*, That not less than $7,000,000 shall be for the Office of China Compliance, and not less than $4,400,000 shall be for the China Countervailing Duty Group: *Provided further,* That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities without regard to section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4912); and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 shall include payment for assessments for services provided as part of these activities: *Provided further,* That negotiations shall be conducted within the World Trade Organization to recognize the right

EXHIBIT 26

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Office of Inspector General	Inspector General		2.1.2

1.0 PURPOSE

To establish the responsibility and authority of the Amtrak Office of Inspector General ("OIG"), the general principles for ensuring a productive relationship between the OIG and the rest of the company, and to summarize the process followed by the OIG when conducting audits, evaluations, and investigations.

2.0 SCOPE

This policy applies to all Amtrak employees, contractors, programs, and operations.

3.0 RESPONSIBILITY

The head of Amtrak and the Amtrak Inspector General ("Inspector General") are responsible for the interpretation and administration of this policy. As of the date of this policy, the "head" of Amtrak is defined as the Chairperson of the Board of Directors of Amtrak (the "Chair").

4.0 AUTHORITY AND RESPONSIBILITIES OF THE OIG

4.1 Mission of the OIG. The Inspector General Act of 1978, as amended (5 U.S.C. Appendix 3), hereinafter "IG Act," established the OIG as an independent and objective unit within Amtrak to:

(a) Provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to Amtrak programs and operations;
(b) Provide leadership and coordination and to recommend policies for activities designed (1) to promote economy, efficiency, and effectiveness in the administration of, and (2) to prevent and detect fraud and abuse in Amtrak programs and operations;
(c) Review existing and proposed legislation and regulations relating to Amtrak programs and operations and make recommendations in its semiannual reports concerning their impact on the economy and efficiency in the administration of programs and operations administered or financed by Amtrak or the prevention and detection of fraud and abuse in such programs;
(d) Keep the Chair and Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by Amtrak, recommend corrective action concerning such problems, abuses, and deficiencies, and report on the progress made in implementing corrective actions.

4.2 Establishment of the OIG.

(a) The Inspector General is appointed by the Chair without regard to political affiliation, and solely on the basis of integrity and demonstrated ability in

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Tom Carper Chairman, Board of Directors		2.1.1	1

accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(b) The Inspector General reports to and is under the general supervision of the Chair and is not subject to supervision by any other officer or employee of Amtrak. The Chair cannot prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(c) The Inspector General serves as a non-voting, ex officio member of the Executive Committee. This is an important mechanism to foster open communications and facilitate the exchange of information. It allows the IG to be aware of management issues and concerns and to provide appropriate input for management to consider. The IG's role will be limited and subject to the following conditions:

(1) The IG will not be a voting member;

(2) The IG will not perform programmatic functions or roles, which are proscribed under the IG Act;

(3) The IG's participation will be in a mutually agreed capacity, which allows the IG to decide not to attend certain meetings, or Amtrak management to elect to conduct meetings or segments of meetings, without the IG's presence;

(4) Both the IG and Amtrak management will respect the IG's statutory requirement to maintain independence and objectivity and will not request participation or agreement with respect to any matter that would impair or compromise that independence or objectivity;

(5) The IG will not make management decisions or perform management functions.

(d) If the Inspector General is removed from office or is transferred to another position or location within Amtrak, the Chair must communicate in writing the reasons for the removal or transfer to both Houses of Congress, at least 30 days before the removal or transfer. The Chair can also take other personnel actions authorized by law.

(e) The Chair also provides the OIG with appropriate and adequate office space at central and field office locations of Amtrak, together with needed equipment, office supplies, communications facilities and services, and necessary maintenance services.

4.3 Authority of the Inspector General. In carrying out the provisions of the IG Act, the Inspector General is authorized to:

(a) Conduct audits and investigations and issue reports relating to Amtrak programs and operations that, in the judgment of the Inspector General, are necessary or desirable;

(b) Have access to all Amtrak records, reports, audits, reviews, documents, papers, recommendations, or other material available to Amtrak which relate to programs and operations with respect to which the Inspector General has responsibilities;

(c) Request such information or assistance as may be necessary to carry out the duties and responsibilities provided by the IG Act from any Federal, State, or local governmental agency or unit thereof;
(d) Require by subpoena the production of information, documents, reports, answers, records, accounts, papers and other data needed to accomplish the functions assigned by the IG Act (procedures other than subpoenas will be used by the Inspector General to obtain documents and information from Federal agencies). Because the Inspector General has access to all Amtrak information, subpoenas are not used to obtain documents and information from Amtrak;
(e) Administer oaths, affirmations, and affidavits, when needed to carry out the functions assigned by the IG Act;
(f) Have direct and prompt access to the Chair when necessary for any purpose pertaining to the performance of functions and responsibilities under the IG Act; and
(g) Enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of the IG Act.

5.0 GENERAL PRINCIPLES GUIDING RELATIONSHIPS WITH THE OIG

5.1 To work together most effectively, the OIG and Amtrak's management, employees, and contractors should:

(a) Interact with professionalism and mutual respect.
(1) Representatives of Amtrak's management and the OIG should always act in good faith and expect the same from the other.
(2) Amtrak's management and the OIG share as a common goal the successful accomplishment of Amtrak's mission.

