



General Oversight Provisions in the American Recovery and Reinvestment Act (ARRA) of 2009: Brief Comparative Analysis of House and Senate Versions

Clinton T. Brass

Analyst in Government Organization and Management

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Summary

This report provides a brief analysis of selected “general oversight provisions” in the House- and Senate-passed versions of the American Recovery and Reinvestment Act of 2009 (ARRA, H.R. 1, 111th Congress). The analysis is included in a side-by-side discussion of similar provisions in each bill.

For purposes of this report, the term “general oversight provision” means an oversight-related provision that addresses multiple agencies or programs. Therefore, oversight-related provisions that are specific to a single program or appropriation, such as appropriations set-asides, are excluded from the report’s scope. General oversight provisions in the House- and Senate-passed bills provide for, among other things, an oversight board composed of executive branch officials, several reporting requirements, and increased resources for agency inspectors general (IGs).

In the context of crises, several oversight issues may arise. In the short term, these include questions of how to balance speed with prudence, and more general challenges of how to reconcile values of transparency, accountability, efficiency, effectiveness, and equity. Longer-term issues include questions of how to build the capacity of federal agencies, Congress, and the President to better respond to crises. In addition, and arguably no less significant, questions arise of how to anticipate and avoid preventable crises.

The federal government might be viewed as a system of “nested” oversight, with multiple entities engaging in simultaneous oversight activity. Congress oversees the President and agencies, for example, including the Office of Management and Budget (OMB). Inspectors general and congressional support agencies such as the Government Accountability Office (GAO) provide assistance to Congress, agencies, and the President with oversight. In turn, within the executive branch, OMB has a statutory responsibility to provide management leadership for many agencies and oversees their activities. Agencies oversee their own activities through organizational and procedural arrangements. Throughout, tools such as monitoring, analysis, and evaluation may be utilized.

In developing an overall oversight framework, there also are multiple perspectives on the potential objectives of oversight. These include compliance with applicable laws and regulations (e.g., adherence to legal requirements and avoidance of fraud); implementation that is faithful with congressional intent, when an agency or the President exercises discretion; avoidance of mismanagement (e.g., adherence to sound management practices); avoidance of undesired bias in funding allocations (e.g., fair allocation of resources and implementation of authorities, with intended equity); effectiveness of funded activities (e.g., achievement of programmatic missions and purposes); and efficiency of funded activities (e.g., minimization of avoidable “waste” and unnecessary redundancy).

This report will be updated as events warrant.

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- provisions addressing the Whistleblower Protection Enhancement Act of 2009, in the House-passed version (Division A, Title 1, Part 4, Sec. 1261 et seq.);
- prohibitions on the use of funds for casinos, golf courses, etc. (Senate-passed version, Division A, Title XVI, Section 1609; House-passed version, Division A, Title I, Section 1109);
- provisions related to program-specific program evaluations (e.g., in the House-passed version, Division A, Title IX, Subtitle B, Department of Health and Human Services Prevention and Wellness Fund, “annual evaluations of programs ... in order to determine the quality and effectiveness of the programs”); and
- contract, grant, or cooperative agreement restrictions and prohibitions (e.g., House-passed version, Division A, Title 1, Section 1241; and Senate-passed version, Division A, Title XVI, Section 1608).

Oversight of Economic Stimulus Legislation

On January 14, 2009, then OMB Director-designate Peter Orszag appeared before the Senate Committee on Homeland Security and Governmental Affairs for a confirmation hearing.¹ Among other things, he was asked about his plans for oversight of the economic stimulus package that was anticipated to be considered at the beginning of the 111th Congress. Director-designate Orszag said the incoming Administration would favor creating a special oversight board. Composed of relevant inspectors general (IGs) and chaired by a newly established White House position of Chief Performance Officer (CPO), he said the board “would review problems and ... would conduct regular meetings to examine specific problems that might be identified.” He also said the Administration planned “to create a website that will contain information about the contracts and include [Portable Document Format files] or contracts themselves, and also financial information about the contracts.”²

¹ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Nominations*, 111th Cong., 1st sess., January 14, 2009, <http://hsgac.senate.gov/public/index.cfm?Fuseaction=Hearings.Detail&HearingID=b6ebfd98-b0ac-4edb-a9bf-118eb5519984>. A transcript is available at <http://www.cq.com> (subscription required).

