

## **Joint Explanatory Statement of the Committee of the Conference**

H.R. 22, Fixing America's Surface Transportation Act (FAST Act) authorizes federal surface transportation programs through fiscal year (FY) 2020. The FAST Act improves our Nation's infrastructure, reforms federal surface transportation programs, refocuses those programs on addressing national priorities, and encourages innovation to make the surface transportation system safer and more efficient.

### **DIVISION A – SURFACE TRANSPORTATION**

#### **Title I – Federal-Aid Highways**

Title I of the FAST Act reauthorizes the Federal-aid Highway and highway safety construction programs through FY 2020, establishes new programs to promote the efficient movement of freight and support large-scale projects of national or regional significance, and makes other policy changes and reforms.

##### *Refocuses on National Priorities*

The FAST Act focuses on the importance of goods movement to the U.S. economy by establishing a new formula program for highway freight projects, and emphasizes the need to address large-scale projects of national or regional importance by establishing a new competitive grant program, the Nationally Significant Freight and Highway Projects (NSFHP) program. Both programs provide limited eligibility for intermodal and freight rail projects. The Act also modifies the National Highway Freight Network created by the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), and requires the redesignation of the Network every five years to reflect changes in freight flows, including emerging freight corridors and critical commerce corridors.

The NSFHP program will facilitate the construction of infrastructure projects that are difficult to complete solely using existing federal, state, local, and private funds. Among other purposes, projects supported by this program will reduce the impact of congestion, generate national and regional economic benefits, and facilitate the efficient movement of freight. This program emphasizes the importance of addressing transportation impediments, which significantly slow interstate commerce. Across the country there are significant bottlenecks that could benefit from this program, which would provide substantial grant funding for infrastructure projects.

To address deficient bridges, the FAST Act continues the set-aside for off-system bridges, and expands funding available for on-system bridges located off the National Highway System.

##### *Increases Flexibility*

The FAST Act converts the Surface Transportation Program (STP) to a block grant program, maximizing the flexibility of STP for states and local governments. It also increases the amount of STP funding that is distributed to local governments from 50 percent to 55 percent over the life of the bill. The Act provides states and local governments with increased flexibility by rolling the Transportation Alternatives Program into STP, and allowing 50 percent of certain

transportation alternatives funding suballocated to local areas to be used on any STP-eligible project.

The FAST Act expands eligibility for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program by allowing states to use National Highway Performance Program, STP block grant, and NSFHP funds to pay the subsidy and administrative costs associated with providing TIFIA credit assistance.

#### *Streamlines Reviews, Reduces Bureaucracy, & Increases Transparency*

The FAST Act streamlines the environmental review and permitting process to accelerate project approvals. The Act includes important reforms to align environmental reviews for historic properties. In addition, it establishes a new pilot program to allow up to five states to substitute their own environmental laws and regulations for the National Environmental Policy Act (NEPA) if the state's laws and regulations are at least as stringent as NEPA. The Act also requires an assessment of previous efforts to accelerate the environmental review process, as well as recommendations on additional means of accelerating the project delivery process in a responsible manner.

The FAST Act increases the transparency of the Federal-aid Highway Program by requiring Federal Highway Administration (FHWA) to provide project-level information to Congress and the public. This information permits monitoring of projects for cost overruns and assists Congress in understanding how states are using their Federal-aid Highway funds.

#### *Promotes Innovative Technologies*

The FAST Act provides for the deployment of transportation technologies and congestion management tools that support an efficient and safe surface transportation system. It encourages the installation of vehicle-to-infrastructure equipment to reduce congestion and improve safety.

#### *Focus on Highway Safety*

The FAST Act increases the focus on roadway safety infrastructure and on the safety needs of pedestrians. In addition, there is an increase in funding to improve the safety of railway-highway grade crossings.

#### *Additional Provisions*

The FAST Act removes a requirement which would have required states to collect superfluous data on unpaved and gravel roads. It also bans the use of funding for automated traffic enforcement systems.

#### *Additional Explanatory Language*

The conferees intend that a wide range of freight projects be eligible under the new formula and competitive grant programs, including projects that eliminate freight bottlenecks, use new technologies to improve the efficiency of freight movement, and modify highways to provide additional freight capacity, including by physically separating passenger vehicles from commercial trucks.

The conference report expands the flexibility for the use of Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds for rural states and for the use of CMAQ funds for port-related freight operations and vehicle-infrastructure communications equipment.

The conferees intend that none of the amendments made by section 1308 affect the authority of the U.S. Department of Justice related to an approved state's implementation of NEPA that existed prior to the date of enactment of this Act.

Pursuant to section 1403 of the conference report, conferees intend that additional monies deposited into the Highway Trust Fund by subsequent Acts shall automatically be made available for obligation to states, without further action by Congress. These adjustments to contract authority, which will be distributed among authorized programs in the same manner as set forth in the FAST Act, will ensure that any funding that flows into the Highway Trust Fund can immediately be used to fund necessary surface transportation investments.

## **Title II – Innovative Project Finance**

Title II of the FAST Act makes additional modifications to improve access to the TIFIA program and expand leveraging opportunities. Specifically, it updates the TIFIA program to enable it to be better utilized by rural areas and more accessible for small projects. This is accomplished by using the leveraging ability of TIFIA to support state infrastructure banks and allowing the U.S. Department of Transportation (USDOT) to set-aside TIFIA funding in order to replace the fees typically collected from TIFIA borrowers to pay for independent financial analysis and outside counsel for rural projects.

The conference report also directs USDOT to establish a streamlined application process for use by an eligible applicant under certain circumstances. It also makes transit-oriented development projects eligible to apply for TIFIA loans and reinstates the ability of a state to capitalize their state infrastructure bank with their federal-aid highway funds for fiscal years 2016 through 2020.

Lastly, the conference report codifies an existing USDOT practice of allowing costs related to highway projects delivered by a public-private partnership that uses an advance construction authorization coupled with the availability payment concession model to be eligible for federal-aid reimbursement.

## **Title III - Public Transportation**

Title III of the FAST Act reauthorizes the programs of the Federal Transit Administration (FTA) through FY 2020 and includes a number of reforms to improve mobility, streamline capital project construction and acquisition, and increase the safety of public transportation systems across the country.

### *Invests in Public Transportation*

The FAST Act provides stable, robust funding for FTA's state and local partners. The five years of predictable formula funding provided by this Act will enable recipients to better manage their long-term capital assets and address the backlog of state of good repair needs. It also includes

funding for new competitive grant programs for buses and bus facilities, innovative transportation coordination, frontline workforce training, and public transportation research activities. Overall, the investments made by this Act will promote greater mobility and access to public transportation services throughout the Nation.

#### *Improves Safety*

The FAST Act clarifies FTA's safety authority with respect to the oversight of, and responsibilities for, the safe operation of rail fixed guideway public transportation systems. It also requires the Secretary of Transportation (Secretary) to undertake a review of safety standards and protocols and evaluate the need to establish federal minimum public transportation safety standards. Finally, the Act requires the Secretary to promote workforce safety through a rulemaking process.

#### *Promotes Wise Investments*

The FAST Act includes a number of reforms to the rolling stock procurement process in an effort to facilitate more cost-effective investments by public transportation agencies. The conferees are aware that one of the biggest challenges to capital asset acquisition, particularly for small and rural public transportation providers, is the high purchasing costs attributable to the relatively small size of the procurement. The Act addresses current purchasing power issues for smaller public transportation providers by supporting cooperative procurements and leasing.

#### *Additional Explanatory Language*

The conference report includes language clarifying the program of interrelated projects under the Capital Investment Grant program. The conferees intend to ensure that project sponsors have the option to seek funding for a program that blends new fixed guideway capital projects, core capacity improvement projects, and small start projects as well as a program of projects that are only new fixed guideway capital projects, core capacity improvement projects, or small start projects.

The conferees note the ongoing efforts of the USDOT in coordination with the U.S. Department of Treasury to advance the Build America Investment Initiative (Initiative). This Initiative is intended to increase infrastructure investment and economic growth by engaging with state and local governments and private sector investors to encourage collaboration, expand the market for public-private partnerships and put federal credit programs to greater use. The conferees encourage the USDOT to utilize all available tools, including the National Surface Transportation and Innovative Finance Bureau and the Expedited Project Delivery for Capital Investment Grants Pilot Program established in section 3005(b) for public transportation infrastructure projects.

Section 3005(b) establishes a program for the expedited project delivery of projects utilizing public-private partnerships. The program streamlines the project delivery process for up to eight grants for new fixed guideway capital projects, core capacity improvement projects, or small start projects. The conferees seek to expedite projects that have a federal interest of less than 25 percent. The conferees intend state and local governments, as well as private investors to complete their due diligence for a project prior to their agreement to commit to the project. This pilot program maintains the Secretary's discretion to determine that the eligible project is a part

of an approved transportation plan; that the applicant has the legal, financial, and technical capacity to carry out the project; that the project will be supported by a public-private partnership; that the project is supported by an acceptable degree of local financial commitment; and that the project will be operated by existing public transportation providers. The conferees do not intend for public-private partnerships to be a means to privatization, rather the pilot program is intended to ensure that the FTA has all of the tools necessary to allow public transportation infrastructure projects to more effectively leverage public dollars and encourage private investment through an innovative expedited project delivery method.

The conferees expect that all projects receiving funding through this expedited process enter into revenue service. Therefore, the conference report includes a provision specifying that an applicant must repay all federal funds awarded for the project from all federal funding sources, for all eligible project activities, facilities, and equipment, plus interest and penalty charges allowed by law if a project is not completed. This provision is intended to ensure that all federal interest is protected and returned plus interest if a public-private partnership fails to deliver a project.

Section 3005(b) requires the Secretary to deliver an annual report on expedited project delivery for capital grants. As with full funding grant agreements under section 5309, this pilot program requires each recipient to conduct a before and after study report, with an additional description and analysis of predicted and actual benefits and costs of the innovative project delivery and financing methods.

The conference report includes a provision to promote the local coordination of all transportation services in an area. The purpose of this provision is to ensure that all transportation providers receiving federal assistance coordinate the provision of service to improve mobility for the transportation disadvantaged, achieve service efficiencies, and reduce or eliminate the duplication of transportation services. Section 3006(b) establishes the “Pilot Program for Innovative Coordinated Access and Mobility” to provide grants for innovative projects that improve the coordination of transportation services and non-emergency medical transportation, including the deployment of technology. In section 3006(c), the conferees direct the members of the Interagency Transportation Coordinating Council on Access and Mobility (Council) to undertake action to improve local coordination, establish a cost-sharing policy, provide recommendations to Congress on eliminating federal barriers to local coordination, and address recommendations made previously to the Council by the Government Accountability Office (GAO) for member federal agencies.

Section 3011 of the conference report includes a provision to allow rolling stock manufacturers that procure iron and steel produced in the United States, as defined in 49 CFR 661.5(b), to include the cost of that iron and steel in the domestic content calculation made pursuant to section 5323(j)(2)(C), when such iron or steel is used in rolling stock frames and car shells. The conferees intend for this provision to apply to rolling stock frames or car shells, regardless of where they are produced, provided the iron or steel is produced in the United States.

To increase accountability, section 3011 requires the Secretary, upon denial of a Buy America waiver, to issue a written certification that the item is produced in the United States in a

sufficient and reasonably available amount, the item is of satisfactory quality, and includes a list of known manufacturers in the United States from which the item can be obtained. This section subsequently requires the Secretary to disclose any waiver denial and subsequent written certification on the website of the USDOT.

The conference report includes a definition of a small purchase to mean a purchase of not more than \$150,000 for the application of Buy America requirements in section 5323(j).

Section 3013 provides the Secretary with increased authority to assist public transportation systems with severe safety needs. MAP-21 granted the Secretary permission to take enforcement actions against recipients that are noncompliant with federal transit safety law. The conferees expect the Secretary to utilize this authority to issue directives, require more frequent oversight, impose more frequent reporting requirements, require that formula grant funds be spent to correct safety deficiencies before funds are spent on other projects, withdraw funds from a recipient, and provide direct safety oversight when deemed necessary. In addition, the conferees intend to provide clarification that the FTA's authority extends to each of the states in which a multi-state fixed guideway public transportation system operates.

Section 3017 amends FTA's Buses and Bus Facilities grant program to reflect a number of changes. This section allows recipients in a state to pool formula funds to accommodate larger scale procurements. Subsection (b) reinstates a competitive grant bus program to address the capital investment needs of public transportation systems across the country. This competitive grant program includes a 10 percent rural set-aside and a limitation that not more than 10 percent of all grant amounts be awarded to a single grantee. States may also submit a statewide application for bus needs to allow the state, rather than the federal government to distribute competitively awarded grant funds.

The conference report also incorporates grants for low or no emission buses and bus facilities, previously included in the research program, into the competitive bus program. The conferees note that these grants are appropriately situated in the bus program and have included language to ensure that any vehicles or facilities financed under this program are ready for full integration into a public transportation system. Additionally, the new low or no emissions buses and bus facilities grant program includes project eligibility for rehabilitating or improving existing public transportation facilities to accommodate low or no emission vehicles to account for such things as retrofitting to include charging stations.

The conferees are aware that one of the biggest challenges to capital asset acquisition, particularly for small and rural public transportation providers, is the high purchasing costs attributable to the relatively small size of the procurement. The conferees intend to address current purchasing power issues for smaller public transportation providers in a variety of ways. First, the conference report includes a provision allowing multiple states and providers to purchase capital assets through cooperative procurements. These procurements allow one state to act as a lead procurement agency in an administrative capacity on behalf of each participant to the contract. These voluntary cooperative procurements will enable providers purchasing similar capital assets to pool their procurement requests, which will increase the size of the request and result in the procurement receiving a more competitive bid from the manufacturers. This

provision will not only support the needs of small and rural public transportation providers, but also provide additional purchasing opportunities for large and medium-sized public transportation providers.

In addition, the conference report creates a pilot program to allow up to three geographically diverse nonprofits to host cooperative procurement contracts. These are intended to be separate from the state cooperative purchasing contracts and provide another opportunity for public transportation systems of all sizes to enhance their purchasing options.

Section 3019 of the conference report reduces the barriers for transit agencies to develop and enter into leasing arrangements for public transportation equipment or facilities by removing existing regulatory requirements that have impeded the authority of transit agencies seeking to reduce long-term capital costs. The conference report ensures that the terms of a lease agreement are negotiated by the grantee to best suit their short- and long-term needs.

#### **Title IV - Highway Traffic Safety**

Title IV of the FAST Act reauthorizes highway traffic safety programs administered by the National Highway Traffic Safety Administration (NHTSA) through FY 2020 and makes several reforms to existing law to help keep drivers, pedestrians, and our roads safer.

##### *Prioritizes Emerging Safety Needs*

The FAST Act enables states to spend more funds on the pressing safety needs unique to their states by reallocating unspent National Priority Safety Program funds and increasing the percentage of such funds that can be flexed to each state's traditional safety programs. It also requires the Secretary to study the feasibility of establishing an impairment standard for drivers under the influence of marijuana and provide recommendations on how to implement such a standard. Finally, the Act requires NHTSA to take additional actions to improve awareness of the dangers of drug impaired driving.

##### *Improves Safety*

The FAST Act reforms the Impaired Driving Countermeasures, Distracted Driving, and State Graduated Driver License incentive grants to reduce unreasonable barriers to state eligibility, while strengthening incentives for states to adopt laws and regulations to improve highway safety. It encourages states to increase driver awareness of commercial motor vehicles. Finally, the Act creates a state grant to enhance safety for bicyclists, pedestrians, and other non-motorized users.