(b) Ensure mutual respect for each mission.
(1) Amtrak's officers, directors, employees, and contractors should recognize the OIG's primary responsibility and authority to conduct independent and objective audits, evaluations, and investigations of Amtrak programs and operations, and the OIG's responsibility to report to both the Chairman and the Congress.
(2) The OIG will seek to carry out its work with a minimum of disruption to the primary mission of Amtrak.
(3) Amtrak's management will promptly notify the OIG in the event that it initiates reviews or examinations related to fraud or waste which could be the subject of an OIG audit, investigation, or inspection. Once notified, the Inspector General will determine whether it is a matter subject to the jurisdiction of the OIG and respond promptly to management to determine how to proceed. To the extent the Inspector General deems appropriate, the OIG will coordinate with the responsible department where management is engaged in a review or examination or litigation involving matters of common interest to the OIG and management.

(4) If, in the course of its work, the OIG discovers facts or circumstances related to safety or other matters which have some immediacy or may cause significant business or legal harm to the company unless management is notified and given the opportunity to intervene, the Inspector General will, at his discretion, notify and coordinate with appropriate Amtrak managers or the department head in order to address safety issues quickly or to limit significant business or legal harm.

(c) Foster open communications at all levels.

(1) The OIG's access to information, records, facilities and people must be unimpeded. Amtrak's employees, contractors, and representatives should promptly respond to OIG requests for information to facilitate OIG activities.

(2) Amtrak managers will be forthcoming in recognizing the existence of challenges that the OIG can help to address.

(3) Surprises are to be avoided. The OIG will seek to avoid undertaking its work or presenting its findings without reasonable notice to management and management will keep the OIG informed of significant challenges and problems.

(4) With limited exceptions, primarily related to criminal investigations, the Inspector General will keep the President and the Chairman advised of its work and its findings on a timely basis, and the OIG will provide information helpful to Amtrak's management at the earliest possible stage.

(5) Because some OIG investigations may involve allegations of criminal misconduct or other need for confidentiality, circumstances will dictate whether, and what type of, notice will be given. This will be at the discretion of the Inspector General, with consideration of all factors of confidentiality, sensitivity, and investigative techniques.

(d) Be thorough, objective, and fair.

(1) The OIG will perform its work thoroughly, objectively, and with due consideration of the point of view of Amtrak's management.

(2) When working with the OIG, Amtrak's management and staff should objectively consider differing opinions and alternative ways to improve operations.

(3) Both the OIG and other departments of Amtrak should recognize successes in addressing management challenges and advancing Amtrak's mission.

(e) Respect confidential information.

(1) The OIG will respect Amtrak's need to protect confidential, sensitive, or privileged information from inappropriate disclosure, while meeting OIG's obligation to report to the Department of Justice, external oversight entities such as Congress, and the public.

(2) The terms confidential, sensitive, and privileged will be accorded the meanings ascribed to them under the Freedom of Information Act (FOIA).

(3) Other than the Department of Justice, in disclosing to external oversight entities (such as the Congress, Department of Transportation, OMB, and

GAO) or other law enforcement entities, information that may be confidential, sensitive or privileged, the OIG will notify the recipient entities of the confidential, sensitive, or privileged nature of the information and request that they treat the information with the level of protection set forth under the FOIA or as otherwise required by law. If the IG believes there is a significant risk that the information could be released inappropriately, he may, at his discretion, consult with the appropriate department head to ensure that the company's interests are protected.

(4) The process to determine the sensitivity of information included in OIG audit, evaluation, and investigative reports that will be subject to public release is described in sections 6 and 7 below.

(f) Be engaged.

(1) The OIG, Amtrak's management, and the Board will work cooperatively to identify the most important areas for OIG work, as well as the best means to address the results of that work, while maintaining the OIG's required independence.

(2) Amtrak's leadership will recognize that the OIG's limited resources must also be applied to address work that is initiated by the OIG, requested by members of Congress, or mandated by law or regulation.

(g) Facilitate the exchange of information.

(1) The OIG will keep abreast of Amtrak's programs and operations, and keep Amtrak's management and Board informed of OIG activities and concerns that are raised in the course of the OIG's work.

(2) Amtrak's management and Board should ensure that the OIG is kept up to date on current matters and events affecting Amtrak or that may affect it in the future.

(3) Amtrak and the OIG will implement mechanisms, both formal and informal, to ensure prompt and regular feedback.

(4) All Amtrak employees, contractors, and representatives should understand that the OIG is the primary entity within Amtrak to address issues or concerns related to fraud or abuse; and that they have a responsibility to report suspected violations of the law or Amtrak policy that could result in fraud or abuse.

(5) The failure to cooperate with or the intentional furnishing of false or misleading information to the OIG by Amtrak employees, contract personnel, or representatives, may result in disciplinary action, contract termination, and/or criminal sanctions.

(6) Amtrak's managers must ensure that reprisals are not taken against employees who cooperate with or disclose information to the OIG or other lawful authority.

6.0 COORDINATION BETWEEN AMTRAK OFFICIALS AND THE OIG ON INVESTIGATIONS

6.1 General Investigative Process.

(a) The OIG determines whether it will initiate an investigation once it receives an allegation regarding fraud, abuse, criminal action, or other wrongdoing. Allegations originate from various sources including employees, vendors, Congress, federal agencies, and prosecutors. The OIG may also initiate investigations proactively to ensure that Amtrak is not being subject to fraud, waste, or abuse.

(b) The investigative process generally involves: (1) determining the basis for an allegation; (2) analyzing the issues involved; and (3) obtaining relevant, objective evidence from individuals and entities, in the form of interviews, documents, tangible objects, and data.

(c) The OIG follows the Quality Standards for Investigations (issued by the Council of the Inspectors General on Integrity and Efficiency ("CIGIE")) to guide its investigative activity.