² He continued, “One of the difficulties in existing financial—federal financial management payment flows is that the time between when a contract is signed and when the information shows up on federal government websites is so long that we didn’t want to allow that time lapse to occur. So we would propose that the contract officer, when you sign the contract, would be required to go to a simple Web-based portal and fill out a simple template, basically to create a faster flow of information, at least at an aggregate level, on specific contracts, post the contract, so you’d see that information too.”

The Obama Administration subsequently established a rudimentary Recovery.gov website in anticipation of enactment of stimulus legislation. The home page explained the Administration's intentions for the website.

Check back after the passage of the American Recovery and Reinvestment Act to see how and where your tax dollars are spent. An oversight board will routinely update this site as part of an unprecedented effort to root out waste, inefficiency, and unnecessary spending in our government.³

Numerous oversight provisions subsequently were included in economic stimulus legislation considered by the House and Senate.⁴ For example, on January 21, 2009, after markup of a draft bill by the House Committee on Appropriations, the committee issued a press release that characterized the stimulus as providing "unprecedented accountability."⁵

Excerpt from House Appropriations Committee Press Release

Unprecedented Accountability: A historic level of transparency, oversight and accountability will help guarantee taxpayer dollars are spent wisely and Americans can see results for their investment.

- In many instances funds are distributed through existing formulas to programs with proven track records and accountability measures already in place.
- How funds are spent, all announcements of contract and grant competitions and awards, and formula grant allocations must be posted on a special website created by the President. Program managers will also be listed so the public knows who to hold accountable.
- Public notification of funding must include a description of the investment funded, the purpose, the total cost and why the activity should be funded with recovery dollars. Governors, mayors or others making funding decisions must personally certify that the investment has been fully vetted and is an appropriate use of taxpayer dollars. This will also be placed on the recovery website.
- A Recovery Act Accountability and Transparency Board will be created to review management of recovery dollars and provide early warning of problems. The seven member board includes Inspectors General and Deputy Cabinet secretaries.
- The Government Accountability Office and the Inspectors General are provided additional funding and access for special review of recovery funding.
- State and local whistleblowers who report fraud and abuse are protected.
- There are no earmarks in this package.

At the same time, concerns have been expressed about the capacity of agencies and "a depleted contracting workforce" to spend funds rapidly "while also improving competition and oversight."⁶ In addition, the question has been raised whether inspectors general and the

³ <http://www.recovery.gov/>.

⁴ It is possible that some oversight provisions may have been informed by experience with implementation of the Emergency Economic Stabilization Act of 2008 (EESA, Division A of H.R. 1424, P.L. 110-343) and the Troubled Asset Relief Program (TARP). For more information about oversight provisions in that law, see CRS Report RL34713, *Emergency Economic Stabilization Act: Preliminary Analysis of Oversight Provisions*, by (name redacted).

⁵ U.S. Congress, House Committee on Appropriations, "Summary: American Recovery and Reinvestment," press release, January 21, 2009, <http://appropriations.house.gov/pdf/PressSummary01-21-09.pdf>.

⁶ Robert O'Harrow Jr., "If Spending is Swift, Oversight May Suffer," *Washington Post*, February 9, 2009, p. A1. Related to the issue of workforce capacity, the George W. Bush Administration's initiative to improve management of federal agencies, the "President's Management Agenda," established criteria for agencies to receive scores on things such as their workforce planning (e.g., to ensure the workforce is adequate to an agency's needs). According to the Bush Administration's criteria and final grades in December 2008, 8 of the 15 cabinet departments received the highest (continued...)