##### *Additional Explanatory Language*

The conferees are concerned about the dangers posed by unsecured loads on non-commercial vehicles. Federal grant funds for state-run safety campaigns raising awareness about the dangers posed by unsecured loads are currently eligible for funding under State Highway Safety Programs (23 U.S.C. 402). Therefore, the conferees encourage states to address unsecured loads the next time they submit their State Highway Safety Program for approval by the Secretary or through other state initiatives.

The conferees are concerned with the number of deaths due to impaired driving. The conference report includes Senate language to create an incentive grant for states that provide a 24-7 sobriety program available for use within a state.

As a condition of receiving grant funds, NHTSA currently requires states to sign certifications and assurances that they comply with applicable statutes and regulations with regard to maintenance of effort requirements. The conference report provides additional flexibility to allow states to certify compliance with maintenance of effort requirements. Therefore, the conferees expect that NHTSA should reasonably defer to state interpretations and analyses that underpin such certifications.

## **Title V - Motor Carriers**

Title V of the FAST Act reauthorizes the programs of the Federal Motor Carrier Safety Administration (FMCSA) through FY 2020 and includes several reforms to improve truck and bus safety, while reducing regulatory burdens.

### *Improves Safety*

The FAST Act incentivizes the adoption of innovative truck and bus safety technologies and accelerates the implementation of safety regulations required by law. The Act also authorizes a new testing method to detect the use of drugs and alcohol by commercial motor vehicle drivers.

### *Reduces Regulatory Burdens*

The FAST Act reforms the regulatory process by requiring FMCSA to use the best available science and data on various segments of the trucking industry when developing rulemakings and by establishing a process under which the public or the motor carrier industry can petition FMCSA to revise or repeal regulations if they are no longer current, consistent, and uniformly enforced. The Act also consolidates nine existing FMCSA grant programs into four and streamlines program requirements to reduce administrative costs and regulatory burdens on states.

### *Provides Opportunities for Veterans*

The FAST Act awards grant priority to programs that train veterans for careers in the trucking industry and reduces regulatory barriers faced by veterans seeking employment as commercial truck and bus drivers. It also establishes a pilot program for younger veterans and reserve members that received training during their service in the military to drive certain commercial motor vehicles in interstate commerce.

### *Reform of Compliance, Safety, Accountability Program*

The FAST Act requires a thorough review and reform of the current enforcement prioritization program to ensure that FMCSA's Compliance, Safety, Accountability analysis is the most reliable possible for the public and for enforcement purposes. Following reviews by the GAO, the U.S. Department of Transportation Inspector General and various law enforcement organizations, the Act requires that FMCSA *analysis* of enforcement data be temporarily removed from public websites on the day after enactment, until the agency has completed



reforms required by this Act. Enforcement and inspection data reported by states and enforcement agencies will remain available for public view.

*Additional Explanatory Language*

Section 5101 requires that states grant maximum reciprocity for inspections conducted using a nationally accepted system that allows ready identification of previously inspected commercial motor vehicles. The conferees believe that decals used to meet this requirement should adhere to design and functional requirements as specified by the Secretary. Section 5101 also provides additional flexibility for states to exercise the “Right of Entry” requirement provided by the Motor Carrier Safety Assistance Program to ensure that alternate methods for gaining access to motor carriers can be used to satisfy inspection or enforcement requirements.

The FMCSA has informed the conferees and the conferees agree that nothing in section 5402 authorizes the use of hair testing as an alternative to urine tests until the U.S. Department of Health and Human Services establishes federal standards for hair testing.

The conferees intend section 5501 to be carried out to identify delays experienced by commercial motor vehicle drivers, including during the loading and unloading of goods at shipper and receiver facilities. The conferees do not intend this provision to measure productivity at ports.

Section 5515 requires the Administrator of the FMCSA to conduct a study on the safety effects of a motor carrier operator commuting more than 150 minutes. On June 17, 2014, a tractor-trailer struck a van near Cranbury, New Jersey, killing one person and injuring several others. According to the National Transportation Safety Board, the truck driver had been awake more than 24 hours at the time of the crash. In addition, the Georgia-based driver had driven 12 hours overnight to his job in Delaware before starting his shift. The study shall address the prevalence of long commutes in the industry and the impact on safety.

Conferees expect that the implementation of section 5516 will provide the maximum flexibility possible to re-route longer combination vehicles in the affected state to divided highways, highway facilities designed for freight transportation, or along routes that will enhance overall highway safety.

In implementing section 32934 of MAP-21, FMCSA determined that the language in subsection (b), which ensures that federal transportation funds to a state would “not be terminated, limited, or otherwise interfered with,” only applied with respect to the exemptions enumerated in subsection (a) and not with respect to any further exemption or other minimum standard imposed by state law or regulation. Section 5518 clarifies that states which enact laws or regulations that exempt or impose other minimum standards beyond those enumerated in subsection (a) for farm vehicles and the drivers of such vehicles will not lose federal transportation funds. FMCSA reviewed this section and informed the conferees that it will be implemented in the manner described above.

**Title VI – Innovation**

Title VI of the FAST Act reauthorizes the programs for the research activities of the USDOT through FY 2020 and includes several provisions to promote innovation and the use and deployment of transportation technologies to address various surface transportation needs.

*Invests in Innovation*

The FAST Act provides dedicated Highway Trust Fund authorizations to carry out research and development, technology deployment, training and education, intelligent transportation systems activities, grants to University Transportation Centers, and to administer the Bureau of Transportation Statistics (BTS).

*Emphasizes Technology*

The FAST Act ensures that these programs are implemented and Intelligent Transportation Systems (ITS) are deployed in a technology neutral manner. The Act promotes technology neutral policies that accelerate vehicle and transportation safety research, development and deployment by promoting innovation and competitive market-based outcomes, while using federal funds efficiently and leveraging private sector investment across the automotive, transportation and technology sectors.

*Promotes Safety*

The FAST ACT encourages FHWA and other federal agencies, states, local governments, and stakeholders to examine additional ways that they can safely and expediently drive the adoption, deployment, and delivery of innovative technology and techniques that would enhance the safety and efficiency of the Nation's roadways.

*Establishes a Competitive Deployment Program*

The FAST Act establishes a competitive advanced transportation and congestion management technologies deployment grant program to promote the use of innovative transportation solutions. The deployment of these technologies will provide Congress and USDOT with valuable real life data and feedback to inform future decision making.

*Updates Federal Regulations*

The use of transportation technologies by state and local partners is growing, and the FAST Act makes several changes to ensure that federal regulations promote innovation, not stand in its way.

*Additional Explanatory Language*

The conference report provides for the collection of statistics on port capacity and throughput for the 25 largest ports to be reported annually by the BTS.

The conference report focuses on research for user based alternative revenue mechanisms that preserve a user fee structure to maintain the long-term solvency of the Highway Trust Fund. It is essential that the federal government properly invest in our infrastructure by looking to alternative revenue sources.

The conferees believe that federal, state, and local agencies must be prepared for the future growth and adoption of innovative technologies such as autonomous vehicles and that the ITS

program should support research initiatives that are engaged in the research, development, testing, and validation of autonomous vehicle technologies.

Subtitle C of Title V of the Water Resources Reform and Development Act of 2014 (128 Stat. 1332-1345) established the “Water Infrastructure Finance and Innovation Act” (WIFIA), a program designed to assist a wide array of water resources infrastructure projects intended to attract private capital, along with state and local public capital, alongside federal investment. Section 1445 of the conference report modifies the WIFIA program to ensure both public and private capital have an equal opportunity to participate, thereby ensuring financing is adequately leveraged. Some have expressed concerns that modifying the prohibition on the use of tax exempt debt financing may inadvertently disadvantage private capital being used in financing projects. The conferees would request that as the Environmental Protection Agency and the US Army Corps of Engineers continue to implement the WIFIA program, the agencies include specifications that will ensure private capital has an equal opportunity to engage in the financing of these projects.

## **Title VII – Hazardous Material Transportation**

Title VII of the FAST Act strengthens and advances the safe and efficient movement of hazardous materials through a number of reforms and safety improvements. It also authorizes hazardous materials safety and grant programs for fiscal years 2016 through 2020.

### *Enhances Emergency Preparedness and Response*

The FAST Act reforms an underutilized grant program to get more resources to states and Indian tribes for emergency response, while also granting states more power to decide how to spend their planning and training grants to improve emergency response. It helps better leverage training funding for hazardous materials employees and those enforcing hazardous material regulations.

### *Streamlines Processes and Creates Certainty and Transparency for Industry*

The FAST Act accelerates the administrative process and reduces inefficiencies to create certainty for the hazardous materials industry with special permits and approvals. The Act requires a full review of third-party classification labs to ensure the labs can perform such examinations in a manner that meets the hazardous materials regulations. Furthermore, it allows the Pipelines and Hazardous Materials Safety Administration (PHMSA) to respond more effectively during national emergencies. Finally, it requires PHMSA to withdraw a rulemaking on “wetlines” consistent with a GAO study recommending that PHMSA collect more data before proceeding further.

### *Enhances Information Available to First Responders*

The FAST Act requires Class I railroads to generate accurate, real-time, electronic train composition information for first responders through agreements with fusion centers and to provide information about certain flammable liquid shipments to State Emergency Response Commissions (SERCs). It prohibits the withholding of train composition information from first responders in the event of an accident, incident, or emergency. The Act requires the USDOT to establish security and confidentiality protections for the release of any information intended for

fusion centers, SERCs, or other authorized persons. It also requires a GAO study on the quality of emergency response information carried by train crews.

#### *Improves Tank Car Safety Requirements*

The FAST Act enhances safety by requiring new tank cars to be equipped with “thermal blankets,” mandating all legacy DOT-111 tank cars in flammable liquids service are upgraded to new retrofit standards regardless of the product shipped, and setting minimum requirements for the protection of certain valves. Further, it requires reporting on the industry-wide progress and capacity to modify DOT-111 tank cars. Finally, the Act requires a derailment test and an independent evaluation to investigate braking technology requirements for the movement of trains carrying certain hazardous materials, and it requires the Secretary to determine, fully incorporating the results of the testing and evaluation, whether recent electronically-controlled pneumatic braking system requirements are justified.

### **Title VIII – Multimodal Freight Transportation**

Title VIII of the FAST Act focuses attention on the importance of multimodal freight transportation as a foundation for the United States to compete in the global economy. The Act establishes a multimodal freight policy and a national multimodal freight strategic plan and designates a National Multimodal Freight Network to assist states in strategically directing resources and informing freight transportation planning.

The FAST Act encourages each state to establish a freight advisory committee comprised of freight stakeholders to provide input on freight projects and funding needs. Further, states will be required to develop a fiscally-constrained freight plan, either independently or incorporated into the broader transportation planning process.

#### *Additional Explanatory Language*

The conferees intend for states to solicit input from a broad range of freight stakeholders in adding mileage to the National Multimodal Freight Network, including critical rural freight corridors. The conferees intend for states to take a strong lead in designating facilities for inclusion in the final National Multimodal Freight Network.

The conferees emphasize the importance of the national strategic freight plan, which will now be multimodal in scope, and, among other things, will assess the conditions and performance of the National Multimodal Freight Network, and develop best practices for improving the performance of the Network, including critical commerce corridors and critical urban and rural access to critical freight corridors.

### **Title IX – National Surface Transportation and Innovative Finance Bureau**

Title IX of the FAST Act establishes the National Surface Transportation and Innovative Finance Bureau (Bureau) within USDOT. The Bureau will serve as a one-stop-shop for states and local governments to receive federal financing or funding assistance, as well as technical assistance, in order to move forward with complex surface transportation projects. The Act directs the Bureau to administer the application process for various credit assistance programs and the NSFHP

program; promote innovative financing best practices; reduce uncertainty and delays with environmental reviews and permitting; reduce costs and risks to taxpayers in project delivery; and procurement. The Act also gives the Secretary the authority to consolidate or eliminate different offices within USDOT. These targeted improvements are based on previous congressionally initiated reforms, oversight, and USDOT led pilot projects that seek to reduce project delays and maximize taxpayer funding.

Finally, the FAST Act establishes a Council on Credit and Finance (Council) within USDOT. It requires the Council to review applications for various credit assistance programs and the NSFHP program, as appropriate, and then make recommendations to the Secretary about which applications should receive federal financing or funding assistance.

### **Title X – Sport Fish Restoration and Recreational Boating Safety**

Title X of the FAST Act reauthorizes expenditure authority for the Dingell-Johnson Sport Fish Restoration Act through FY 2020 and reforms grant programs to reduce administrative costs and increase flexibility for states. The Act also provides parity for the Coast Guard by establishing a set-aside for the Service’s administrative expenses.

#### *Additional Explanatory Language*

The conferees understand that funds provided under section 10001 are sufficient to pay the salaries and expenses of some, but not all, of the personnel whose duties exclusively involve boating safety, but who are currently funded out of the Service’s Operating Expenses account. Under the authority provided by section 10002, the conferees expect the Coast Guard to use any additional funds provided under section 10001 to pay only the salaries and expenses of personnel whose duties exclusively involve boating safety.

The majority of the U.S. Fish and Wildlife Service’s (USFWS) grants management work with state fish and wildlife agencies occurs at the regional level. As a result, the conferees direct the USFWS to prioritize the use of administrative funds by regional offices to improve grant administration timeliness and responsiveness to state fish and wildlife agencies.

### **Title XI – Rail**

Title XI of the FAST Act reforms Amtrak to improve its business operations and planning; improves rail infrastructure; strengthens freight and passenger rail safety; accelerates project delivery; and leverages innovative rail financing, including potential private sector capital, by reforming an underutilized loan program.

#### *Authorizations*

The FAST Act authorizes fiscally-responsible levels for Amtrak, under a new structure that provides separate funding authorizations for the Northeast Corridor and the National Network. It also authorizes three grant programs to help improve the Nation’s rail infrastructure to meet the future needs of freight and passenger movement.

#### *Amtrak Reforms*

The FAST Act makes significant reforms to the way Amtrak structures its financial reporting and planning functions. This Act aligns these critical functions along Amtrak's core operating business lines. All of Amtrak's financial, business, and asset activities are required to be organized in a way that supports the corporation's major business lines. These provisions will allow Northeast Corridor net operating revenues to be re-invested into the Corridor's substantial capital investment needs, while ensuring Amtrak has the tools and resources needed to efficiently operate its National Network. The Act also creates a State-Supported Route Committee to encourage a more collaborative relationship between states, Amtrak, and USDOT regarding state-supported routes for which states provide financial resources. Finally, the Act encourages non-federal participation in certain elements of Amtrak's system by creating station development opportunities for the private sector; exploring the potential for new revenue streams through right-of-way development; and facilitating the use of local products on Amtrak routes.

#### *Intercity Passenger Rail Policy*

The FAST Act includes provisions to improve the Nation's rail infrastructure and its intercity passenger rail service, while ensuring sound use of taxpayer investments in passenger rail projects. The subtitle authorizes a new Consolidated Rail Infrastructure and Safety Improvements grant program to support a broad array of rail projects and activities, using cost-benefit analysis principles for project selection, and repeals duplicative grant programs. It authorizes a Federal-State Partnership for State of Good Repair grant program designed to improve critical rail assets with a backlog of deferred maintenance, such as Northeast Corridor infrastructure. It also authorizes a Restoration and Enhancement Grant program to assist with, on a competitive basis, the initiation or restoration of routes formerly operated by Amtrak, including the rail service discontinued in the wake of Hurricane Katrina. This program is paired with funding for a Gulf Coast Working Group to study the return of this service.

The Act also includes provisions to enhance collaborative capital planning efforts amongst all Northeast Corridor users. The Act creates competitive opportunities for intercity passenger rail routes and strengthens requirements for large capital projects funded with federal dollars. All grant programs are subject to the grant conditions contained in section 24405 of title 49, United States Code.