(d) Allegations are reviewed and screened and resources are allocated based on, among other things, the seriousness of the allegations, potential harm to Amtrak or the public, whether a violation of a statute or regulation likely occurred, and the effect of the alleged illegal or improper activity on Amtrak programs and operations.

(e) If the OIG determines that an investigation should be undertaken, it seeks to obtain all relevant facts by examining documents and other tangible materials and interviewing individuals. When appropriate or required by law, the OIG informs subjects of their legal rights, including the right or opportunity to remain silent and to obtain legal counsel.

(f) The process may result in one or more of the following OIG actions: administrative report to management, referral to a prosecutor for consideration, or closing the investigation.

(g) When the investigation substantiates a wrongful act which is considered administrative, the OIG usually prepares an investigative report, which describes the allegation, the factual evidence to support its findings, and recommendations. This report is submitted to management for a written response. These administrative reports often recommend that management take action, but usually do not recommend specific disciplinary action. Privacy concerns usually restrict these reports from public release.

(h) If an issue identified in an investigative report is a recurring or systemic problem, the OIG may also identify this broader problem to managers and, usually, make recommendations for management to consider in addressing the problem. Management normally is given an opportunity to provide comments before the report is issued. The process for obtaining comments and issuing the report is described in Section 7.2(h).

(i) If there is evidence of criminal wrongdoing, the OIG presents the report to the Department of Justice or other appropriate prosecutors for their consideration. This may lead to prosecution of the subject(s) in Federal, state, or local court. In cases where there is evidence of criminal wrongdoing, the Inspector General may, in his/her discretion, also refer the report to management for administrative action.

6.2 Requirements And Responsibilities.

(a) OIG.

(1) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(2) The OIG will ensure that Amtrak's confidential, sensitive, or privileged information as defined in section 5.1(e) above is not inappropriately disclosed by OIG employees.

(3) Circumstances when the OIG will disclose such information include:
(A) referrals to appropriate agencies for law enforcement purposes;
(B) disclosures under court order;
(C) responses to requests by Congress; and,
(D) referrals to other agencies that may have cognizance over the matter.

(4) The OIG will usually honor an employee's request that counsel be present during an interview. The counsel may not be another employee of Amtrak, paid for by Amtrak (unless approved in accordance with Amtrak's Bylaws and policies), a potential subject, or a witness in the case.

(5) Employees who allege that action was taken against them as reprisal or retaliation for cooperating with or disclosing information to the OIG while they were employed at Amtrak may request the OIG to investigate their reprisal or retaliation allegations.

(b) Amtrak Management, Employees, and Contractors.

(1) All Amtrak employees must comply with requests for interviews and briefings.

(2) The failure to cooperate with or the intentional furnishing of false or misleading information to the OIG by Amtrak employees, contract personnel, or representatives, may result in disciplinary action, contract termination, and/or criminal sanctions or penalties.

(3) Amtrak's managers must ensure that reprisals are not taken against employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.

(4) In the context of investigations, managers should not question staff about their interactions with the OIG.

(5) Any employee who makes a complaint to the OIG with the knowledge that the complaint is false or that it is made with willful disregard for the truth of the information may be held accountable for such statements and may be subject to disciplinary action or criminal prosecution.

7.0 COORDINATION BETWEEN AMTRAK OFFICIALS AND OIG ON AUDITS AND EVALUATIONS

7.1 Types of Audits and Evaluations. The OIG conducts audits and evaluations of Amtrak programs and operations, including performance of contractors. Some audits and evaluations may be specifically required by statute.

(a) An audit is an independent, formal, and methodical examination of an organization, program, function, or activity, designed to help Amtrak accomplish its mission efficiently and effectively. OIG audits are performed in accordance with Government Auditing Standards (commonly called the Yellow Book).

(b) Evaluations are reviews of an organization, program, function, or activity. Evaluations are performed in accordance with the Quality Standards for Inspections issued by the CIGIE.

(c) Audits and evaluations may include financial or performance reviews.
   (1) Financial reviews include financial statement audits and any other financially related reviews related to Amtrak's financial operations.
   (2) Performance reviews include evaluating whether Amtrak programs and operations are working efficiently and effectively as well as whether programs are achieving expected results.

(d) The OIG also routinely gathers information and data but does not use that information in a formal audit report. These activities may be in response to a congressional inquiry, a request for testimony, or routine planning purposes. Normally, OIG staff members assigned to these activities directly contacts responsible managers to collect information. The assigned OIG staff will inform management of the nature of the data gathering effort.

7.2 Audit and Evaluation Processes. The audit and evaluation processes involve the following steps:

(a) Audit or Evaluation Planning. The OIG often conducts informal research to help it develop audit or evaluation plans or to better understand emerging issues. Audit plans outline potential reviews to be conducted, the objectives of each review, and the resources required to conduct them. In developing the audit or evaluation plan for the year, the OIG considers the following:
   (1) Issues that may pose a risk to or would promote Amtrak's mission;
   (2) Objectives of Amtrak's Board and senior managers; and
   (3) Objectives of Congress.

(b) Notification. The OIG will notify responsible management officials of its intent to begin a review.

(c) Entrance Conference. As a general practice, the OIG will request an entrance conference with responsible management officials to advise them of the objectives and scope of the review and the general methodology that will be followed, and to solicit input from Amtrak officials.

(d) Survey. In some cases, particularly for large or complex reviews, the OIG will perform initial research to refine the objectives, determine the scope, and develop a sound methodology.