Government Accountability Office (GAO) have sufficient resources to conduct oversight of the stimulus legislation.⁷

The House of Representatives passed its version of the bill on January 28, 2009. The Senate passed its version on February 10, 2009. As of February 12, the House and Senate were negotiating differences in the two versions of the stimulus legislation.

Oversight and Crises: Issues for Congress

Short-Term and Long-Term Questions

In the event of a crisis to which Congress, the President, and federal agencies feel compelled to respond, several challenges present themselves in the short term. Among these in the present context is the question of how to balance speed with prudence. More general challenges in formulating a response to a crisis include how to reconcile values of transparency, accountability, efficiency, effectiveness, and equity. Oftentimes in such circumstances, agencies and policy makers have little time for planning or reflection.

Longer-term issues include questions of how to build the capacity of federal agencies, Congress, and the President to better respond to crises. In addition, and arguably no less significant, questions arise of how to anticipate and avoid preventable crises. For example, the National Commission on Terrorist Attacks Upon the United States, generally known as the 9-11 Commission, described an aspect of this capability as “institutionalizing imagination.”⁸ Organizational, procedural, and system-related options might be explored to address any of these questions.

Oversight Systems and Objectives

The federal government might be viewed as a system of “nested” oversight, with multiple entities engaging in simultaneous oversight activity. Congress oversees the President and agencies, including the Office of Management and Budget (OMB), an entity within the Executive Office of the President.⁹ Inspectors general and congressional support agencies such as the Government Accountability Office (GAO) provide assistance to Congress, agencies, and the President with oversight. In turn, within the executive branch, OMB has a statutory responsibility to provide management leadership for many agencies, including monitoring and oversight of their

(...continued)

rating of a “green” score for “management of human capital,” while the other 7 departments received the middle “yellow” score. U.S. President (George W. Bush), “Executive Branch Management Scorecard,” December 31, 2008, formerly available at <http://www.results.gov>.

⁷ Senator Claire McCaskill asked then OMB Director-designate Orszag about this issue in one of his confirmation hearings. See U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Nominations*, 111th Cong., 1st sess., January 14, 2009.

⁸ U.S. National Commission on Terrorist Attacks Upon the United States, *The 9-11 Commission Report* (Washington: GPO, 2004), p. 344.

⁹ For an overview of congressional oversight, see CRS Report RL30240, *Congressional Oversight Manual*, by (name redacted) et al.

activities.¹⁰ Agencies oversee their own activities through organizational and procedural arrangements, often as Congress has mandated via statute. Viewed together, for example, GAO may attempt to oversee OMB's oversight of an agency's oversight of a funding recipient. Throughout, tools such as monitoring, analysis, and evaluation may be utilized.

In developing an overall oversight framework, there also are multiple perspectives on the potential objectives of oversight. These include the following:

- compliance with applicable laws and regulations (e.g., adherence to legal requirements and avoidance of fraud);
- implementation that is faithful with congressional intent, when an agency or the President exercises discretion;
- avoidance of mismanagement (e.g., adherence to sound management practices);
- avoidance of undesired bias in funding allocations and policy execution (e.g., fair allocation of resources and fair implementation of policy, with intended equity);
- effectiveness of funded activities (e.g., achievement of programmatic missions and purposes); and
- efficiency of funded activities (e.g., minimization of avoidable “waste” and unnecessary redundancy).

Outside of the legislative branch, it remains to be seen how implementing agencies, nonfederal recipients of funds (e.g., state governments), OMB, a proposed oversight board, and IGs will approach these perspectives on oversight.

Comparative Analysis of Selected General Oversight Provisions

Table 1 provides a brief analysis of selected general oversight provisions in the House- and Senate-passed versions of economic stimulus legislation. Bolded text refers to citations within each bill. It should be noted that references to “the Act” within each bill generally refer to either Division A or Division B of the bill, not to the entire bill.

¹⁰ See, for example, 31 U.S.C. § 503.