#### *Rail Safety*

The safe movement of goods and people by rail remains the top rail policy priority of both the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The Federal Railroad Administration (FRA) recently reported that fiscal year 2014 was one of the safest years on record, and the agency noted that, since fiscal year 2005, total train accidents have declined by 46 percent, total derailments have declined by 47 percent, and total highway-rail grade crossing incidents have declined by 24 percent. The FAST Act aims to further increase safety.

The FAST Act includes several provisions to improve the safety of highway-rail grade crossings, including grade crossing safety action plans, a private grade crossing study, and an evaluation on the use of locomotive horns at grade crossings. Additionally, the Act includes requirements to strengthen the safety of passenger rail, including locomotive recording devices, speed limit

action plans, and locomotive alerters. It also includes a post-accident assessment for the Amtrak accident on May 12, 2015, in Philadelphia, Pennsylvania.

The FAST Act also establishes a process for obtaining a public version of a bridge inspection report, such as a summary form. However, it does not require a railroad to provide, or authorize the FRA to provide, any copy of any bridge inspection report prepared in accordance with section 417 of the Rail Safety Improvement Act of 2008 to any state, political subdivision of a state, or other unauthorized persons.

### *Project Delivery*

Moving projects through the federal review process can be challenging given the number of agencies and entities involved. Subtitle E of this title, the Train, Railroad, and Infrastructure Network Act, streamlines the process for approving rail projects without compromising our historic and natural resources. It does so by applying important provisions already in law for other modes of transportation to rail projects. It directs the Secretary to apply to rail – to the greatest extent feasible – the expedited environmental review procedures already used for highways and transit. It also requires the Secretary to engage in a process to identify additional categorical exclusions used in transportation projects and to propose new and existing exclusions for rail. With respect to historic sites, it preserves existing requirements for important historic sites, such as historic stations, while ensuring expedited delivery of critical improvements to rail infrastructure. It ensures that improvements to certain bridges and tunnels over which common-carrier service has been discontinued or railbanked, but not those bridges and tunnels abandoned from the interstate rail network, are not considered a use of a historic site. This will create an improved and more equitable way for the USDOT to manage federal permitting and reviews for all surface transportation programs, regardless of mode.

### *Financing*

Innovative financing programs are a method to advance major infrastructure. The Railroad Rehabilitation Improvement and Financing (RRIF) program is authorized to provide loans and loan guarantees to railroad projects, ranging from short-line railroad equipment to passenger rail facilities. While this program provides attractive low-interest, long-term financing, it has not been extensively utilized, and its inflexible terms and limited consideration of project-finance style lending features limit its utility to large-scale infrastructure projects. Subtitle F of this title, the Railroad Infrastructure Financing Improvement Act (RIFIA), includes several provisions designed to unlock this program by streamlining USDOT's approval processes; mirroring programmatic features similar to the successful TIFIA program to make RRIF a more flexible lender; and making it easier to develop partnerships that combine RRIF loans with other types of financing, including private financing. It also requires the Secretary to pay back the credit risk premium, with interest, to a borrower that has repaid its RRIF loan, regardless of whether the loan is or was included in a cohort. The intent of this provision is for the Secretary to pay back such credit risk premium, with interest, as soon as feasible but not later than three months after the date of enactment. Finally, subtitle F includes language that modifies general authority to provide direct loans under RRIF to include at least one of the eligible applicants in a joint venture.

<b>H.R. 22, Fixing America's Surface Transportation Act (FAST Act)</b>			
<b>H.R. 22 EAH</b>	<b>H.R. 22 EAS</b>	<b>Titles</b>	<b>Conference Agreement</b>
<b>DIVISION A -- SURFACE TRANSPORTATION</b>			
1	1 2	Short title; table of contents.	Senate recedes with modifications.
2	3	Definitions.	Senate recedes.
3	4	Effective date.	Senate recedes.
4	--	References.	Senate recedes.
<b>TITLE I -- FEDERAL-AID HIGHWAYS</b>			
<i>Subtitle A -- Authorizations and Programs</i>			
1101	11001	Authorization of appropriations.	Senate recedes with modifications.
1102	11002	Obligation ceiling.	Senate recedes with modifications.
1103	--	Definitions.	Senate recedes.
1104	11003	Apportionment.	Senate recedes with modifications.
1105	--	National highway performance program.	Senate recedes.
1106	11004 11014	Surface transportation block grant program.	Senate recedes with modifications.
1107	35401	Railway-highway grade crossings.	Senate recedes.
1108	11011 11012	Highway safety improvement program.	Senate recedes with modifications.
1109	11013	Congestion mitigation and air quality improvement program.	House recedes with modifications.
1110	43001	National highway freight policy.	Senate recedes with modifications.
1111	44001 44002	Nationally significant freight and highway projects.	Senate recedes with modifications.
1112	--	Territorial and Puerto Rico highway program.	Senate recedes.
1113	12101	Federal lands and tribal transportation program.	Senate recedes with modifications.
1114	11024	Tribal transportation program amendment.	House recedes.
1115	11027	Federal lands transportation program.	Senate recedes with modifications.
1116	--	Tribal transportation self-governance program.	Senate recedes.
1117	11020	Emergency relief for federally owned roads.	House recedes.
1118	11007	Highway use tax evasion projects.	Senate recedes with modifications.
1119	11008	Bundling of bridge projects.	Senate recedes.
1120	--	Tribal High Priority Projects program.	House recedes.



1121	11010	Construction of ferry boats and ferry terminal facilities.	House recedes.
<b><i>Subtitle B -- Planning and Performance Management</i></b>			
1201	11005	Metropolitan transportation planning.	House recedes with modifications.
1202	11006	Statewide and nonmetropolitan transportation planning.	House recedes with modifications.
<b><i>Subtitle C -- Acceleration of Project Delivery</i></b>			
1301	11116	Satisfaction of requirements for certain historic sites.	Senate recedes.
1302	--	Treatment of improvements to rail and transit under preservation requirements.	Senate recedes.
1303	--	Clarification of transportation environmental authorities.	Senate recedes.
1304	11117	Bridge exemption from consideration under certain provisions.	House recedes.
1305	11103 11104 11105 11106	Efficient environmental reviews for project decisionmaking.	Senate recedes with modifications.
1306	11107	Improving transparency in environmental reviews.	Senate recedes with modifications.
1307	11108 31106	Integration of planning and environmental review.	House recedes with modifications.
1308	11109	Development of programmatic mitigation plans.	Senate recedes with modifications.
1309	--	Delegation of authorities.	Senate recedes with modifications.
1310	11101	Categorical exclusion for projects of limited Federal assistance.	Senate recedes.
1311	11113 31105	Application of categorical exclusions for multimodal projects.	Senate recedes.
1312	11112	Surface transportation project delivery program.	Senate recedes with modifications.
1313	--	Program for eliminating duplication of environmental reviews.	Senate recedes with modifications.
1314	12202	Assessment of progress on accelerating project delivery.	Senate recedes.
1315	--	Improving State and Federal agency engagement in environmental reviews.	Senate recedes with modifications.
1316	31103 11110	Accelerated decisionmaking in environmental reviews.	Senate recedes.
1317	31104	Aligning Federal environmental reviews.	Senate recedes with modifications.

--	31101	Delegation of authority.	Senate recesses.
--	31102	Infrastructure Permitting Improvement Center.	Senate recesses.
<b><i>Subtitle D -- Miscellaneous</i></b>			
1401	11017 11018 11019	Tolling; HOV facilities; Interstate reconstruction and rehabilitation.	Senate recesses with modifications.
1402	--	Prohibition on the use of funds for automated traffic enforcement.	Senate recesses.
1403	11205 34104	Repeat offender criteria.	House recesses with modifications.
1404	12204	Highway Trust Fund transparency and accountability.	Senate recesses with modifications.
1405	11204	High priority corridors on National Highway System.	Senate recesses.
1406	11009	Flexibility for projects.	Senate recesses.
1407	11009	Productive and timely expenditure of funds.	Senate recesses.
1408	11015	Consolidation of programs.	Senate recesses.
1409	11028	Federal share payable.	Senate recesses with modifications.
1410	--	Elimination or modification of certain reporting requirements.	Senate recesses.
1411	14001	Technical corrections.	Senate recesses with modifications.
1412	12208 14001	Safety for users.	Senate recesses.
1413	12208	Design standards.	Senate recesses.
1414	--	Reserve fund.	Senate recesses with modifications.
1415	--	Adjustments.	Senate recesses with modifications.
1416	11022	National electric vehicle charging, hydrogen, propane, and natural gas fueling corridors.	Senate recesses with modifications.
1417	--	Ferries.	House recesses.
1418	15005	Study on performance of bridges.	House recesses.
1419	11207	Relinquishment of park-and-ride lot facilities.	Senate recesses.
1420	--	Pilot program.	Senate recesses with modifications.
1421	--	Innovative project delivery examples.	Senate recesses.
1422	15004	Administrative provisions to encourage pollinator habitat and forage on transportation rights-of-way.	Senate recesses.
1423	--	Milk products.	Senate recesses.
1424	11203	Interstate weight limits for emergency vehicles.	House recesses.

1425	11203	Vehicle weight limitations -- Interstate System.	Senate recesses with modifications.
1426	--	New national goal, performance measure, and performance target.	House recesses.
1427	11115	Service club, charitable association, or religious service signs.	Senate recesses.
1428	--	Work zone and guard rail safety training.	Senate recesses.
1429	--	Motorcyclist advisory council.	Senate recesses with modification.
1431	--	Highway work zones.	Senate recesses with modifications.
1432	--	Study on State procurement of culvert and storm sewer materials.	House recesses.
1433	--	Use of durable, resilient, and sustainable materials and practices.	Senate recesses.
1434	--	Strategy to address structurally deficient bridges.	House recesses.
1435	--	Sense of Congress.	Senate recesses.
1436	--	Identification of roadside highway safety hardware devices.	Senate recesses.
1437	--	Use of modeling and simulation technology.	Senate recesses.
1438	--	National Advisory Committee on Travel and Tourism Infrastructure.	Senate recesses.
1439	--	Regulation of motor carriers of property.	Senate recesses.
1440	--	Emergency exemptions.	Senate recesses with modifications.
1441	--	Program to assist veterans to acquire commercial driver's licenses.	Senate recesses with modifications.
1442	--	Operation of certain specialized vehicles on certain highways in the State of Arkansas.	Senate recesses.
1444	--	Exemptions from requirements for certain welding trucks used in pipeline industry.	Senate recesses.
1443	--	Projects for public safety relating to idling trains.	Senate recesses with modifications.
1445	--	Waiver.	Senate recesses.
1446	--	Federal authority.	House recesses.
--	11016	State flexibility for National Highway System modifications	House recesses.
--	11021	Bridges requiring closure or load restrictions.	Senate recesses.
--	11023	Asset management.	House recesses with modifications.
--	11025	Nationally significant Federal lands and Tribal projects program.	House recesses with modifications.
--	11026	Federal lands programmatic activities.	House recesses.
--	11029	Obligation and release of funds.	Senate recesses.

--	11102	Programmatic agreement template.	House recesses.
--	11110	Adopting of Departmental environmental documents.	Senate recesses.
--	11111	Technical assistance for States.	House recesses.
--	11114	Modernization of the environmental review process.	House recesses.
--	11118	Elimination of barriers to improve at-risk bridges.	House recesses.
--	11119	At-risk project preagreement authority.	House recesses.
--	11201	Credits for untaxed transportation fuels.	Senate recesses.
--	11202	Justification reports for access points on the Interstate System.	House recesses.
--	11206	Vehicle-to-infrastructure equipment.	House recesses with modifications.
--	11208	Transfer and sale of toll credits.	Senate recesses.
	11209	Regional infrastructure accelerator demonstration program.	House recesses.
--	11210	Sonoran Corridor Interstate development.	Senate recesses.
--	12102	Performance management data support program.	House recesses.
--	12201	Every Day Counts initiative.	Senate recesses.
--	12203	Grant program for achievement in transportation for performance and innovation.	Senate recesses.
--	12205	Report on highway trust fund administrative expenditures.	House recesses.
--	12206	Availability of reports.	House recesses.
--	12207	Performance period adjustment.	House recesses.
--	15001	Appalachian regional development highway system.	House recesses.
--	15002	Appalachian regional development program.	House recesses.
--	15003	Water infrastructure finance and innovation.	House recesses.
<b>TITLE II -- INNOVATIVE PROJECT FINANCE</b>			
2001	13001	Transportation Infrastructure Finance and Innovation Act of 1998 amendments.	House recesses with modifications.
2002	13001	State infrastructure bank program.	House recesses with modifications.
2003	--	Availability payment concession model.	Senate recesses.
2004	--	Streamlined application process.	House recesses with modifications.
<b>TITLE III -- PUBLIC TRANSPORTATION</b>			
3001	21001	Short title.	Senate recesses.
3002	21002	Definitions.	Senate recesses with modifications.

3003	21003 21004	Metropolitan and statewide transportation planning.	House recedes with modifications.
3004	21005	Urbanized area formula grants.	Senate recedes with modifications.
3005	21006	Fixed guideway capital investment grants.	House recedes with modifications.
3006	--	Formula grants for enhanced mobility of seniors and individuals with disabilities.	Senate recedes.
3007	21008	Formula grants for rural areas.	House recedes with modifications.
3008	21009	Research, development, demonstration, and deployment program.	House recedes with modifications.
3009	21012	Human resources and training.	House recedes with modifications.
3010	21020	Bicycle facilities.	House recedes with modifications.
3011	21013	General provisions.	Senate recedes with modifications.
3012	21015	Public transportation safety program.	Senate recedes with modifications.
3013	--	Apportionments.	Senate recedes with modifications.
3014	21016	State of good repair grants.	Senate recedes with modifications.
3015	21017	Authorizations.	House recedes with modifications.
3016	21018	Bus and bus facility grants.	Senate recedes with modifications.
3017	--	Obligation ceiling.	Senate recedes with modifications.
3018	21011	Innovative procurement.	Senate recedes with modifications.
3019	--	Review of public transportation safety standards.	Senate recedes.
3020	--	Study on evidentiary protection for public transportation safety program information.	Senate recedes with modifications.
3021	21007	Mobility of seniors and individuals with disabilities.	Senate recedes with modifications.
3022	--	Improved transit safety measures.	Senate recedes.
3023	--	Paratransit system under FTA approved coordinated plan.	Senate recedes with modifications.
3024	--	Report on potential of Internet of Things.	Senate recedes.
3025	--	Report on parking safety.	Senate recedes with modifications.
3026	--	Appointment of directors of the Washington Metropolitan Area Transit Authority.	Senate recedes.