(e) Field Work. The OIG analyzes selected areas of a program, activity, or function. It obtains sufficient evidence to support the findings and conclusions and to make recommendations. Frequent interaction with responsible managers and employees occurs during fieldwork.

(f) **Exit Conference.** Prior to the issuance of a draft audit or evaluation report, the OIG will contact the responsible management official to set up an exit conference to discuss the results of the work. In some cases discussion draft reports or fact sheets are used to facilitate the discussion. The OIG strives to maintain an open channel of communication with managers to ensure that findings, conclusions, and recommendations are accurately and fairly presented in the report.

(g) **Draft Report.** The OIG provides a draft report to the Audit Liaison, responsible managers of audited organizations, and Amtrak departments affected by the audit findings for their review and comment. The draft report will have been approved by OIG management and will contain the objectives, results, conclusions, and recommendations resulting from the OIG's audit or evaluation.

(h) **Management Response.** Responsible management officials are normally provided 30 days to respond in writing to the draft report, indicating how they plan to address the findings and recommendations contained in the report. In some cases, the OIG requests a quicker response. Extensions to the established due date will be granted by the responsible Assistant Inspector General.

(1) Comments should clearly indicate whether responsible management officials concur with each of the recommendations.

(2) Concurrence is when management agrees to implement the recommendation or to take an alternative action that will correct the deficiency, along with actual or estimated completion dates.

(3) Nonconcurrence is when management does not agree to implement the recommendation or an acceptable alternative. In this case, management should explain the rationale, and include additional facts, if necessary.

(4) Management should also identify any information contained in the report that should be protected from public release on the basis that its release may cause significant business or legal harm to Amtrak (the information so designated must not be subject to public release pursuant to the Freedom of Information Act, as amended, 5 U.S.C. § 552). The responsible manager should also weigh the public benefit of transparency against the harm, or potential harm, to company interests, in light of the fact that the company receives Federal subsidies.

(5) With respect to decisions regarding confidential, sensitive or privileged information, the Inspector General will follow the standard set forth in Section 5.1(e) above. If the OIG disagrees with management's assertion that specific information should be withheld from public release because it is confidential, sensitive, or privileged, the IG will confer with the responsible department head regarding the need to redact the information before publicly releasing the report. If so requested, the department head has one week to articulate in writing to the IG the bases or reasons for protecting the information from disclosure, including identifying the significant business or legal harm anticipated compared to the benefit of transparency. If, following that consultation, the IG determines that the

information should be publicly released, he will consult with the Chair before including such information in a publicly released report.

(i) **Final Report.** The OIG will amend the draft report, as appropriate, based on management's response. The Inspector General makes final determinations about what information will be included in the issued report. The OIG also normally includes the entire management response, along with the OIG's analysis of the response in the final report.

(j) **Report Distribution.** The OIG usually distributes audit and evaluation reports to the Chairman, other Board members, responsible management officials, and Congress. Final reports are normally public documents and are available on the OIG Web site.

(k) **Recommendation Follow-up.** Amtrak managers are responsible for implementing OIG recommendations to the extent there is concurrence, and OIG staff and Amtrak's Audit Liaison monitor managers' actions to ensure that recommendations are implemented in a timely manner.

7.3 Audit and Evaluation Process Responsibilities.

(a) **Audit Liaison.**
- (1) The Audit Liaison is an individual, or individuals, designated by Amtrak management to perform the functions outlined in this section.
- (2) Facilitates OIG audits and evaluations with Amtrak management. In this role, the liaison ensures that Amtrak managers are aware of OIG reviews and that OIG staff is provided with initial contacts to begin the review process.
- (3) Coordinates entrance and exit conferences with appropriate Amtrak managers.
- (4) Follows up with Amtrak managers to track the status of management actions to implement OIG recommendations.
- (5) Ensures that management's response to draft reports is coordinated with affected departments, is approved by the head of the audited department or organization and is completed in a timely manner.

(b) **Inspector General Managers.**
- (1) Notifies responsible management officials of the intent to begin a review.
- (2) Contacts responsible management officials and the audit liaison to schedule entrance conferences and exit conferences.
- (3) Provides copies of draft reports to the Audit Liaison, responsible management officials of audited organizations, and Amtrak departments affected by audit findings.
- (4) Reviews and evaluates management response to the draft report and, as appropriate, either revises the report or provides the OIG's analysis of the response in the final report.
- (5) Grants extensions to the established due date for management comments.
- (6) Distributes final reports to the Audit Liaison and the appropriate Amtrak departments, and makes further distribution to authorized committees and subcommittees of Congress and the public.

(c) **Responsible Management Officials.** To maximize the value of OIG reports, management officials or their designees will:

(1) Attend exit conferences, unless they are waived by agreement with the OIG.

(2) Prepare responses to draft OIG reports.

(3) State in the proposed management decision whether they concur with the recommendations presented in the corresponding audit or evaluation report or propose alternative actions to correct the deficiency. For nonconcurrences, explain why management does not concur and present additional facts, if necessary.

(4) Take prompt and effective action to implement agreed-upon corrective actions.

8.0 OTHER POLICIES

8.1 The presumption is that this policy will take precedence in instances where other policies are inconsistent with this policy. When inconsistencies are identified, OIG and management will consult and reconcile differences.