Table 1. Selected General Oversight Provisions in AARA Legislation

| Subject | House-Passed Bill (Received in Senate from House; H.R. 1) | Senate-Passed Bill (Engrossed Amendment; H.R. 1) | Brief Analysis |
|---|--|---|---|
| General Oversight Funding (“M” indicates millions) | | | |
| Appropriations for Offices of Inspector General (OIGs) in executive departments | <p>In consolidated provision, appropriates funds for “oversight and audit of programs, grants, and projects funded under this Act” to OIGs (available until end of FY2013) in Departments of:</p> <p>Agriculture (USDA, \$22.5 M);</p> <p>Commerce (DOC, \$10 M),</p> <p>Defense (DOD, \$15 M),</p> <p>Education (ED, \$14 M),</p> <p>Energy (DOE, \$15 M),</p> <p>Health and Human Services (HHS, \$19 M),</p> <p>Homeland Security (DHS, \$2 M),</p> <p>Housing and Urban Development (HUD, \$15 M),</p> <p>Interior (DOI, \$15 M),</p> <p>Justice (DOJ, \$2 M),</p> <p>Labor (DOL, \$6 M),</p> <p>Transportation (DOT, \$20 M), and</p> <p>Veterans Affairs (VA, \$1 M).</p> <p>[Division A, Title I, Sec. 1107]</p> | <p>In multiple provisions, appropriates funds to OIGs (available until end of FY2011 unless otherwise noted) in:</p> <p>USDA (\$5 M and \$17.5 M),</p> <p>DOC (\$10 M transfer from Broadband Technology Opportunities Program, available until expended; \$2 M transfer from Digital-to-Analog Converter Box Program, available until end of FY2010; and \$6 M, available until end of FY2012),</p> <p>DOD (\$12 M and \$3 M),</p> <p>ED (\$4 M and \$10 M, available until end of FY2012),</p> <p>DOE (\$5 M and \$10 M, available until end of FY2012),</p> <p>HHS (\$4 M and \$15 M, available until end of FY2012),</p> <p>DHS (\$5 M, available until end of FY2012),</p> <p>HUD (\$2.75 M; \$12.25 M, available until end of FY2012),</p> <p>DOI (\$7.6 M and \$7.4 M),</p> <p>DOJ (\$2 M),</p> <p>DOL (\$3 M),</p> <p>Department of State (\$1.5 M),</p> <p>DOT (\$7.75 M; \$12.25 M, available until end of FY2012),</p> <p>Department of the Treasury, IG for Tax Administration (\$7 M, available until end of FY2012), and</p> <p>VA (\$4.4 M).</p> <p>[Division A, multiple titles]</p> <p>HHS (\$31.25 M, available until end of FY2012).</p> <p>[Division B, Title V, Sec. 5004]</p> | <p>Appropriations for OIGs under the two measures exhibit differences in terms of which agencies get funding, funding amounts, and periods of availability for obligation of funds.</p> |