3027	--	Effectiveness of public transportation changes and funding.	Senate recesses.
3028	--	Increase support for Growing States.	House recesses.
--	21010	Private sector participation.	House recesses.
--	21014	Project management oversight.	House recesses with modifications.
--	21019	Salary of Federal Transit Administrator.	House recesses with modifications.
--	21020	Technical and conforming amendments.	House recesses with modifications.
--	31108	Authorization of grants for positive train control.	House recessed with modifications.
<b>TITLE IV -- HIGHWAY TRAFFIC SAFETY</b>			
4001	34101	Authorization of appropriations.	House recesses with modifications.
4002	34102	Highway safety programs.	Senate recesses with modifications.
4003	--	Highway safety research and development.	Senate recesses with modifications.
4004	--	High-visibility enforcement program.	Senate recesses with modifications.
4005	34102 34103 34132 34134	National priority safety programs.	Senate recesses with modifications.
4006	34122	Stop motorcycle checkpoint funding.	House recesses.
4007	--	Marijuana-impaired driving.	Senate recesses.
--	34106	Increasing public awareness of the dangers of drug-impaired driving.	House recesses.
4008	--	National priority safety program grant eligibility.	Senate recesses.
4009	--	Data collection.	Senate recesses with modifications.
4010	34141	Technical corrections.	Senate recesses.
--	34105	Study on the national roadside survey of alcohol and drug use by drivers.	House recesses.
--	34121 34131	Short title.	Senate recesses.
--	34133	Barriers to Data Collection Report.	House recesses with modifications.
<b>TITLE V -- MOTOR CARRIER SAFETY</b>			
<i>Subtitle A -- Motor Carrier Safety Grant Consolidation</i>			
5101	32502	Grants to States.	Senate recesses with modifications.
5102	32504	Performance and registration information	Senate recesses.

		systems management.	
5103	32505	Authorization of appropriations.	Senate recedes with modifications.
5104	32506	Commercial driver's license program implementation.	Senate recedes.
5105	32507	Extension of Federal motor carrier safety programs for fiscal year 2016.	Senate recedes with modifications.
5106	32508	Motor carrier safety assistance program allocation.	Senate recedes with modifications.
5107	32509	Maintenance of effort calculation.	Senate recedes.
--	32501	Definitions.	Senate recedes.
<b><i>Subtitle B -- Federal Motor Carrier Safety Administration Reform</i></b>			
<b><i>Part I -- Regulatory Reform</i></b>			
5201	32603	Notice of cancellation of insurance.	Senate recedes.
5202	32305	Regulations.	Senate recedes with modifications.
5203	32303	Guidance.	Senate recedes with modifications.
5204	32304	Petitions.	Senate recedes with modifications.
--	32201	Petitions for regulatory relief.	House recedes with modifications.
--	32202	Inspector standards.	House recedes.
<b><i>Part II -- Compliance, Safety, Accountability Reform</i></b>			
5221	32001	Correlation study.	Senate recedes with modifications.
5222	32002	Beyond compliance.	Senate recedes with modifications.
5223	32003	Data certification.	Senate recedes with modifications.
5224	--	Interim hiring standard.	House recedes.
--	32004	Data improvement.	House recedes.
--	32005	Accident report information.	House recedes with modifications.
<b><i>Subtitle C -- Commercial Motor Vehicle Safety</i></b>			
5301	32301	Update on statutory requirements.	House recedes with modifications.
5302	32601	Windshield technology.	House recedes.
5303	32302	Prioritizing statutory rulemakings.	Senate recedes with modifications.
5304	--	Safety reporting system.	Senate recedes.
5305	32503	New entrant safety review program.	Senate recedes.
5306	32201	Ready mixed concrete trucks.	House recedes.
--	32006	Post-accident report review.	House recedes with

			modifications.
--	32007	Recognizing excellence in safety.	Senate recesses.
--	32008	High risk carrier reviews.	House recesses.
<b><i>Subtitle D -- Commercial Motor Vehicle Drivers</i></b>			
5401	--	Opportunities for veterans.	Senate recesses with modification.
5402	32611	Drug-free commercial drivers.	Senate recesses.
5403	--	Certified medical examiners.	House recesses.
5404	32403	Commercial driver access.	House recesses with modifications.
5405	--	Veterans expanded trucking opportunities.	Senate recesses with modifications.
<b><i>Subtitle E -- General Provisions</i></b>			
5501	--	Minimum financial responsibility.	Senate recesses with modifications.
5502	--	Delays in goods movement.	Senate recesses.
5503	--	Report on motor carrier financial responsibility.	Senate recesses with modifications.
5504	32401	Emergency route working group.	Senate recesses.
5505	32606	Household goods consumer protection working group.	Senate recesses with modifications.
5506	32203	Technology improvements.	Senate recesses with modifications.
5507	--	Notification regarding motor carrier registration.	Senate recesses.
5508	--	Report on commercial driver's license skills test delays.	Senate recesses with modifications.
5509	--	Covered farm vehicles.	Senate recesses.
5510	--	Operators of hi-rail vehicles.	Senate recesses with modifications.
5511	32602	Electronic logging device requirements.	Senate recesses.
5512	--	Technical corrections.	Senate recesses.
5513	--	Automobile transporter.	Senate recesses.
5514	--	Ready mix concrete delivery vehicles.	Senate recesses.
5515	--	Safety study regarding double-decker motorcoaches.	Senate recesses with modifications.
5516	--	Transportation of construction materials and equipment.	Senate recesses.
5517	--	Commercial delivery of light- and medium-duty trailers.	Senate recesses.
5518	32610	GAO Review of school bus safety.	Senate recesses.
--	32402	Additional State Authority	House recesses with modifications.
--	32604	Access to National Driver Register	House recesses.
--	32605	Study on Commercial Motor Vehicle Driver	House recesses with



		Commuting	modifications.
--	32607	Interstate Van Operations	Senate recesses.
--	32608	Report on Design and Implementation of Wireless Roadside Inspection Systems	House recesses with modifications.
--	32609	Motorcoach Hours of Service Study	Senate recesses.
<b>TITLE VI -- INNOVATION</b>			
6001	--	Short title.	Senate recesses.
6002	--	Authorization of appropriations.	Senate recesses with modifications.
6003	12002	Advanced transportation and congestion management technologies deployment.	Senate recesses with modifications.
6004	--	Technology and innovation deployment program.	Senate recesses with modifications.
6005	--	Intelligent transportation system goals.	Senate recesses with modifications.
6006	--	Intelligent transportation system program report.	Senate recesses.
6007	--	Intelligent transportation system national architecture and standards.	Senate recesses.
6008	--	Communication systems deployment report.	Senate recesses.
6009	--	Infrastructure development.	Senate recesses with modifications.
6010	31207	Departmental research programs.	Senate recesses.
6011	31207	Research and Innovative Technology Administration.	Senate recesses.
6012	31208	Office of Intermodalism.	Senate recesses.
6013	--	University transportation centers.	Senate recesses.
6014	31206	Bureau of Transportation Statistics independence.	House recesses.
6015	12004	Surface transportation system funding alternatives.	Senate recesses.
6016	12003	Future interstate study.	Senate recesses with modifications.
6017	--	Highway efficiency.	Senate recesses with modifications.
6018	--	Motorcycle safety.	House recesses.
6019	--	Hazardous materials research and development.	Senate recesses.
6020	--	Web-based training for emergency responders.	Senate recesses.
6021	--	Transportation technology policy working group.	Senate recesses with modifications.
6022	--	Collaboration and support.	Senate recesses.
6023	--	Prize competitions.	House recesses.
6024	--	GAO report.	Senate recesses.
6025	--	Intelligent transportation system purposes.	Senate recesses.

6026	12001	Infrastructure integrity.	No agreement.
6027	31203	Consolidated research prospectus and strategic plan.	House recedes with modifications.
6028	--	Traffic congestion.	Senate recedes with modifications.
6029	--	Rail safety.	House recedes.
6030	--	Study and report on reducing the amount of vehicles owned by certain Federal departments and increasing the use of commercial ride-sharing by those departments.	House recedes.
--	12001	Research, technology, and education.	Senate recedes.
--	31201	Findings.	House recedes with modifications.
--	31202	Modal research plans.	House recedes with modifications.
--	31204	Research Ombudsman.	Senate recedes.
--	31205	Smart cities transportation planning study.	House recedes with modifications.
--	31301	Short title.	Senate recedes.
--	31302	Findings.	Senate recedes.
--	31303	Port performance freight statistics program.	House recedes with modifications.
<b>TITLE VII -- HAZARDOUS MATERIALS TRANSPORTATION</b>			
7001	--	Short title: Hazardous Materials Safety and Improvement Act of 2015	Senate recedes.
<i>Subtitle A -- Authorizations</i>			
7002	33105	Authorization of appropriations.	Senate recedes with modifications.
<i>Subtitle B -- Hazardous Material Safety and Improvement</i>			
7003	33104	National emergency and disaster response.	Senate recedes.
7009	--	Motor carrier safety permits.	Senate recedes.
7008	--	Improving the effectiveness of planning and training grants.	Senate recedes with modifications.
7006	--	Improving publication of special permits and approvals.	Senate recedes with modifications.
7004	33102	Enhanced reporting.	Senate recedes.
7005	--	Wetlines.	Senate recedes.
7007	--	GAO study on acceptance of classification examinations.	Senate recedes with modifications.
7018	33101	Hazardous materials endorsement exemption.	Senate recedes.
<i>Subtitle C -- Safe Transportation of Class 3 Flammable Liquids By Rail</i>			
--	--	Community Safety Grants	Senate recedes with modifications.
7012	35431	Real-time emergency response information.	House recedes with

			modifications.
--	35408	Emergency response.	House recedes with modifications.
7015	--	Phase-out of all tank cars used to transport Class 3 flammable liquids.	Senate recedes with modifications.
7010	35432	Thermal blankets.	Senate recedes.
7017	--	Minimum requirements for top fittings protection for class DOT-117R tank cars.	Senate recedes.
7011	35433	Rulemaking oil spill response plans.	Senate recedes with modifications.
--	35438	Modification reporting	House recedes with modifications.
--	35439	Report on crude oil characteristics research study	House recedes with modifications.
7019	35434	Hazardous materials by rail liability study.	House recedes with modifications.
7013	35435	Study and testing of electronically controlled pneumatic brakes.	Senate recedes with modifications.
7014	--	Study on the efficacy and implementation of the European Train Control System	House recedes.
--	33103	Hazardous material information.	Senate recedes.
<b>TITLE VIII -- MULTIMODAL FREIGHT TRANSPORTATION</b>			
8001	41001 41002 41003 42001 42002 42003 42004	Multimodal freight transportation.	Senate recedes with modifications.
--	42005	Savings provision.	House recedes with modifications.
<b>TITLE IX -- NATIONAL SURFACE TRANSPORTATION AND INNOVATIVE FINANCE BUREAU</b>			
9001	--	National Surface Transportation and Innovative Finance Bureau.	Senate recedes with modifications.
9002	--	Council on Credit and Finance.	Senate recedes with modifications.
<b>TITLE X -- SPORT FISH RESTORATION AND RECREATIONAL BOATING SAFETY</b>			
10001	15006	Allocations.	Senate recedes with modifications.
10002	--	Recreational boating safety.	Senate recedes with modifications.
<b>TITLE XI -- RAIL</b>			

1*	35001 35501 35601	Short Titles and table of contents.	Senate recedes with modifications.
<b><i>Subtitle A - Authorizations</i></b>			
101	35101	Authorization of grants to Amtrak.	Senate recedes with modifications.
102	35104	Authorization of appropriations for Amtrak Office of Inspector General.	House recedes with modifications.
104 501 502	35002	Definitions.	Senate recedes with modifications.
103	--	National infrastructure investments.	House recedes.
--	35103	Authorization of appropriations for National Transportation Safety Board rail investigations	Senate recedes.
	35102	National Infrastructure Investments	Senate recedes
--	35105	National cooperative rail research programs	Senate recedes.
<b><i>Subtitle B - Amtrak Reforms</i></b>			
201	35201	Accounts.	Senate recedes with modifications.
201	35201	Amtrak Grant Process.	House recedes with modifications.
202	35202	5-year business line and assets plans.	House recedes with modifications.
203	35203	State-supported route committee.	House recedes with modifications.
--	35213	Amtrak board of directors.	House recedes with modifications.
204	35204	Route and Service Planning Decisions.	Senate recedes with modifications.
206	35207	Food and beverage reform.	Senate recedes.
201	35206	Rolling stock purchases.	House recedes with modifications.
--	35208	Local products and promotional events.	House recedes.
210	35212	Amtrak pilot program for passengers transporting domesticated cats and dogs.	Senate recedes with modifications.
207	35209	Right-of-way leveraging.	Senate recedes with modifications.
208	35210	Station Development.	House recedes with modifications.
211	35214	Amtrak boarding procedures.	Senate recedes with modifications.
209	35211	Amtrak debt.	House recedes.
202	35202	Elimination of duplicative reporting.	Senate recedes.
<b><i>Subtitle C - Intercity Passenger Rail Policy</i></b>			

--	35421	Consolidated rail infrastructure and safety improvements.	House recedes with modifications.
301	35302	Federal-state partnership for state of good repair.	Senate recedes with modifications.
--	35301	Restoration and Enhancement Grants.	House recedes with modifications.
306	35305	Gulf coast rail service working group.	House recedes with modifications.
201	35308	Northeast Corridor Commission.	House recedes with modifications.
205	35205	Competition.	House recedes with modifications.
--	35311	Performance-based proposals.	House recedes with modifications.
304	35303	Large capital project requirements.	Senate recedes with modifications.
305	35304	Small business participation study.	Senate recedes with modifications.
--	35307	Shared-use study.	House recedes with modifications.
--	35309	Northeast Corridor through-ticketing and procurement efficiencies.	House recedes with modifications.
--	35310	Data and analysis.	House recedes with modifications.
--	35312	Amtrak Inspector General.	House recedes with modifications.
307	36313	Miscellaneous Provisions.	Senate recedes with modifications.
--	35414	Technical and conforming amendments.	House recedes with modifications.
302	--	RRIF Improvements.	House recedes.
303	--	NEC Fast Forward.	House recedes.
--	35306	Integrated passenger rail study.	Senate recedes.
<b><i>Subtitle D - Rail Safety</i></b>			
503	35401	Highway-rail grade crossing safety.	House recedes with modifications.
--	35409	Private highway-rail grade crossings.	House recedes with modifications.
504	35415	GAO study on use of locomotive horns at highway-rail grade crossings.	House recedes with modifications.
--	35444	Positive Train Control at grade crossings effectiveness study.	House recedes with modifications.
--	35416	Bridge inspection reports.	House recedes with modifications.
--	35402	Speed limit action plans.	House recedes with

			modifications.
--	35404	Alerters.	House recedes.
--	35405	Signal protection.	House recedes with modifications.
--	35407	Commuter rail track inspections.	House recedes with modifications.
--	35413	Post-accident assessment.	House recedes.
--	35436	Recording devices.	House recedes with modifications.
--	35411	Railroad police officers.	House recedes with modifications.
--	35410	Repair and replacement of damaged track.	House recedes with modifications.
7016	--	Track safety: Vertical Track Deflection.	Senate recedes with modifications.
--	35437	Rail passengers liability.	House recedes with modifications.
--	35403	Signage.	Senate recedes.
--	35406	Technology implementation plans.	Senate recedes.
--	35412	Operation Deep Dive.	Senate recedes.
<b><i>Senate Part IV- Positive Train Control</i></b>			
--	35441	Coordination of Spectrum.	Senate recedes.
--	35442	Updated plans.	Senate recedes.
--	35443	Early adoption and interoperability.	Senate recedes.
<b><i>Subtitle E - Project Delivery</i></b>			
--	35501	Short title: Train, Railroad and Infrastructure Network (TRAIN) Act.	House recedes.
1302	35502	Treatment of improvements to rail under preservation requirements.	Senate recedes.
401	35503	Efficient environmental reviews.	House recedes with modifications.
402	35505	Railroad rights-of-way.	House recedes with modifications.
--	35507	Protections for existing agreements and NEPA.	House recedes.
402	35502	Preservation of public lands.	Senate recedes.
--	35504	Advance acquisition.	Senate recedes.
--	35506	Savings clause.	Senate recedes.
<b><i>Subtitle F - Finance</i></b>			
--	35601	Short Title, References.	House recedes with modifications.
--	35602	Definitions.	House recedes with modifications.
--	35603	Eligible applicants.	House recedes with modifications.