EXHIBIT 27

Farm Credit Administration

Office of Inspector General
1501 Farm Credit Drive
McLean, Virginia 22102-5090

March 17, 2010

The Honorable Ray LaHood
Secretary of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: The National Railroad Passenger Corporation (Corporation or Amtrak) and its Office of Inspector General

Dear Secretary LaHood:

The Chairperson of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), Phyllis K. Fong, advised you in a January 8, 2010 letter that I would be conducting the first review described below as required by the Consolidated Appropriations Act of 2010, signed by the President on December 16, 2009 (Appropriations Act).[1]

The Appropriations Act, under Operating Grants to the National Railroad Passenger Corporation, provides, in part, that:

> …To enable the Secretary of Transportation to make quarterly grants to the National Railroad Passenger Corporation for the operation of intercity passenger rail, as authorized by section 101 of the Passenger Rail Investment and Improvement Act of 2008 (division B of Public Law 110-432), $563,000,000, to remain available until expended: *Provided*, That the Secretary shall not make the grants for the third and fourth quarter of the fiscal year available to the Corporation until an Inspector General who is a member of the Council of the Inspectors General on Integrity and Efficiency determines that the Corporation and the Corporation's Inspector General have agreed upon a set of policies and procedures for interacting with each other that are consistent with the letter and the spirit of the Inspector General Act of 1978, as amended...

The Appropriations Act further provides that 1 year after this determination the CIGIE shall appoint another member to evaluate the then operational independence of the Amtrak Inspector General (IG).

[1] Pub. L. No. 111-117(2009)

Conclusion

Based on my evaluation of the policies and procedures required by the Appropriations Act and other due diligence described in this report, it is my determination that the Corporation and the IG have agreed to a set of policies and procedures for interacting with each other that are consistent with the letter and the spirit of the Inspector General Act of 1978, as amended (IG Act).

As a result, they are now positioned to build a constructive relationship that will enable the Amtrak Office of Inspector General (OIG) to operate unhindered in its role of: 1) promoting economy, efficiency, and effectiveness, 2) preventing and detecting fraud and abuse, and 3) providing a means for keeping the head of the entity and Congress fully and currently informed about the problems and deficiencies relating to Amtrak's programs and operations.

Amtrak will benefit by having a properly functioning OIG that remains independent of Corporation programmatic activities and, thus, able to provide objective assessments and recommendations regarding Amtrak operations.

Background

The Appropriations Act's requirements resulted from Congressional concern that the OIG's independence and ability to effectively oversee the expenditure of funds, including funding provided by the Federal government, was being undermined by the Corporation.

Congressional focus was heightened in mid-2009 as a result of the IG's unexpected retirement on June 18, 2009. The concern was whether his retirement was involuntary and is evidenced by language in one Congressional letter stating "On June 18, 2009, Mr. Weiderhold entered into a separation agreement with Amtrak…Amtrak presented the agreement to Mr. Weiderhold on June 17, 2009, indicating that if he did not sign it by June 19, 2009, the Chairman of the Board would send a 30-day notice letter to Congress to begin the process of removing him as Inspector General, as required by the IG Reform Act."[2]

Regarding the overall relationship between the Corporation and the OIG, another Congressional letter referred to "…longstanding and serious conflicts between Amtrak management and the Inspector General, and major disputes about the role of the Inspector General within Amtrak."[3] Another member of Congress indicated he was investigating whether the independence of the IG had been undermined by Amtrak officials.[4]

With the IG's retirement on June 18, the Corporation appointed a senior member of the Corporation's staff as Interim IG. This elicited criticism from members of Congress, charging that the appointment of a Corporation official as Interim IG "…undermines the statutory

[2] July 30, 2009 letter from Charles Grassley, Ranking Member, U.S. Senate's Committee on Finance, and Darrell Issa, Ranking Member, U.S. House of Representatives' Committee on Oversight and Government Reform, to The Honorable Jeffery Zients, Executive Chairperson, Council of the Inspectors General on Integrity and Efficiency, and Deputy Director for Management, Office of Management and Budget

[3] July 28, 2009 letter from Chairman Edolphus Towns and Ranking Member Darrell Issa of the U.S. House of Representatives' Committee on Oversight and Government Reform to Amtrak Board Chairperson Thomas Carper

[4] June 25, 2009 press release from Senator Charles Grassley

independence of the Office of Inspector General."[5] The Corporation's Chairman responded in a letter that the Interim IG's appointment was based in large part on "…her [Interim IG] clear understanding of the role of the Inspector General, her unquestionable integrity, and the short period of time for which she would serve."[6] The Chairman further stated in the letter that "The Board is committed to having an Office of Inspector General (OIG) that operates under best practices consistent with the Inspector General Act." The Interim IG remained in place until the current IG was hired effective November 16, 2009.

It was this environment of adversity between the Corporation and its OIG that elicited the concern and involvement of Congress, and resulted in this review, as required by the Appropriations Act.

Methodology

In conducting this review, I obtained and evaluated various historical documents related to the past issues between the Corporation and the OIG; conducted numerous interviews with Corporation officials, the current IG, and other OIG personnel; and evaluated the policies and procedures, as required by the Appropriations Act, that will serve as guidelines for interaction between Corporation officials and OIG personnel.

Of course, notwithstanding written guidelines developed between the Corporation and the OIG regarding their relationship, the IG Act is the definitive word regarding the role and authorities of an Inspector General established by the statute.