| Subject | House-Passed Bill (Received in Senate from House; H.R. 1) | Senate-Passed Bill (Engrossed Amendment; H.R. 1) | Brief Analysis |
|---|--|---|--|
| Appropriations for OIGs in other executive agencies | <p>In consolidated provision, appropriates funds for “oversight and audit of programs, grants, and projects funded under this Act” to OIGs (available until end of FY2013) in other executive agencies:</p> <p>Corporation for National and Community Service (CNCS, \$1 M),</p> <p>Environmental Protection Agency (EPA, \$20 M),</p> <p>General Services Administration (GSA, \$15 M),</p> <p>National Aeronautics and Space Administration (NASA, \$2 M),</p> <p>National Science Foundation (NSF, \$2 M),</p> <p>Small Business Administration (SBA, \$10 M), and</p> <p>Social Security Administration (SSA, \$2 M).</p> <p>[Division A, Title I, Sec. 1107]</p> | <p>In multiple provisions, appropriates funds to OIGs (available until end of FY2011 unless otherwise noted) in:</p> <p>Agency for International Development (\$0.5 M),</p> <p>CNCS (\$1 M),</p> <p>GSA (\$2 M; \$5 M, available until end of FY2012),</p> <p>NASA (\$2 M),</p> <p>NSF (\$2 M),</p> <p>SBA (\$10 M), and</p> <p>SSA (\$3 M, available until end of FY2012).</p> <p>[Division A, multiple titles]</p> | Appropriations for OIGs under the two measures exhibit differences in terms of which agencies get funding, funding amounts, and periods of availability for obligation of funds. |
| General appropriations set-aside for management and oversight | <p>Unless other provisions in the act or applicable laws say otherwise, sets aside 0.5% of each amount appropriated in Division A “for expenses of management and oversight of the programs, grants, and activities funded by such appropriation.” Allows agency head to transfer funds to other accounts for that purpose. Funds remain available until end of FY2012. [Division A, Title I, Sec. 1106]</p> | No comparable provision. | Appropriations provisions in both measures include set-asides for oversight and monitoring for a number of specific accounts and programs. However, the House-passed version also includes a comprehensive provision (relating to appropriations provisions) requiring that a minimum amount of funding be provided for “management and oversight” activities. It is not readily apparent if either version leaves gaps in the provision of resources for oversight. |
| Appropriations for Government Accountability Office (GAO) | <p>GAO is appropriated \$25 M for “oversight activities relating to this Act” (i.e., Division A), available until end of FY2010. [Division A, Title I, Secs. 1105 and 1108]</p> | <p>GAO is appropriated \$20 M, available until end of FY2010. [Division A, Title IX]</p> | The House-passed version provides \$5 M more in funding, but for a more specific purpose than in the Senate-passed version. |

| Subject | House-Passed Bill (Received in Senate from House; H.R. 1) | Senate-Passed Bill (Engrossed Amendment; H.R. 1) | Brief Analysis |
|--|--|---|--|
| Evaluations of Tax Expenditures, and Economic and Environmental Impacts | | | |
| Study of economic, employment, and related effects of tax changes | Requires Comptroller General to submit a report on February 1, 2010, and a report every three months thereafter in calendar year 2010, to the House Committee on Ways and Means. The report is to focus on national (and where available, state-by-state) information about the economic, employment, and other effects of provisions in the “Tax Provisions” title. [Division B, Title I, Subtitle H, Sec. 1731] | No comparable provision. | The House measure includes a requirement for some analysis of tax changes based on national and available state-level data. Neither version requires analysis of the impacts of individual tax expenditure provisions. |
| Reports on use of funds | No comparable provision. | Requires a “recipient” entity (including states, but not an “individual”) receiving “recovery funds” from an agency under Division A to submit a report to the agency not later than 10 days after the end of each calendar quarter. The report is to include (1) the total amount of funds received from the agency, (2) the amount of funds expended or obligated “to projects or activities,” and (3) a list of projects or activities for which funds were expended or obligated, including certain project- and activity-specific information for each listing, such as “an analysis of the number of jobs created and the number of jobs retained by the project or activity.” Not later than 30 days after the end of a calendar quarter, agencies are required to post information in these reports on a website. The Congressional Budget Office (CBO) and GAO are required to “comment” on recipients’ reports of jobs created and retained within seven days after the reports are submitted. [Division A, Title XV, Sec. 1551] | In the Senate version, separate reports required to be submitted by the White House’s Council of Economic Advisers (see below, Sec. 1541) are to be “based on” these “use of funds” reports. Logistically, it is not clear how CBO and GAO would be able to comment on recipients’ reports of jobs created and retained within seven days of the reports being submitted to agencies, unless recipients or agencies were required to expeditiously submit the information also to CBO and GAO. |
| Economic and employment impacts of stimulus legislation | Requires chairman of White House Council of Economic Advisers (CEA), in consultation with Director of OMB and Secretary of the Treasury, to submit to Congress quarterly reports “detailing the estimated impact of programs under this Act on employment, economic growth, and other key economic indicators.” [Division A, Title I, Sec. 1204] | Requires chairperson of CEA, in consultation with the Director of OMB and the Secretary of the Treasury, to submit to House and Senate Appropriations Committees quarterly reports “that detail the impact of programs funded through covered funds on employment, estimated economic growth, and other key economic indicators.” The quarterly reports are to be “based on the reports required under section 1551,” described above. Specifies that the first report be submitted no later than 45 days after the end of first full quarter after enactment, and that the last report required to be submitted apply to the quarter when the Recovery Accountability and Transparency Board terminates. [Division | House and Senate versions appear to only require estimates of economic impacts of appropriations-related provisions in each measure’s Division A, not provisions in Division B (e.g., tax changes). In the House version, estimates are not required to be disaggregated. In the Senate version, it is not clear if the CEA is required to estimate aggregate impacts based on data other than those submitted by recipients. Reports in both versions are not required to be posted on Recovery.gov or its equivalent. The House- |