--	35604	Eligible purposes.	House recedes with modifications.
--	35605	Program administration.	House recedes with modifications.
--	35606	Loan terms and repayment.	House recedes with modifications.
--	35607	Credit risk premiums.	House recedes with modifications.
--	35608	Master credit agreements.	House recedes with modifications.
--	35609	Priorities and conditions.	House recedes with modifications.
--	35610	Savings provision.	House recedes with modifications.
303	--	Reporting on leveraging RRIF.	Senate recedes with modifications.

*\*House section numbers for Title XI correspond to H.R. 749, Passenger Rail Reform and Investment Act (EH).*

## **DIVISION B – COMPREHENSIVE TRANSPORTATION AND CONSUMER PROTECTION ACT OF 2015**

The Motor Vehicle Safety Title of the conference report includes numerous provisions intended to improve vehicle and roadway safety over the next five years and into the future. The incorporated provisions establish a means of reducing fatalities, injuries, and the associated economic and societal costs resulting from motor vehicle defects and roadway accidents. Specifically, the Title would modernize and improve the National Highway Traffic Safety Administration (NHTSA) by improving the vehicle safety recall processes, enhancing agency transparency, and increasing efficiency in current regulatory processes. The Title would also increase accountability among automakers and other stakeholders in the automotive industry, promote entrepreneurship and innovation within the automotive industry, and foster greater attention to vehicle safety issues from both automakers and regulators.

To modernize and enhance transparency at NHTSA, the Title includes good-government provisions that would require the agency to submit an annual agenda to Congress on its activities for the upcoming year and authorizes additional funding for NHTSA’s vehicle safety program if the agency implements recommendations made by the Department of Transportation Inspector General to improve the agency’s efficacy.

The Title also incentivizes the development and utilization of new crash avoidance technologies that can help reduce the severity of accidents, or prevent accidents altogether. It also directs a study on unattended children warning systems. One section directs NHTSA to update standards related to Tire Pressure Monitoring Systems. This section should not be interpreted as precluding the use of indirect tire pressure monitoring systems or technologies. Both the House and the Senate have been informed that NHTSA has not identified any safety concerns with the indirect

systems currently in use in the United States. The Title also requires NHTSA to promulgate a rule for registration of tires sold by independent retailers.

To improve the motor vehicle safety recall process, the Title expands the availability and accessibility of vehicle safety recall information to consumers and establishes a pilot grant program for States to notify consumers of vehicle recalls. These provisions are intended to help improve recall awareness among motorists and encourage quick repair of defective vehicles. In addition to these provisions, the Safety Title incentivizes dealers to check for open recalls at the time of service for all patrons and requires rental car companies to ground vehicles that are subject to an open safety recall until they are fixed. The rental car safety provision contains a rule of construction stating that this section should not be construed to create or increase liability under State and local law for damages related to the commercial loss of use of a recalled rental vehicle pending completion of the recall remedy. To encourage future adoption of direct vehicle notification of open recalls, the Title also includes a study on the feasibility of such technology.

The Safety Title includes a provision addressing regulatory parity between electric and natural gas vehicles. This provision would modify the manner in which the fuel economy of natural gas dual-fueled vehicles is calculated, beginning in 2016, so as to more closely match the way it is done for electric vehicles.

An essential part of improving vehicle and roadway safety is increasing accountability among automotive companies. To that end, the Safety Title extends the time period for automakers to pay for defect remedies from 10 years to 15 years; it extends the period companies must retain safety records from 5 years to 10 years; and increases the maximum cap on civil penalties for violations of motor vehicle safety standards and laws from \$35 million to \$105 million upon NHTSA's certification that its final rule on civil penalty factors has been completed. These provisions reflect the greater longevity of cars on the road and will prompt NHTSA and automakers to identify safety issues earlier so that recalls can be issued to ensure that motor vehicle owners can have the necessary repairs made as quickly as possible. The Title also broadens a company's recall obligations in the event of bankruptcy and increases corporate responsibility for documents submitted to NHTSA. It also incentivizes industry employees to come forward with original information about possible motor vehicle safety violations by allowing the Secretary of Transportation to pay awards from a portion of recovered sanctions.

Entrepreneurship and experimentation within the manufacturing sector are also essential components to the automotive industry's development. To promote sustained growth and ingenuity within the low-volume manufacturing industry, the Safety Title includes a section that creates a framework for low-volume manufacturers to produce replica vehicles. One section directs the manufacturer of the engine installed within replica vehicles to provide instructions to the EPA Administrator and the vehicle manufacturer explaining how to install the engine and maintain its functionality such that it complies with certain environmental laws and regulations. While the instructions must be submitted to the Administrator, nothing in the legislative language contemplates an approval process by the EPA Administrator. Further, this provision explicitly preserves state registration and licensing authorities over the use of such vehicles.

#### **DIVISION C – FINANCE**



## **Tax Complexity Analysis**

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (the `IRS Reform Act') requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 11(a) of rule XXII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have `widespread applicability' to individuals or small businesses, within the meaning of the rule.

### **Title XXXI – Highway Trust Fund and Related Taxes**

**Extension of Highway Trust Fund Expenditure Authority (sec. 51101 of the Senate amendment, sec. 31101 of the House amendment, sec. 31101 of the conference agreement, and secs. 9503, 9504, and 9508 of the Code)<sup>1</sup>**

#### **Present Law Highway Trust Fund Expenditure Provisions In general**

Under present law, revenues from the highway excise taxes, as imposed through October 1, 2016, generally are dedicated to the Highway Trust Fund. Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by the Code.<sup>2</sup> The Code authorizes expenditures (subject to appropriations) from the Highway Trust Fund through December 4, 2015, for the purposes provided in authorizing legislation, as such legislation was in effect on the date of enactment of the Surface Transportation Extension Act of 2015, Part II.

#### **Highway Trust Fund expenditure purposes**

The Highway Trust Fund has a separate account for mass transit, the Mass Transit Account.<sup>3</sup> The Highway Trust Fund and the Mass Transit Account are funding sources for specific programs.

Highway Trust Fund expenditure purposes have been revised with each authorization Act enacted since establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most

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<sup>1</sup> Except where otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code"). All references to the House amendment refer to the House Amendment to the Senate Amendment to H.R. 22 (the "DRIVE Act"), the Surface Transportation Reauthorization and Reform Act of 2015, as passed by the House of Representatives on November 5, 2015.

<sup>2</sup> Sec. 9503. The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

<sup>3</sup> Sec. 9503(e)(1).

recent such authorizing Act) are specified by the Code as Highway Trust Fund expenditure purposes. The Code provides that the authority to make expenditures from the Highway Trust Fund expires after December 4, 2015. Thus, no Highway Trust Fund expenditures may occur after December 4, 2015, without an amendment to the Code.

Section 9503 of the Code appropriates to the Highway Trust Fund amounts equivalent to the taxes received from the following: the taxes on diesel, gasoline, kerosene and special motor fuel, the tax on tires, the annual heavy vehicle use tax, and the tax on the retail sale of heavy trucks and trailers.<sup>4</sup> Section 9601 provides that amounts appropriated to a trust fund pursuant to sections 9501 through 9511, are to be transferred at least monthly from the General Fund of the Treasury to such trust fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in the Code section appropriating the amounts to such trust fund. The Code requires that proper adjustments be made in amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

### **Senate Amendment**

The expenditure authority for the Highway Trust Fund is extended through September 30, 2021. The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are updated to include the reauthorization bill, the DRIVE Act.<sup>5</sup> Effective date.—The provision is effective on August 1, 2015.

### **House Amendment**

The expenditure authority for the Highway Trust Fund is extended through September 30, 2021. The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are updated to include the reauthorization bill, the Surface Transportation and Reauthorization and Reform Act of 2015.<sup>6</sup> Effective date.—The provision is effective November 21, 2015.

### **Conference Agreement**

The conference agreement provides for expenditure authority through September 30, 2020.<sup>7</sup> The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are updated to include the conference agreement bill, the FAST Act.

**Extension of Highway-Related Taxes (sec. 51102 of the Senate amendment, sec. 31102 of the House amendment, sec. 31102 of the conference agreement, and secs. 4041, 4051, 4071, 4081, 4221, 4481, 4483, and 6412 of the Code)**

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<sup>4</sup> Sec. 9503(b)(1).

<sup>5</sup> The provision also updates the Code provisions governing the Leaking Underground Storage Tank Trust Fund, and the Sport Fish Restoration and Boating Trust Fund.

<sup>6</sup> The provision also updates the Code provisions governing the Leaking Underground Storage Tank Trust Fund, and the Sport Fish Restoration and Boating Trust Fund.

<sup>7</sup> Cross-references to the reauthorization bill in the Code provisions governing the Sport Fish Restoration and Boating Trust Fund are also updated to include the conference agreement bill. In addition the date references in the Code provisions governing the Leaking Underground Storage Tank Trust Fund, and the Sport Fish Restoration and Boating Trust Fund are also updated.

### **Present Law Highway Trust Fund Excise Taxes In general**

Six separate excise taxes are imposed to finance the Federal Highway Trust Fund program. Three of these taxes are imposed on highway motor fuels. The remaining three are a retail sales tax on heavy highway vehicles, a manufacturers' excise tax on heavy vehicle tires, and an annual use tax on heavy vehicles. A substantial majority of the revenues produced by the Highway Trust Fund excise taxes are derived from the taxes on motor fuels. The annual use tax on heavy vehicles expires October 1, 2017. Except for 4.3 cents per gallon of the Highway Trust Fund fuels tax rates, the remaining taxes are scheduled to expire after October 1, 2016. The 4.3-cents-per-gallon portion of the fuels tax rates is permanent.<sup>8</sup> The six taxes are summarized below.

### **Highway motor fuels taxes**

The Highway Trust Fund motor fuels tax rates are as follows:<sup>9</sup>

Gasoline	18.3 cents per gallon
Diesel fuel and kerosene	24.3 cents per gallon
Alternative fuels	18.3 or 24.3 cents per gallon generally <sup>10</sup>

### **Non-fuel Highway Trust Fund excise taxes**

In addition to the highway motor fuels excise tax revenues, the Highway Trust Fund receives revenues produced by three excise taxes imposed exclusively on heavy highway vehicles or tires. These taxes are:

A 12-percent excise tax imposed on the first retail sale of heavy highway vehicles, tractors, and trailers (generally, trucks having a gross vehicle weight in excess of 33,000 pounds and trailers having such a weight in excess of 26,000 pounds);<sup>11</sup>

An excise tax imposed on highway tires with a rated load capacity exceeding 3,500 pounds, generally at a rate of 0.945 cents per 10 pounds of excess;<sup>12</sup> and

An annual use tax imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more.<sup>13</sup> (The maximum rate for this tax is \$550 per year, imposed on vehicles having a taxable gross weight over 75,000 pounds.)

The taxable year for the annual use tax is from July 1st through June 30th of the following year. For the period July 1, 2016, through September 30, 2016, the amount of the annual use tax is reduced by 75 percent.<sup>14</sup>

### **Senate Amendment**

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<sup>8</sup> This portion of the tax rates was enacted as a deficit reduction measure in 1993. Receipts from it were retained in the General Fund until 1997 legislation provided for their transfer to the Highway Trust Fund.

<sup>9</sup> Secs. 4081(a)(2)(A)(i), 4081(a)(2)(A)(iii), 4041(a)(2), 4041(a)(3), and 4041(m). Some of these fuels also are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund (secs. 4041(d) and 4081(a)(2)(B)).

<sup>10</sup> See secs. 4041(a)(2), 4041(a)(3), and 4041(m).

<sup>11</sup> Sec. 4051.

<sup>12</sup> Sec. 4071.

<sup>13</sup> Sec. 4481.

<sup>14</sup> Sec. 4482(c)(4) and (d).

Present-law taxes are generally extended through September 30, 2023. The heavy vehicle use tax is extended through September 30, 2024.

Effective date.—The provision is effective on October 1, 2016.

**House Amendment**

Present-law taxes are generally extended through September 30, 2023. The heavy vehicle use tax is extended through September 30, 2024.

Effective date.—The provision is effective October 1, 2016.

**Conference Agreement**

The conference agreement generally extends present-law taxes through September 30, 2022. The heavy vehicle use tax is extended through September 30, 2023.

Effective date.—The provision is effective October 1, 2016.

**Additional Transfers to the Highway Trust Fund (sec. 31201 of the House amendment, sec. 51201 of the Senate amendment, sec. 31201 of the conference agreement, and sec. 9503 of the Code)**

**Present Law**

Public Law No. 110-318, “an Act to amend the Internal Revenue Code of 1986 to restore the Highway Trust Fund balance” transferred, out of money in the Treasury not otherwise appropriated, \$8,017,000,000 to the Highway Trust Fund effective September 15, 2008. Public Law No. 111-46, “an Act to restore sums to the Highway Trust Fund and for other purposes,” transferred, out of money in the Treasury not otherwise appropriated, \$7 billion to the Highway Trust Fund effective August 7, 2009. The Hiring Incentives to Restore Employment Act transferred, out of money in the Treasury not otherwise appropriated, \$14,700,000,000 to the Highway Trust Fund and \$4,800,000,000 to the Mass Transit Account in the Highway Trust Fund.<sup>15</sup> The HIRE Act provisions generally were effective as of March 18, 2010. Moving Ahead for Progress in the 21st Century (“MAP-21”)<sup>16</sup> provided that, out of money in the Treasury not otherwise appropriated, the following transfers were to be made from the General Fund to the Highway Trust Fund:

	FY 2013	FY 2014
Highway Account	\$6.2 billion	\$10.4 billion
Mass Transit Account		\$2.2 billion

MAP-21 also transferred \$2.4 billion from the Leaking Underground Storage Tank Trust Fund to the Highway Account in the Highway Trust Fund. The Highway and Transportation Funding Act of 2014 transferred \$7.765 billion from the General Fund to the Highway Account of the Highway Trust Fund, \$2 billion from the General Fund to the Mass Transit Account of the

<sup>15</sup> The Hiring Incentives to Restore Employment Act (the “HIRE” Act), Pub. L. No. 111-147, sec. 442.

<sup>16</sup> Moving Ahead for Progress in the 21st Century Act (“MAP-21”), Pub. L. No. 112-141, sec. 40201(a)(2), and sec. 40251.

Highway Trust Fund, and \$1 billion from the Leaking Underground Storage Tank Trust Fund to the Highway Account of the Highway Trust Fund.<sup>17</sup> Signed into law on July 30, 2015, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 transferred \$6.068 billion from the General Fund to the Highway Account of the Highway Trust Fund and \$2 billion from the General Fund to the Mass Transit Account of the Highway Trust Fund.

### **Senate Amendment**

The Senate amendment provides that out of money in the Treasury not otherwise appropriated, the following transfers are to be made from the General Fund to the Highway Trust Fund: \$34,401,000,000 to the Highway Account and \$11,214,000,000 to the Mass Transit account.

Effective date.—The provision is effective on the date of enactment.

### **House Amendment**

The House amendment provides that out of money in the Treasury not otherwise appropriated, the following transfers are to be made from the General Fund to the Highway Trust Fund: \$25,976,000,000 to the Highway Account and \$9 billion to the Mass Transit account.

Effective date.—The provision is effective on the date of enactment.

### **Conference Agreement**

The conference agreement provides that out of money in the Treasury not otherwise appropriated, the following transfers are to be made from the General Fund to the Highway Trust Fund: \$51,900,000,000 to the Highway Account and \$18,100,000,000 to the Mass Transit account.

Effective date.—The provision is effective on the date of enactment.

**Transfer to Highway Trust Fund of Certain Motor Vehicle Safety Penalties (sec. 51202 of the Senate amendment, sec. 31202 of the House amendment, sec. 31202 of the conference agreement, and section 9503 of the Code)**

### **Present Law**

Present law imposes certain civil penalties related to violations of motor vehicle safety.