My interaction with Corporation officials in conducting this determination involved: 1) attending the January 2010 monthly meeting between the Amtrak Board of Directors (Board) and the current IG; 2) meeting separately with the Board at its January 2010 meeting; 3) interviewing the Board's Chairman and all members of Amtrak's Executive Committee, comprised of the senior leadership of the Corporation, including the President and Chief Executive Officer (CEO) and the Chief Operating Officer; and 4) interviewing the current IG and his senior officials. I also interviewed the Department of Transportation's (DOT) Inspector General and his General Counsel. This interface resulted in a total of 17 interviews conducted at Amtrak and at the DOT's Office of Inspector General during the period January 13 – March 16, 2010.

Even though I reviewed historical documents related to the issues between the Corporation and the OIG, I focused my attention on two areas. First, I considered what Corporation and OIG officials said during the interviews regarding their current relationship and developed a perception as to their commitment regarding the working relationship they want going forward. Second, I assessed the policies and procedures agreed to by the Corporation and the OIG for interacting with each other that are consistent with the letter and the spirit of the IG Act.

Findings

Interviews

Throughout the interviews with Corporation officials there was consistency regarding the adversity that had existed between the OIG and Corporation. Corporation officials expressed their perspective that the OIG was not always conducting audits/inspections and investigations

[5] July 28, 2009 letter from Chairman Edolphus Towns and Ranking Member Darrell Issa of the U.S. House of Representatives' Committee on Oversight and Government Reform to Amtrak Board Chairperson Thomas Carper

[6] July 31, 2009 letter from Chairman Thomas Carper to Chairman Edolphus Towns and Ranking Member Darrell Issa of the U.S. House of Representatives' Committee on Oversight and Government Reform

timely and with transparency, handling Corporation documents appropriately, and affording management opportunity to comment on OIG reports of Corporation processes and performance. OIG officials expressed in their view that the Corporation had hindered the independence and effectiveness of OIG operations by delaying and filtering access to information and Amtrak personnel, unnecessarily requiring redacting of OIG reports before being made available to the public, and being untimely in responding to findings, conclusions, and recommendations in OIG reports.

There was also consistency in what Amtrak officials said regarding the relationship between the current IG and the Corporation. They indicated the IG's approach to managing OIG operations and interacting with Corporation officials has built an initial positive relationship.

Similarly, the IG has indicated Corporation personnel have been providing excellent cooperation in his efforts to understand past relationship issues, learn about Amtrak's culture and operations, and build a format for establishing a constructive relationship between the OIG and the Corporation.

This is a new relationship and one that will likely be tested over time, as are virtually all relationships between departments and agencies and their Inspectors General. Nevertheless, it seems that all parties are well aware of their respective responsibilities in building and maintaining an environment in which an ongoing positive relationship between the Corporation and the OIG can exist.

Policies and Procedures

The policies and procedures developed by the Corporation and the IG for interacting with each other were provided to me for review on March 2, 2010.

After review of the policies and procedures, I concluded that they are consistent with the letter and the spirit of the IG Act. The IG's independence and ability to oversee Amtrak's operations and expenditure of funds, including funding provided by the Federal government, are properly addressed.

There are a number of features of the policies and procedures that speak to the independence and oversight capabilities of the IG, and the past issues between the Corporation and the IG. A few of these are as follows:

1. The document constituting the policies and procedures is signed by the Chairman, the head of the entity. This provides the necessary import to the message and guidelines contained in the document.
2. The Responsibility section of the document specifies that "The head of Amtrak and the Amtrak Inspector General ("Inspector General") are responsible for the interpretation and administration of this policy." This properly places the responsibility at the highest levels for the successful implementation of the policies and procedures.
3. The document reiterates the IG Act's provision that a designated Federal entity's (DFE) IG, in this case Amtrak, is under the general supervision of the head of the DFE and that the IG is not subject to supervision by any other officer or employee of the DFE. (IG Act, section 8G(d)) This emphasizes the IG's independence.
4. The document reiterates the IG Act's provision that no one in a host establishment or DFE may "…prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of

any audit or investigation." (IG Act, section 8G(d)) This again emphasizes the IG's independence.

5. The document provides for, as does the IG Act, full and unimpeded access to all information at Amtrak. (IG Act, section 6(a)(1)) This, along with the reiteration of the IG Act in 3 & 4 above, serves to ensure that all Amtrak employees, particularly those not familiar with the IG Act, are informed of these essential provisions of the IG Act.
6. The OIG's handling of confidential, sensitive, or privileged Amtrak information obtained in connection with OIG review activities has been effectively dealt with in the document. The document provides for a process of internal discussion between the IG and management regarding the public release of such information, but with Amtrak's acknowledgement of the IG's final authority to decide whether such information should be released in a public report.
7. The document sets forth a number of general principles to guide the relationship between the Corporation and the IG. These address the Chairman's and Board's expectations of all staff regarding matters such as professionalism and mutual respect, open communication, objectivity and fairness, and the need for the OIG to respect and properly protect Amtrak information. All Amtrak personnel should benefit from the Chairman setting forth his and the Board's expectations in these areas.
8. The document establishes an Audit Liaison position to facilitate and coordinate the OIG's access and activities within the Corporation. This has the potential to provide an effective bridge between the OIG and the Corporation, and to significantly enhance the Corporation's effective and timely response to OIG products.

In summary, the document reiterates the role and authorities of the IG as delineated in the IG Act, and sets forth Amtrak leadership's expectations for all Corporation employees in establishing and maintaining an environment within which the OIG can maximize its effectiveness and contributions to the Corporation's operations and performance.

However, as also set forth in the document, it will be incumbent on the Chairman and the IG to ensure that all Amtrak employees adhere to all provisions of the policies and procedures.