### **Senate Amendment**

The provision deposits the civil penalties related to motor vehicle safety in the Highway Trust Fund instead of in the Treasury's General Fund.

Effective date.— The provision is effective for amounts collected after the date of enactment.

### **House Amendment**

The House amendment is the same as the Senate amendment.

### **Conference Agreement**

The conference agreement follows the House amendment and Senate amendment.

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<sup>17</sup> Highway and Transportation Funding Act of 2014, Pub. L. No. 113-159, sec. 2002.

**Appropriation From Leaking Underground Storage Tank Trust Fund (sec. 51203 of the Senate amendment, sec. 31203 of the House amendment, sec. 31203 of the conference agreement, and secs. 9503 and 9508 of the Code)**

**Present Law**

Fuels of a type subject to other trust fund excise taxes generally are subject to an add-on excise tax of 0.1-cent-per-gallon to fund the Leaking Underground Storage Tank (“LUST”) Trust Fund.<sup>18</sup> For example, the LUST excise tax applies to gasoline, diesel fuel, kerosene, and most alternative fuels subject to highway and aviation fuels excise taxes, and to fuels subject to the inland waterways fuel excise tax. This excise tax is imposed on both uses and parties subject to the other taxes, and to situations (other than export) in which the fuel otherwise is tax-exempt. For example, off-highway business use of gasoline and off-highway use of diesel fuel and kerosene generally are exempt from highway motor fuels excise tax. Similarly, States and local governments and certain other parties are exempt from such tax. Nonetheless, all such uses and parties are subject to the 0.1-cent-per-gallon LUST excise tax.

Liquefied natural gas, compressed natural gas, and liquefied petroleum gas are exempt from the LUST tax. Additionally, methanol and ethanol fuels produced from coal (including peat) are taxed at a reduced rate of 0.05 cents per gallon.

**Senate Amendment**

The provision transfers \$100 million on the date of enactment, \$100 million on October 1, 2016 and an additional \$100 million on October 1, 2017, from the LUST Trust Fund to the Highway Account of the Highway Trust Fund.

Effective date.—The provision is effective on the date of enactment.

**House Amendment**

The House amendment is the same as the Senate amendment.

**Conference Agreement**

The conference agreement follows the House amendment and Senate amendment.

Effective date.—The provision is effective on the date of enactment.

**Title XXXII – Offsets**

**A. Revocation or denial of passport in case of certain unpaid taxes (sec. 52101 of the Senate amendment, sec. 32102 of the House amendment, sec. 32101 of the conference agreement and secs. 6320 and 6331 and new secs. 7345 and 6103(k)(11) of the Internal Revenue Code)**

**Present Law**

The administration of passports is the responsibility of the Department of State.<sup>19</sup> The Secretary of State may refuse to issue or renew a passport if the applicant owes child support in excess of \$2,500 or owes certain types of Federal debts. The scope of this authority does not extend to

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<sup>18</sup> Secs. 4041, 4042, and 4081.

<sup>19</sup> “Passport Act of 1926,” 22 U.S.C. sec. 211a et seq.

rejection or revocation of a passport on the basis of delinquent Federal taxes. Although issuance of a passport does not require a social security number or taxpayer identification number (“TIN”), the applicant is required under the Code to provide such number. Failure to provide a TIN is reported by the State Department to the Internal Revenue Service (“IRS”) and may result in a \$500 fine.<sup>20</sup>

Returns and return information are confidential and may not be disclosed by the IRS, other Federal employees, State employees, and certain other individuals having access to such information except as provided in the Code.<sup>21</sup> There are a number of exceptions to the general rule of nondisclosure that authorize disclosure in specifically identified circumstances, including disclosure of information about Federal tax debts for purposes of reviewing an application for a Federal loan<sup>22</sup> and for purposes of enhancing the integrity of the Medicare program.<sup>23</sup>

### **Senate Amendment**

Under the Senate Amendment, the Secretary of State is required to deny a passport (or renewal of a passport) to a seriously delinquent taxpayer and is permitted to revoke any passport previously issued to such person. In addition to the revocation or denial of passports to delinquent taxpayers, the Secretary of State is authorized to deny an application for a passport if the applicant fails to provide a social security number or provides an incorrect or invalid social security number. With respect to an incorrect or invalid number, the inclusion of an erroneous number is a basis for rejection of the application only if the erroneous number was provided willfully, intentionally, recklessly or negligently. Exceptions to these rules are permitted for emergency or humanitarian circumstances, including the issuance of a passport for short-term use to return to the United States by the delinquent taxpayer.

The provision authorizes limited sharing of information between the Secretary of State and Secretary of the Treasury. If the Commissioner of Internal Revenue certifies to the Secretary of the Treasury the identity of persons who have seriously delinquent Federal tax debts as defined in this provision, the Secretary of the Treasury or his delegate is authorized to transmit such certification to the Secretary of State for use in determining whether to issue, renew, or revoke a passport. Applicants whose names are included on the certifications provided to the Secretary of State are ineligible for a passport. The Secretary of State and Secretary of the Treasury are held harmless with respect to any certification issued pursuant to this provision.

A seriously delinquent tax debt generally includes any outstanding debt for Federal taxes in excess of \$50,000, including interest and any penalties, for which a notice of lien or a notice of levy has been filed. This amount is to be adjusted for inflation annually, using calendar year 2014 as a base year, and a cost-of-living adjustment. Even if a tax debt otherwise meets the statutory threshold, it may not be considered seriously delinquent if (1) the debt is being paid in a timely manner pursuant to an installment agreement or offer-in-compromise, or (2) collection action with respect to the debt is suspended because a collection due process hearing or innocent spouse relief has been requested or is pending.

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<sup>20</sup> Sec. 6039E.

<sup>21</sup> Sec. 6103.

<sup>22</sup> Sec. 6103(1)(3).

<sup>23</sup> Sec. 6103(1)(22).

Effective date.—The provision is effective on January 1, 2015.

### **House Amendment**

The House amendment is the same as the Senate amendment.

### **Conference Agreement**

The following changes are included in the conference agreement to ensure that there is a mechanism allowing the IRS to correct errors and to take into account actions taken by a taxpayer to come into compliance after procedures has been initiated to inform the Secretary of State that the taxpayer is seriously delinquent. As explained below, these measures include clarification of the definition of a seriously delinquent tax debt, notification requirements, standards under which the Commissioner may reverse the certification of serious delinquency, and limits on authority to delegate the certification process. A limited right to seek injunctive relief by a taxpayer who is wrongly certified as seriously delinquent is also provided.

The provision clarifies the definition of “seriously delinquent tax debt” to permit revocation of a passport only after the IRS has followed its examination and collection procedures under current law and the taxpayer’s administrative and judicial rights have been exhausted or lapsed.

The provision requires notice to taxpayers regarding the procedures. First, the provision adds the possible loss of a passport to the list of matters required to be included in notices to taxpayer of potential collection activity under sections 6320 or 6331. Second, the provision requires that the Commissioner provide contemporaneous notice to the taxpayer(s) when the Commissioner sends a certification of serious delinquency to the Secretary of the Treasury. Finally, in instances in which the Commissioner decertifies the taxpayer’s status as a delinquent taxpayer, he is required to provide notice to the taxpayer contemporaneous with the notice to the Secretary of the Treasury.

The decertification process included in the conference agreement provides a mechanism under which the Commissioner can correct an erroneous certification or end the certification because the debt is no longer seriously delinquent, due to certain events subsequent to the certification. If after certifying the delinquency to the Secretary of the Treasury, (1) the IRS receives full payment of the seriously delinquent tax debt, (2) the taxpayer enters into an installment agreement under section 6159, (3) the IRS accepts an offer in compromise under section 7122, or (4) a spouse files for relief from joint liability, the Commissioner must notify the Secretary that the taxpayer is not seriously delinquent. In each instance, the “decertification” is limited to the taxpayer who is the subject of one of the above actions. In the case of a claim for innocent spouse relief, the decertification is only with respect to the spouse claiming relief, not both. The Commissioner must generally decertify within 30 days of the event that requires decertification. The Commissioner must provide the notice of decertification to the Secretary of the Treasury, who must in turn promptly notify the Secretary of State of the decertification. The Secretary of State must delete the certification from the records regarding that taxpayer.

The provision as amended limits the Commissioner’s authority to delegate duties under this section. As amended, the authority to certify or decertify a seriously delinquent tax debt is



delegable only to the Deputy Commissioner for Services and Enforcement, or to a Division Commissioner (the head of an IRS operating division).

Finally, the amendments to the provision permit limited judicial review of the certification or a failure to reverse a certification.

Effective date.—The provision as amended is effective upon date of enactment.

**B. Reform of rules related to qualified tax collection contracts, and special compliance personnel program (secs. 52102 and 52103 of the Senate amendment, secs. 32106 and 32107 of the House amendment, secs. 32102 and 32103 of the conference agreement, and sec. 6306 of the Code)**

**Present Law**

Code section 6306 permits the IRS to use private debt collection companies to locate and contact taxpayers owing outstanding tax liabilities of any type<sup>24</sup> and to arrange payment of those taxes by the taxpayers. There must be an assessment pursuant to section 6201 in order for there to be an outstanding tax liability. An assessment is the formal recording of the taxpayer's tax liability that fixes the amount payable. An assessment must be made before the IRS is permitted to commence enforcement actions to collect the amount payable. In general, an assessment is made at the conclusion of all examination and appeals processes within the IRS.<sup>25</sup>

Several steps are involved in the deployment of private debt collection companies. First, the private debt collection company contacts the taxpayer by letter.<sup>26</sup> If the taxpayer's last known address is incorrect, the private debt collection company searches for the correct address. Second, the private debt collection company telephones the taxpayer to request full payment.<sup>27</sup> If the taxpayer cannot pay in full immediately, the private debt collection company offers the taxpayer an installment agreement providing for full payment of the taxes over a period of as long as five years. If the taxpayer is unable to pay the outstanding tax liability in full over a five-year period, the private debt collection company obtains financial information from the taxpayer and will provide this information to the IRS for further processing and action by the IRS. The Code specifies several procedural conditions under which the provision would operate. First, provisions of the Fair Debt Collection Practices Act apply to the private debt collection company. Second, taxpayer protections that are statutorily applicable to the IRS are also made statutorily applicable to the private sector debt collection companies. In addition, taxpayer protections that are statutorily applicable to employees of the IRS are made statutorily applicable to employees of private sector debt collection companies. Third, subcontractors are prohibited from having contact with taxpayers, providing quality assurance services, and composing debt

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<sup>24</sup> This provision generally applies to any type of tax imposed under the Internal Revenue Code.

<sup>25</sup> An amount of tax reported as due on the taxpayer's tax return is considered to be self-assessed. If the IRS determines that the assessment or collection of tax will be jeopardized by delay, it has the authority to assess the amount immediately (sec. 6861), subject to several procedural safeguards.

<sup>26</sup> The provision requires that the IRS disclose confidential taxpayer information to the private debt collection company. Section 6103(n) permits disclosure of returns and return information for "the providing of other services ... for purposes of tax administration."

<sup>27</sup> The private debt collection company is not permitted to accept payment directly. Payments are required to be processed by IRS employees.

collection notices; any other service provided by a subcontractor must receive prior approval from the IRS.

The Code creates a revolving fund from the amounts collected by the private debt collection companies. The private debt collection companies are paid out of this fund. The Code prohibits the payment of fees for all services in excess of 25 percent of the amount collected under a tax collection contract.

The Code provides that up to 25 percent of the amount collected may be used for IRS collection enforcement activities. The law also requires the Treasury Department to provide a biennial report to the Committee on Finance and the Committee on Ways and Means. The report is to include, among other items, a cost benefit analysis, the impact of the debt collection contracts on collection enforcement staff levels in the IRS, and an evaluation of contractor performance. The Omnibus Appropriations Act of 2009 (the “Act”), which made appropriations for the fiscal year ending September 30, 2009, included a provision stating that none of the funds made available in the Act could be used to fund or administer section 6306.<sup>28</sup> Around the same time, the IRS announced that the IRS would not renew its contracts with private debt collection agencies.<sup>29</sup>

## **Senate Amendment**

### **Qualified tax collection contracts**

The provision requires the Secretary to enter into qualified tax collection contracts for the collection of inactive tax receivables. Inactive tax receivables are defined as any tax receivable (1) removed from the active inventory for lack of resources or inability to locate the taxpayer, (2) for which more than 1/3 of the applicable limitations period has lapsed and no IRS employee has been assigned to collect the receivable; or (3) for which, a receivable has been assigned for collection but more than 365 days have passed without interaction with the taxpayer or a third party for purposes of furthering the collection. Tax receivables are defined as any outstanding assessment that the IRS includes in potentially collectible inventory.

The provision designates certain tax receivables as not eligible for collection under qualified tax collection contracts, specifically a contract that: (1) is subject to a pending or active offer-in-compromise or installment agreement; (2) is classified as an innocent spouse case; (3) involves a taxpayer identified by the Secretary as being (a) deceased, (b) under the age of 18, (c) in a designated combat zone, or (d) a victim of identity theft; (4) is currently under examination, litigation, criminal investigation, or levy; or (5) is currently subject to a proper exercise of a right of appeal. The provision grants authority to the Secretary to prescribe procedures for taxpayers in presidentially declared disaster areas to request relief from immediate collection measures under the provision.

The provision requires the Secretary to give priority to private collection contractors and debt collection centers currently approved by the Treasury Department’s Bureau of the Fiscal Service (previously the Financial Management Service) on the schedule required under section 3711(g)

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<sup>28</sup> Pub. L. No. 111-8, March 11, 2009.

<sup>29</sup> IR-2009-19, March 5, 2009.

of title 31 of the United States Code, to the extent appropriate to carry out the purposes of the provision.

The provision adds an additional exception to section 6103 to allow contractors to identify themselves as such and disclose the nature, subject, and reason for the contact. Disclosures are permitted only in situations and under conditions approved by the Secretary.

The provision requires the Secretary to prepare two reports for the House Committee on Ways and Means and the Senate Committee on Finance. The first report is required annually and due not later than 90 days after each fiscal year and is required to include: (1) the total number and amount of tax receivables provided to each contractor for collection under this section, (2) the total amounts collected by and installment agreements resulting from the collection efforts of each contractor and the collection costs incurred by the IRS; (3) the impact of such contacts on the total number and amount of unpaid assessments, and on the number and amount of assessments collected by IRS personnel after initial contact by a contractor, (4) the amount of fees retained by the Secretary under subsection (e) and a description of the use of such funds; and (5) a disclosure safeguard report in a form similar to that required under section 6103(p)(5).

The second report is required biannually and is required to include: (i) an independent evaluation of contractor performance; and (ii) a measurement plan that includes a comparison of the best practices used by private debt collectors to the collection techniques used by the IRS and mechanisms to identify and capture information on successful collection techniques used by the contractors that could be adopted by the IRS.

#### **Special compliance personnel program**

The provision requires that the amount that, under current law, is to be retained and used by the IRS for collection enforcement activities under section 6306 of the Code be instead used to fund a newly created special compliance personnel program. The provision also requires the Secretary to establish an account for the hiring, training, and employment of special compliance personnel. No other source of funding for the program is permitted, and funds deposited in the special account are restricted to use for the program, including reimbursement of the IRS and other agencies for the cost of administering the qualified debt collection program and all costs associated with employment of special compliance personnel and the retraining and reassignment of other personnel as special compliance personnel. Special compliance personnel are individuals employed by the IRS to serve either as revenue officers performing field collection functions or as persons operating the automated collection system.

The provision requires the Secretary to prepare annually a report for the House Committee on Ways and Means and the Senate Committee on Finance, to be submitted no later than March of each year. In the report, the Secretary is to describe for the preceding fiscal year accounting of all funds received in the account, administrative and program costs, number of special compliance personnel hired and employed as well as actual revenue collected by such personnel. Similar information for the current and following fiscal year, using both actual and estimated amounts, is required.

Effective date.—The provision relating to qualified tax collection contracts applies to tax receivables identified by the Secretary after the date of enactment. The requirement to give priority to certain private collection contractors and debt collection centers applies to contracts and agreements entered into within three months after the date of enactment, and the new exception to section 6103 applies to disclosures made after the date of enactment. The requirement of the reports to Congress is effective on the date of enactment.

The provision relating to the special compliance personnel program applies to amounts collected and retained by the Secretary after date of enactment.

### **House Amendment**

The House amendment is the same as the Senate amendment.

### **Conference Agreement**

The conference agreement follows the House amendment and the Senate amendment provision. It is intended that the IRS will implement the proposal without delay to facilitate the collection of taxes, which are owed to the Government but are not being actively pursued by the IRS for collection, while protecting taxpayer rights and privacy. To carry out these goals of expeditious tax collection and taxpayer rights, it is intended that the IRS will make it a priority to use collection contractors and debt collection centers currently approved by the Treasury Department.

## **C. Repeal of Modification of Automatic Extension of Return Due Date for Certain Employee Benefit Plans (sec. 52105(b)(3) of the Senate amendment, sec. 32104 of the conference agreement and secs. 6058 and 6059 of the Code)**

### **Present Law**

An employer that maintains a pension, annuity, stock bonus, profit-sharing or other funded deferred compensation plan (or the plan administrator of the plan) is required to file an annual return containing information required under regulations with respect to the qualification, financial condition, and operation of the plan.<sup>30</sup> The plan administrator of a defined benefit plan subject to the minimum funding requirements<sup>31</sup> is required to file an annual actuarial report.<sup>32</sup> These filing requirements are met by filing an Annual Return/Report of Employee Benefit Plan, Form 5500, and providing the information as required on the form and related instructions.<sup>33</sup> Similarly, the Employee Retirement Income Security Act of 1974 (“ERISA”) requires the administrator of certain pension and welfare benefit plans to file annual reports disclosing certain information to the Department of Labor (“DOL”) and, with respect to some defined benefit

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<sup>30</sup> Sec. 6058.

<sup>31</sup> Sec. 412. Most governmental plans (defined in section 414(d)) and church plans (defined in section 414(e)) are exempt from the minimum funding requirements.

<sup>32</sup> Sec. 6059.

<sup>33</sup> Treas. Reg. secs. 301.6058-1(a) and 301.6059-1. Form 5500 consists of a main form and various schedules, some of which require additional information to be included. The schedules that must be filed and the additional information that must be included with Form 5500 depend on the type and size of plan. A simplified annual reporting form, Annual Return/Report of Small Employee Benefit Plan, Form 5500-SF, is available to certain plans (covering fewer than 100 employees) that are subject to reporting requirements under ERISA and the Code. References herein to Form 5500 include Form 5500-SF.

plans, to the Pension Benefit Guaranty Corporation (“PBGC”).<sup>34</sup> Plan administrators also comply with these ERISA filing requirements by filing Form 5500.

Forms 5500 are filed with DOL, and information from Forms 5500 is shared with the IRS and PBGC.<sup>35</sup> Form 5500 is due by the last day of the seventh month following the close of the plan year.<sup>36</sup> DOL and IRS rules allow the due date to be automatically extended by 2½ months if a request for extension is filed.<sup>37</sup> Thus, in the case of a plan that uses the calendar year as the plan year, the extended due date for Form 5500 is October 15.

Under the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, in the case of returns for taxable years beginning after December 31, 2015, the Secretary of the Treasury is directed to modify appropriate regulations to provide that the maximum extension for the returns of employee benefit plans filing Form 5500 is an automatic 3½-month period ending on November 15 for calendar-year plans.<sup>38</sup>

### **Senate Amendment**

Under the provision, in the case of returns for any taxable period beginning after December 31, 2015, the Secretary of the Treasury or the Secretary’s delegate is directed to modify appropriate regulations to provide that the maximum extension for the returns of employee benefit plans filing Form 5500 is an automatic 3½-month period beginning on the due date for filing the return, without regard to any extensions.<sup>39</sup>

Effective date.—The provision in the Senate amendment is effective on the date of enactment.

### **House Amendment**

No provision.

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<sup>34</sup> ERISA secs. 103, 104, and 4065. Most governmental plans and church plans are exempt from ERISA, including the ERISA reporting requirements. ERISA section 3004 requires that, when the IRS and DOL carry out provisions relating to the same subject matter, they must consult with each other and develop rules, regulations, practices and forms designed to reduce duplication of effort, duplication of reporting, and the burden of compliance by plan administrators and employers. Under ERISA section 4065, the PBGC is required to work with the IRS and DOL to combine the annual report to PBGC with reports required to be made to those agencies.

<sup>35</sup> Form 5500 filings are also publicly released in accordance with sec. 6104(b) and Treas. Reg. sec. 301.6104(b)-1 and ERISA secs. 104(a)(1) and 106(a).

<sup>36</sup> Under ERISA section 104(a)(1), the annual report is due within 210 days after the close of the plan year or within such time as provided by regulations to reduce duplicative filings. DOL and IRS regulations provide for filing at the time required by the forms and instructions issued by the agencies. 29 C.F.R. sec. 2520.104a-5(a)(2) and Treas. Reg. secs. 301.6058-1(a)(4) and 301.6059-1(a).

<sup>37</sup> Treas. Reg. sec. 1.6081-11(a). Instructions for Form 5500 also provide for an automatic extension of time to file the Form 5500 until the due date of the Federal income tax return of the employer maintaining the plan if (1) the plan year and the employer’s tax year are the same; (2) the employer has been granted an extension of time to file its federal income tax return to a date later than the normal due date for filing the Form 5500; and (3) a copy of the application for extension of time to file the Federal income tax return is maintained with the records of the Form 5500 filer. An extension granted by using this automatic extension procedure cannot be extended beyond a total of 9½ months beyond the close of the plan year.

<sup>38</sup> Section 2006(b)(3) of Pub. L. No. 114-41 (July 31, 2015).

<sup>39</sup> The provision in the Senate amendment is similar to section 2006(b)(3) of Pub. L. No. 114-41, which was enacted after the Senate amendment was passed by the Senate.

### **Conference Agreement**

The conference agreement does not include the Senate amendment provision. The conference agreement repeals the provision in the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 that provides for an automatic 3½-month extension of the due date for filing Form 5500. Thus, the extended due date for Form 5500 is determined under DOL and IRS rules as in effect before enactment of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015.

Effective date. –The provision in the conference agreement is effective for returns for taxable years beginning after December 31, 2015.

### Section 32201 - Adjustment for Inflation of Fees for Certain Customs Services

#### **Present Law**

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 establishes certain fees for customs services. These fees are not currently adjusted for inflation.

#### **House Bill**

The House bill provides that the Secretary of Treasury shall annually adjust the fees collected under Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and the limitations on fees under paragraphs (2), (3), (5), (6), (8), and (9) of subsection (b), on, to reflect any increase in the average of the Consumer Price Index.

Effective date. –The provision is effective on October 1, 2015.

#### **Senate Amendment**

The Senate amendment is the same as the House bill.

Effective date. –The provision is effective on October 1, 2015.

### **Conference Agreement**

The conference agreement follows the House bill and the Senate amendment provision with two changes. First, changes to subsection (b) reaffirm Congressional intent that revenue from the adjustments are to be deposited into the Customs User Fee Account, subject to appropriations acts. Second, it sets the first adjustment on April 1, 2016 instead of October 1, 2015.

Effective date. –The provision is effective on April 1, 2016.

### Extension of Enterprise Guarantee Fees.

#### **Senate Amendment**

Section 52205 of the Senate amendment to H.R. 22 modifies Section 1327(f) of the Housing and Community Development Act of 1992 to extend enterprise guarantee fees from October 1, 2021 to October 1, 2025.

#### **House Amendment**

The House amendment to the Senate amendment to H.R. 22 contains no provisions comparable to the Senate position.

### **Conference Agreement**

The Senate recedes from its position and concurs in the House position.

### Section 32202 – Limitation on Surplus Funds of Federal Reserve Banks.

#### **House Amendment**

Section 32202 of the House amendment to the Senate amendment to H.R. 22 modifies Section 7 of the Federal Reserve Act (12 U.S.C. 289) to execute a liquidation of the Federal Reserve surplus account and a remittance of funds to the U.S. Treasury. Section 32202 also dissolves the existence of the surplus account on a go-forward basis. Finally, Section 32202 ensures future net earnings of the Federal Reserve, in excess of dividend paid, are remitted to the U.S. Treasury.

#### **Senate Amendment**

The Senate amendment to H.R. 22 contains no provisions comparable to the House position.

#### **Conference Substitute**

The Senate recedes from its position and concurs in the House position with certain modifications. Specifically, the conference substitute retains the Federal Reserve surplus account, but caps it at \$10,000,000,000. Any amounts which exceed the cap are remitted to the U.S. Treasury.

### Section 32203 – Dividends of the Federal Reserve Bank.

#### **Senate Amendment**

Section 52203 of the Senate amendment to H.R. 22 modified Section 7(a)(1)(A) of the Federal Reserve Act (12 U.S.C. 289(a)(1)(A)) by reducing the interest rate from 6 percent to 1.5 percent on capital paid into the Federal Reserve System by member banks with consolidated assets over \$1,000,000,000.

#### **House Amendment**

The House amendment to the Senate amendment to H.R. 22 contains no provisions comparable to the Senate position.

#### **Conference Substitute**

The House recedes from its position and concurs in the Senate position with certain modifications. Specifically, the conference substitute retains the 6 percent dividend in current law for Federal Reserve System member banks with consolidated assets of \$10,000,000,000 or less, indexed to inflation. For member banks with consolidated assets greater than that amount, the conference substitute replaces the 1.5 percent interest rate with the smaller of: the rate equal to the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of a dividend, and 6 percent. Finally, the conference substitute delays the effective date of the modification to January 1, 2016.

### Section 32204. Strategic Petroleum Reserve Drawdown and Sale.

*Drawdown and Sale.* Subsection (a) would direct the Department of Energy to draw down and sell 66 million barrels of crude oil from the Strategic Petroleum Reserve (SPR).

*Emergency Protection.* Subsection (b) would provide that Secretary shall not draw down and sell crude oil under this section in quantities that would limit the authority to sell petroleum products under section 161(h) of the Energy Policy and Conservation Act. This subsection conditions the 66 million barrels of oil authorized to be sold in a) upon the maintenance of a 530 million barrel floor generally in the Reserve. Forthcoming drawdowns previously authorized by the Bipartisan Budget Act of 2015 would take precedence.

*Increase; Limitation.* Subsection (c) would authorize the increase of drawdown and sales under subsection (b) in order to maximize the financial return to the United States taxpayers, but limits the drawdown and sales under this section to a maximum of \$6,200,000,000 of revenue to the Treasury.

#### Sec. 32205 – Repeal.

Section 32205 would repeal Section 201 of the Bipartisan Budget Act of 2015. Section 201 of the Bipartisan Budget Act of 2015 required the U.S. Department of Agriculture to renegotiate the Standard Reinsurance Agreement by December 31, 2016, and would have placed a cap on the overall rate of return such that the target rate of return did not exceed 8.9 percent of the retained premium.

#### Sec. 32301 - Interest Overpayments.

Section 32301 strikes the requirement that the Office of National Resources Revenue (ONRR) pay interest on overpayments. ONRR, which is part of the Department of the Interior, believes that some lessees overpay deliberately in order to engage in “banking with ONRR” and that the ONRR interest rate is in some cases greater than that offered by other interest earning mechanisms. This provision is part of the President’s FY 2016 budget. Offset estimate: \$300 million.

#### Section 32401 – Budgetary Effects.

##### **House Amendment**

The House amendment to the Senate amendment to H.R. 22 contains no provisions compared to the Senate position.

##### **Senate Amendment**

Section 80001 of the Senate amendment to H.R. 22 provides the budgetary effects to be entered into the PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111-139) shall be determined by the submission printed for the Congressional Record by the Chairman of the Senate Budget Committee.

##### **Conference Substitute**

The conference substitute provides that the budgetary effects of this Act shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111-139).

## **DIVISION D – MISCELLANEOUS**

### **Title XLI - Federal Permitting Improvements**



Title XLI of the conference report seeks to make more efficient the process for federal approval for major infrastructure projects. It creates a council composed of the relevant permitting agencies to establish best practices and model timelines for review, designate individuals within agencies with primary responsibility for coordinating reviews and agency decisions, and shorten the time in which challenges can be made to final decisions.

The Senate recedes with an amendment.

### **Title XLII – Additional Provisions**

Title XLII directs the GAO to study the payments made to vendors of kerosene that is used in noncommercial aviation and submit the results of that study in a report to Congress.

### **Title XLIII – Requirements Regarding Rule Makings**

The House amendment includes a provision requiring that for any publication in the Federal Register pertaining to a rule required pursuant to this Act, the agency making the rule shall include the information that the rule is based upon, including data and studies, and indicate how the public can access that information online.

The Senate amendment contains no similar provision.

The Senate recedes.

### **Title XLIV – Payments to Certified States and Indian Tribes**

In the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP- 21), payments based upon Abandoned Mine Land (AML) funds set forth in the Surface Mining Control and Reclamation Act of 1977 due to certified states were capped at \$15,000,000.00 annually, regardless of the amounts actually due to those certified states. The amounts due the certified states in excess of the \$15,000,000.00 were used as offsets for different purposes. In certain instances, the \$15,000,000.00 payments were insufficient to meet the amounts certified states were owed by the Federal government. This provision requires payment of those excess funds owed by the Federal government to those certified states, but not paid.

### **DIVISION E – EXPORT-IMPORT BANK OF THE UNITED STATES**

Division E reauthorizes and reforms the Export-Import Bank of the United States. There was no disagreement between the Senate amendment and the House amendment.

### **DIVISION F – ENERGY SECURITY**

#### Sec. 61001. Emergency Preparedness for Energy Supply Disruptions

Section 61001 would include the finding that recent natural disasters have underscored the importance of having resilient oil and natural gas infrastructure and effective ways for industry

and government to communicate to address energy supply disruptions. This section also would direct the Secretary of Energy to develop and adopt procedures to enhance communication and coordination between the Department of Energy (DOE), Federal partners, State and local government, and the private sector to improve emergency response and recovery.

#### Sec. 61002. Resolving Environmental and Grid Reliability Conflicts

Section 61002 would resolve conflicts between orders issued pursuant to the Federal Power Act and compliance with environmental laws and regulations. Administration of section 202(c) has led owners of electric generating units (EGUs) to conclude that they can be forced to choose between complying with an emergency order from DOE under that section or violating an obligation imposed by environmental laws or regulations. Left unresolved, therefore, the current statutory structure presents the potential for conflicting legal mandates that could threaten the reliability of the grid.