Corporate Governance

Critical to building and maintaining an environment in which a continuing constructive relationship between the Corporation and the OIG can exist are the Chairman and the Board setting: 1) clear expectations for interaction between all Amtrak employees and the OIG, and 2) the proper leadership tone regarding this interaction. These two elements of leadership need to be established by the Chairman, who is the head of the entity, and the Board. The President and CEO, as the day-to-day manager of the Corporation, must play a vital role in the effective implementation of the expectations and leadership tone. During my discussions with the Chairman, the Board, and the President and CEO, each seemed to have a full appreciation for the leadership now required to create and maintain the proper relationship between the Corporation and its IG.

The Chairman also has a full appreciation that, regardless of what the policies and procedures prescribe regarding the relationship between the Corporation and the OIG, effective ongoing implementation of the policies and procedures will be the key. This was evidenced by a comment the Chairman made to me stating, in effect, that written guidelines and good intentions are important, but actions will ultimately be the determining factor in creating a healthy and viable relationship between the parties.

Concluding Remarks

I wish to thank the Chairman, the Board, the members of the Executive Committee, and the IG and his staff for the many courtesies extended to me as I conducted this evaluation. All personnel with whom I came into contact were most helpful.

If you have any questions, please call me at (703) 883-4030 or 4241. I would be pleased to discuss this report with you.

Sincerely,

Carl A. Clinefelter
Inspector General
Farm Credit Administration
Vice Chairperson
Council of the Inspectors General on Integrity and Efficiency

EXHIBIT 28

Congress of the United States
Washington, DC 20510

July 30, 2009

Via Electronic Transmission

The Honorable Jeffrey Zients
Executive Chair, Council of the Inspectors General for Integrity and Efficiency
Deputy Director for Management, Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Zients:

The Inspector General Reform Act (P.L. 110-409) was introduced to strengthen the independence and integrity of the Inspectors General. One of the most important provisions of the legislation was Section 3 which amended the procedures for the removal of Inspectors General. Specifically, Section 3 requires that, "the head of the designated Federal entity shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer." The Senate Committee Report (S. Rep. 110-262) accompanying the Inspectors General Reform Act stated the intent of Congress in relying on this prior notice of reasons provision to protect Inspectors General rather than adopting explicit "for cause" requirements contained in the House version of the bill:

> The Committee intends that Inspectors General who fail to perform their duties properly whether through malfeasance or nonfeasance, or whose personal actions bring discredit upon the office, be removed. The requirement to notify the Congress in advance of the reasons for the removal should serve to ensure that Inspectors General are not removed for political reasons.

However, the 30-day notice provision cannot serve its purpose if it is implemented in a way that thwarts the ability of Congress to obtain timely information about the reasons for the removal of an inspector general.

Thus, we are writing to you today regarding the retirement and separation agreement of Fred E. Weiderhold, Jr., the former Inspector General (IG) of the National Railroad Passenger Corporation (Amtrak). Rather than receiving 30-days prior notice of Mr. Weiderhold's removal as Inspector General, Congress is learning only now -- more than 30 days *after* his removal -- the reasons that Amtrak's Board of Directors took action to dismiss him.

On June 18, 2009, Mr. Weiderhold entered into a separation agreement with Amtrak, which is attached to this letter. Amtrak presented the agreement to Mr. Weiderhold on June 17, 2009, indicating that if he did not sign it by June 19, 2009, the Chairman of the Board would send a 30-day notice letter to Congress to begin the process of removing him as Inspector General, as required by the IG Reform Act. Under this agreement, Amtrak agreed to pay Mr. Weiderhold a severance payment of $244,573 and an additional lump-sum payment of $38,090 in consideration, in part, for his agreement not to publically or privately disparage Amtrak or make any statements regarding his resignation without first clearing those statements with Amtrak. As originally entered into, the agreement did not allow for Mr. Weiderhold to speak to Congress about the Board's actions to remove him as Inspector General, the reasons for those actions, or anything else related to the circumstances of his departure as IG.

The agreement was amended to permit providing information to Congress only after we began asking questions about his removal. The time it took to amend the agreement caused a period of confusion and delay before the true facts and reasons for Mr. Weiderhold's departure could be known to Congress. This is in direct contradiction to the purposes and goals of the 30-day notice provision in the IG Reform Act. Therefore, we write today to ask for the Council of the Inspectors General for Integrity and Efficiency (CIGIE) for its views on this agreement and its gag provisions.

As you know, the Inspector General Reform Act prohibits designated federal entities such as Amtrak from paying cash bonuses or cash awards to Inspectors General.[1] Federal law also prohibits agencies from preventing employees from communicating with Congress or enforcing gag agreements that do not contain an explicit exception for providing information to Congress.[2] Accordingly, we would appreciate hearing CIGIE's views on the following issues:

1) Should designated federal entities or the President be allowed to require Inspectors General to sign gag agreements without specific exceptions for communications with Congress?

2) Are there other examples of other Inspectors General being required to sign gag agreements or receiving large severance payments?

3) Does CIGIE believe that large severance payments to Inspectors General can pose the same risks to the appearance of IG independence as bonuses and cash awards. If not, what is CIGIE's view of the appropriateness of such payments?

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[1] 5 U.S.C.S. Appx § 3(f)

[2] 5 U.S.C. § 7211; Omnibus Appropriations Act of 2009, Pub L. no. 111-8, 117 Stat. 685 (2009).