To ensure that EGUs and other facilities critical to electric reliability are available for service as needed and to remove the potential for conflict between obligations imposed by law, section 61002 would amend section 202(c) of the FPA to clarify that when a party is under an emergency directive to operate pursuant to section 202(c), it would not be deemed in violation of environmental laws or regulations or subject to civil or criminal liability, or citizen enforcement actions, as a result of actions taken that are necessary to comply with a DOE-issued emergency order. The section further provides that after an initial order, not to exceed 90 days duration, DOE may renew or reissue an order for subsequent 90-day periods as it determines necessary. However, in renewing or reissuing any such order, DOE must consult with the primary federal agency with expertise in the environmental interest protected by a potentially conflicting environmental law and include in such order conditions determined by such agency to be necessary to minimize any adverse environmental impacts that may result from such order, to the extent practicable. DOE may exclude such a condition from the renewed or reissued order if it determines that such condition would prevent the order from adequately addressing the emergency necessitating such order and provides in the order, or otherwise makes publicly available, an explanation of such determination.

#### Sec. 61003. Critical Electric Infrastructure Security

Section 61003 would establish a new section 215A of the Federal Power Act that would provide the Secretary of Energy with the authority to address grid security emergencies if the President provides a written directive or determination identifying a grid security emergency. The Secretary would be authorized to take emergency measures to protect the bulk power system or defense critical electric infrastructure located in the contiguous 48 States and the District of Columbia, including ordering critical electric infrastructure owners and operators to take appropriate actions, with such measures to expire no later than fifteen days from issuance. The new section 215A would also facilitate the protection and voluntary sharing of critical electric infrastructure information between private sector asset owners and the Federal government by: (1) exempting designated Critical Electric Infrastructure Information from certain Federal and State disclosure laws for a period up to 5 years; 2) requiring FERC to facilitate voluntary information sharing between Federal, State, local and tribal authorities, the Electric Reliability Organization, regional entities, and owners, operators and users of the bulk-power system in the U.S.; and 3) establishing sanctions for the unauthorized disclosure of shared information.

Section 61003 would also codify DOE as the Sector-Specific Agency for cyber security for the energy sector and specify DOE's duties with regard to that role.

#### Sec. 61004. Strategic Transformer Reserve

Section 61004 would require DOE to submit a plan to Congress evaluating the feasibility of establishing a Strategic Transformer Reserve for the storage, in strategically-located facilities, of spare large power transformers and emergency mobile substations in sufficient numbers to temporarily replace critically damaged large power transformers and substations. Strategically-located spare large power transformers and emergency mobile substations would diminish the vulnerability of the United States to multiple risks facing electric grid reliability, including physical attack, cyber-attack, electromagnetic pulse, geomagnetic disturbances, severe weather, and seismic events.

#### Sec. 61005. Energy Security Evaluation

Section 61005 would direct the Secretary of Energy, in collaboration with the Secretary of State, to establish U.S. energy security valuation methods to ensure that energy-related actions that significantly affect the supply, distribution, or use of energy are evaluated with respect to their potential impact on energy security, including their impact on consumers and the economy; energy supply, diversity and resiliency; well-functioning and competitive energy markets; United States trade balance; and national security objectives.

### **DIVISION G – FINANCIAL SERVICES**

#### **House Amendment**

Division G (Financial Services) of the House amendment to the Senate amendment to H.R. 22 is comprised of 15 titles that provide regulatory relief to facilitate capital formation, ensure greater consumer access to financial products and services, and provide for certain reforms relating to mint operations and housing. The titles within Division G are derived from measures passed by the House on a bipartisan basis in the 114<sup>th</sup> Congress.

#### Title LXXI – Improving Access to Capital for Emerging Growth Companies

Title LXXI makes changes related to the treatment of Emerging Growth Companies (EGCs), as defined by the Jumpstart Our Business Startups Act (JOBS Act). Specifically, this title reduces the number of days an EGC must have a confidential registration statement on file with the Securities and Exchange Commission (SEC) before it may conduct a “road show” from 21 days to 15 days. Title LXXI also clarifies that an issuer that was an EGC at the time it filed a confidential registration statement but is no longer an EGC will continue to be treated as an EGC through the date of its IPO. Finally, Title LXXI requires the SEC to revise its general instructions on Form S-1 regarding the financial information an issuer must disclose prior to its IPO. The House passed legislation identical to the provisions contained in Title LXXI by voice vote on July 14, 2015.

#### Title LXXII – Disclosure Modernization and Simplification

Title LXXII directs the SEC to simplify its disclosure regime for issuers and investors by permitting issuers to submit a summary page on Form 10-K with cross-references to the content

of the report. This title also directs the SEC to revise Regulation S-K to scale disclosure rules for EGCs and smaller issuers, and to eliminate duplicative, outdated, or unnecessary Regulation S-K disclosure requirements for all issuers. Finally, Title LXXII directs the SEC to further study Reg. S-K and engage in rulemaking to implement additional reforms to simplify and modernize Regulation S-K disclosure rules within 360 days of enactment of this title. The House passed legislation identical to the provisions contained in Title LXXII by voice vote on October 6, 2015.

#### Title LXXIII – Bullion and Collectible Coin Production Efficiency and Cost Savings

Title LXXIII eliminates a requirement for special packaging of gold investment-grade coins made by the United States Mint, allows the Mint to purchase blanks for silver coins made of standard coinage silver instead of a custom silver alloy, and removes the requirement for an already-completed study leading to the Mint issuing investment-grade coins of palladium. This title also allows for the collector version of the 30th anniversary American Eagle Silver Bullion Coin to be edge-lettered to denote such anniversary. The House passed legislation identical to the provisions contained in Title LXXIII by voice vote on June 24, 2015.

#### Title LXXIV – SBIC Advisers Relief

Title LXXIV amends the Investment Advisers Act of 1940 to reduce unnecessary regulatory costs and eliminate duplicative regulation of advisers to Small Business Investment Companies (SBICs). This title preempts state registration requirements of advisers solely advising SBIC funds, allows advisers to venture capital funds to continue to be “exempt reporting advisers” if they also advise an SBIC fund, and prevents the inclusion of the assets of an SBIC fund in the SEC registration calculation of assets under management for those advisers that advise private funds in addition to SBIC funds. The House passed legislation identical to the provisions contained in Title LXXIV by voice vote on July 14, 2015.

#### Title LXXV – Eliminate Privacy Notice Confusion

Title LXXV amends the Gramm-Leach-Bliley Act to reduce confusion among consumers that can occur when they receive annual privacy notices by clarifying that annual privacy notices are only required when disclosure policies change after the relationship begins, and to the extent an institution shares sensitive personal information with third parties for marketing purposes. The House passed legislation identical to the provisions contained in Title LXXV by voice vote on April 13, 2015.

#### Title LXXVI – Reforming Access for Investments in Startup Enterprises

Title LXXVI amends Section 4 of the Securities Act of 1933 to facilitate the sale of company-issued securities by employees of private companies. Under current law, a holder of securities issued in a private placement may resell the securities on a public market after a holding period. However, there is not a legal framework providing for the private resale of such securities. Accordingly, this title establishes a legal framework for such transactions. The House passed legislation identical to the provisions contained in Title LXXVI by a vote of 404–0 on October 6, 2015.

#### Title LXXVII – Preservation Enhancement and Savings Opportunity

Title LXXVII amends the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRA) to permit property owners (including nonprofits) of multifamily

developments subsidized by the Department of Housing and Urban Development (HUD) to access income derived from such developments provided that the owners adhere to HUD's affordability and compliance standards. This title also provides for certain reforms under LIHPRHA relating to obtaining or refinancing a loan secured by a low-income housing project. The House passed legislation identical to the provisions contained in Title LXXVII by voice vote on July 14, 2015.

#### Title LXXVIII – Tenant Income Verification Relief

Title LXXVIII permits HUD to allow public and assisted housing administrators to verify income once every three years – instead of annually – for low-income tenants that have fixed incomes, such as incomes derived from social security payments. The House passed legislation identical to the provisions contained in Title LXXVIII by voice vote on March 24, 2015.

#### Title LXXVIX – Housing Assistance Efficiency

Title LXXVIX amends the McKinney-Vento Homeless Assistance Act to allow a private nonprofit organization to administer permanent housing rental assistance provided through the Continuum of Care Program under the Act. This title also requires that the HUD Secretary reallocate, at least once during each fiscal year, any housing assistance provided from the Emergency Solutions Grants Program that is unused or returned, or that becomes available after the minimum allocation requirements under the Act. The House passed legislation identical to the provisions contained in Title LXXVIX by voice vote on July 14, 2015.

#### Title LXXX – Child Support Assistance

Title LXXX amends the Fair Credit Reporting Act to eliminate the requirement that state and local child support agencies and courts notify an obligor ten days before retrieving a consumer report for purposes of determining the appropriate level of child support payments, or enforcing a child support order, award, agreement, or judgment. The House passed legislation identical to the provisions contained in Title LXXX by voice vote on October 6, 2015.

#### Title LXXXI – Private Investment in Housing

Title LXXXI authorizes the HUD Secretary to establish a demonstration program under which the Secretary may enter into budget-neutral, performance-based agreements (for up to 12 years each) that result in a reduction in energy or water costs with appropriate entities. Specifically, such agreements shall facilitate energy or water conservation improvements at up to 20,000 residential units in multifamily buildings participating in Section 8 rental assistance programs, supportive housing for the elderly, or supportive housing for people with disabilities. This title mirrors a request by the Administration in its 2015 Budget proposal. The House passed legislation identical to the provisions contained in Title LXXXI by voice vote on July 14, 2015.

#### Title LXXXII – Capital Access for Small Community Financial Institutions

Title LXXXII amends the Federal Home Loan Bank Act to allow privately insured credit unions to be eligible for membership in the Federal Home Loan Bank (FHLB) System. In order to be eligible for membership, a privately insured credit union must receive a certification from its state supervisor stating that it is eligible to apply for Federal deposit insurance. Additionally, the private insurer of the credit union must provide a copy of the credit union's annual audit report to the National Credit Union Administration (NCUA) and the Federal Housing Finance Agency.

Further, a state supervisor must provide to the NCUA, upon request, the results of any examination and reports concerning a private insurer of credit unions licensed in that state. The House passed legislation identical to the provisions contained in Title LXXXII by voice vote on April 13, 2015.

#### Title LXXXIII – Small Bank Exam Cycle Reform

Title LXXXIII amends the Federal Deposit Insurance Act to increase the qualifying asset threshold for insured depository institutions eligible for 18-month on-site examination cycles from \$500 million to \$1 billion. The House passed legislation identical to the provisions contained in Title LXXXIII by a vote of 411–0 on October 6, 2015.

#### Title LXXXIV – Small Company Simple Registration

Title LXXXIV simplifies the registration process by amending the SEC’s Form S-1 registration statement, which is the basic registration form for new securities offerings, to allow smaller reporting companies to incorporate by reference any documents filed with the SEC after the effective date of the Form S-1. The House passed legislation identical to the provisions contained in Title LXXXIV by a vote of 426–0 on July 14, 2015.

#### Title LXXXV – Holding Company Registration Threshold Equalization

Title LXXXV amends Title VI of the JOBS Act to raise the threshold for mandatory SEC registration of savings and loan companies from 500 shareholders of record to 2,000 shareholders of record (with no limitation on the number of non-accredited investors) and to raise the threshold for a savings and loan company to terminate its registration from 300 to 1,200 shareholders of record. The House passed legislation identical to the provisions contained in Title LXXXV by voice vote on July 14, 2015.

### **Senate Amendment**

The Senate amendment to H.R. 22 contains no provisions comparable to the House position.

### **Conference Substitute**

The Senate recedes from its position and concurs in the House position with certain modifications. Specifically, the conference substitute consists of the above-described fifteen titles, as adopted by the House without further modification, and five additional titles providing for regulatory relief and related financial services reforms. These five titles are the following:

#### Title LXXXVI – Repeal of Indemnification Requirements

Title LXXXVI amends the Securities Exchange Act of 1934 and the Commodity Exchange Act to repeal the indemnification requirements added by the Dodd-Frank Wall Street Reform and Consumer Protection Act for regulatory authorities to obtain access to swap data. Foreign regulators and regulatory entities have indicated concerns regarding the indemnification requirements of Dodd-Frank. The title removes such requirements so data can be shared with foreign authorities. The title would still require the regulatory agencies requesting the information to agree to certain confidentiality requirements prior to receiving the data. The

House passed legislation identical to the provisions contained in Title LXXXVI by voice vote on July 14, 2015.

#### Title LXXXVII – Treatment of Debt or Equity Instruments of Smaller Institutions

Title LXXXVII amends the Financial Stability Act of 2010 to adjust the date on which consolidated assets are determined for purposes of exempting certain instruments of smaller institutions from capital deductions. The purpose of this title is to provide regulatory relief from the requirements of Section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to certain bank holding companies with less than \$15 billion in assets. The title permits bank holding companies to continue counting hybrid capital instruments issued before May 19, 2010, as Tier 1 capital so long as the company held less than \$15 billion in assets as of either December 31, 2009 or March 31, 2010.

#### Title LXXXIII – State Licensing Efficiency

Title LXXXIII amends the Secure and Fair Mortgage Licensing Act of 2008 (SAFE Act) by directing the Attorney General to provide appropriate state officials responsible for regulating financial service providers with access to criminal history information to the extent that criminal history background checks are required under state law for the licensing of such parties. In 2006, the states, under the auspices of the Conference of State Bank Supervisors (CSBS), developed the Nationwide Mortgage Licensing System and Registry (NMLS). According to CSBS, the NMLS platform was designed to provide “improved coordination and information sharing among regulators, increased efficiencies for industry, and enhanced consumer protection.” Congress codified the NMLS in 2008 through the SAFE Act. Title LXXXIII is intended to authorize the NMLS to process criminal background checks for non-depository licensees beyond mortgage loan originators. The House passed legislation identical to the provisions contained in Title LXXXIII by voice vote on October 28, 2015.

#### Title LXXXIX – Helping Expand Lending Practices in Rural Communities

Title LXXXIX amends the Dodd-Frank Wall Street Reform and Consumer Protection Act to require the Bureau of Consumer Financial Protection (Bureau) to create a petition process for interested parties to apply for an area not designated by the Bureau as rural for purposes of federal consumer financial law to be so designated. Under this title, the Bureau is required to publish applications in the Federal Register within 60 days and make them available for public comment for no fewer than 90 days. When evaluating the application, the Bureau would be required to take into consideration:

- Criteria used by the U.S. Census Bureau when classifying geographical areas as rural or urban;
- Criteria used by the Office of Management and Budget when designating counties as metropolitan or micropolitan or neither;
- Criteria used by the Department of Agriculture when determining property eligibility for rural development programs;
- The Department of Agriculture rural-urban commuting area codes;
- A written opinion of the State banking regulator; and
- Population density.

Title LXXXIX further requires the Bureau to grant or deny any application within 90 days following the expiration of the comment period. The grant or denial must be published in the Federal Register, along with an explanation of what factors the Bureau relied upon in making the decision.

Title LXXXIX contains a rule of construction providing that the Bureau is not required to consider, in connection with the above-described evaluation, any previous designation of the area as non-rural by certain other Federal agencies. Title LXXXIX also includes a sunset provision providing that the designation review process established under such title shall cease to have force or effect after the end of the two-year period beginning on the date of the title's enactment. In addition, Title LXXXIX amends the Truth in Lending Act to provide the Bureau with authority to treat a balloon loan as a "qualified mortgage" if such loan was extended by any creditor operating in rural or underserved areas, even if the creditor does not operate predominantly in such areas. Finally, Title LXXXIX provides expanded authority for the Bureau to exempt creditors serving rural or underserved areas from requirements applicable to escrow and impound accounts relating to certain consumer credit transactions. The House passed legislation substantially similar to the provisions contained in Title LXXXIX by a vote of 401-1 on April 13, 2015.

#### **ADVISORY OF EARMARKS**

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, it shall not be in order to consider in the House of Representative a conference report to accompany a bill or joint resolution unless the joint explanatory statement includes a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits. No provision in the conference report accompanying H.R. 22 includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.