We look forward to hearing CIGIE's views on these matters. Please send your response electronically in PDF format to Brian_Downey@finance-rep.senate.gov. Thank you in advance for your assistance and we would appreciate a response to this inquiry by August 13, 2009. Should you have any questions regarding this matter, please do not hesitate to contact Jason Foster of Senator Grassley's staff at (202) 224-4515, or Stephen Castor of Congressman Issa's staff at (202) 225-5074.

Sincerely,

Charles E. Grassley
Ranking Member
Committee on Finance

Darrell Issa
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

cc: The Honorable Joseph I. Lieberman
Chairman
Senate Committee on Homeland Security and Governmental Affairs

The Honorable Susan M. Collins
Ranking Member
Senate Committee on Homeland Security and Governmental Affairs

The Honorable Edolphus Towns
Chairman
U.S. House Committee on Oversight and Government Reform

The Honorable Phyllis K. Fong
Council of the Inspectors General for Integrity and Efficiency- Chair
U.S. Department of Agriculture
Inspector General

Carl A. Clinefelter
Council of the Inspectors General for Integrity and Efficiency- Vice-Chair
Farm Credit Administration
Inspector General

EXHIBIT 29

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEPUTY DIRECTOR
FOR MANAGEMENT

August 14, 2009

The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Darrell Issa
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Senator Grassley and Representative Issa:

Thank you for bringing to my attention the separation agreement between Mr. Weiderhold and Amtrak, and for seeking the views of the Council of the Inspectors General for Integrity and Efficiency (CIGIE) on this agreement. As you know, the Chairperson of CIGIE is Phyllis K. Fong, the Inspector General of the Department of Agriculture, and as Deputy Director for Management at OMB, I serve as Executive Chairperson of CIGIE. Since my assumption of duties at OMB following my confirmation by the United States Senate on June 22, 2009, I have had the privilege of working directly with Ms. Fong on several issues impacting the Inspector General community and participated in my first CIGIE meeting on July 28, 2009.

Inspectors General serve a critical independent role in promoting integrity and efficiency at departments and agencies of the Federal Government and at Designated Federal Entities. I am committed to working with CIGIE to support their vital work and I appreciate your request to work with CIGIE to develop views on the separation agreement between Mr. Weiderhold and Amtrak.

In this case, Amtrak is a Designated Federal Entity and, as such, its Inspector General is appointed and removable by the Chairman of Amtrak, not the President of the United States, pursuant to the Inspector General Act of 1978, as amended. Moreover, CIGIE has no formal statutory authorities or responsibilities with respect to removals of Inspectors General. Although Amtrak's Chairman advised the OMB Director by letter dated June 24, 2009 of the retirement of Mr. Weiderhold and the appointment of an interim Inspector General, neither OMB nor CIGIE had notice or knowledge of the separation agreement or its provisions prior to our receipt of your letter. In addition, to our knowledge, Amtrak did not provide any advance notice to, or otherwise involve, anyone at CIGIE or OMB (or any other office in the Executive Office of the President) regarding Amtrak's decision to seek the separation of Mr. Weiderhold.

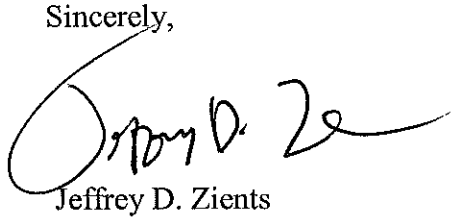
While CIGIE does not play a role in the employment relationships between individual Inspectors General and their agencies, I have consulted with Ms. Fong and, on behalf of CIGIE, we share your policy concerns about the nature of the separation agreement and the restrictions on communication with Congress that it imposed upon Mr. Weiderhold. In response to your specific questions, we offer the following views.

As an initial matter, you have asked whether designated federal entities or the President should be allowed to require Inspectors General to sign "gag agreements" without specific exceptions for communications with Congress. You have also asked whether there are examples of other Inspectors General being required to sign such agreements. In response, we believe that communications with members of Congress and Congressional committees of jurisdiction are in the public interest, consistent with certain limitations, such as those related to national security interests and matters of Executive privilege. In addition, we are not aware of other examples of an Inspector General being requested or required to sign an agreement of the type you describe.

You have also asked whether there are examples of other Inspectors General who have received "large severance payments," and for CIGIE's view on whether such payments are appropriate, including whether they "can pose the same risks to the appearance of IG independence as bonuses and cash awards." In response, we are not aware of other examples of large severance payments (as noted above, CIGIE does not play a role in the employment relationships between individual Inspectors General and their agencies). While we are not familiar with the particular terms of employment agreements between Designated Federal Entities and their employees, these agreements may address severance payments. With respect to the appropriateness of severance payments, we believe that such payments should be considered in the overall context of the employing agency's personnel policies, any contractual agreements between the Inspector General and his or her agency, the particular circumstances relating to a payment, and the size and nature of the payment. With respect to whether a severance payment is similar to a bonus or a cash award, in terms of its potential impact on the independence of an Inspector General, a severance payment differs from a bonus or a cash award in that a severance payment comes at the end of the employment relationship, whereas a bonus or cash award (at least in the Federal Government) is typically made with the expectation of a continuing employment relationship.

Thank you for your inquiry and your leadership. I appreciate the opportunity to respond to your concerns, and if I or CIGIE may be of further assistance, please do not hesitate to contact me.

Sincerely,



Jeffrey D. Zients
Deputy Director for Management

Identical Letter Sent to:

The Honorable Joseph I. Lieberman
The Honorable Susan M. Collins
The Honorable Edolphus Towns
The Honorable Phyllis K. Fong
Carl A. Clinefelter