| Subject | House-Passed Bill (Received in Senate from House; H.R. 1) | Senate-Passed Bill (Engrossed Amendment; H.R. 1) | Brief Analysis |
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| | | <i>A, Title XV, Sec. 1541]</i> | passed version does not indicate when reporting shall begin or cease. The versions specify different congressional recipients. Neither version specifies economic indicators related to the estimated gap between GDP and potential GDP (the archetypal focus of a short-term economic stimulus). |
| Compliance with National Environmental Policy Act (NEPA) | No comparable provision. | Requires the President to report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days following the date of enactment until the end of FY2011 on the status and progress of projects and activities funded by Division A with respect to compliance with NEPA “requirements and documentation.” <i>[Division A, Title XVI, Sec. 1607]</i> | For more information on NEPA, see CRS Report RL33152, <i>The National Environmental Policy Act: Background and Implementation</i> , by nae redated. |
| Establishment and Functions of “Accountability and Transparency” Board | | | |
| Establishment of “Accountability and Transparency” Board | Establishes a Recovery Act Accountability and Transparency Board (RAATB). <i>[Division A, Title I, Sec. 1221]</i> | Establishes a Recovery Accountability and Transparency Board (RATB). <i>[Division A, Title XV, Sec. 1511]</i> | The House-passed version includes the word “Act” in the board’s name. |
| Chair of the board | Designates the Chief Performance Officer (CPO) of the President to chair the board. <i>[Division A, Title I, Sec. 1222]</i> | Requires the President to (a) designate the OMB deputy director for management to serve as chairperson; (b) designate another Senate-confirmed presidential appointee to serve as chairperson; or (c) appoint an individual as chairperson, subject to Senate confirmation. If (c), the individual shall be compensated at the rate of basic pay for level IV of the Executive Schedule. <i>[Division A, Title XV, Sec. 1512]</i> | According to White House announcements, the non-statutory CPO position reports directly to the President. For the House-passed version, this reporting relationship may have implications for a chairperson’s testimony to Congress. Someone who works in proximity to the President and gives the President advice might claim executive privilege. ^a Except under one circumstance in the Senate-passed version (i.e., (c)), the chair is already being paid. |
| Board membership in addition to chair, and term length of members | Six additional members designated by the President from the IGs and deputy secretaries of ED, DOE, HHS, DOT, and “other Federal departments and agencies to which funds are made available in this Act.” Each member to serve for term determined by the President. <i>[Division A, Title I, Sec. 1222]</i> | IGs from USDA, DOC, ED, DOE, HHS, DHS, DOJ, DOT; the Treasury IG for Tax Administration; and any other IG as designated by the President from “any agency that expends or obligates covered funds.” <i>[Division A, Title XV, Sec. 1512]</i> | The House-passed measure specifies a total of seven members including the chair. The Senate-passed version specifies a minimum of nine IG members in addition to the chairperson. The Senate-passed version allows only IGs to be members, while the House amendment also allows deputy secretaries to |

| Subject | House-Passed Bill (Received in Senate from House; H.R. 1) | Senate-Passed Bill (Engrossed Amendment; H.R. 1) | Brief Analysis |
|------------------------|--|--|---|
| Functions of the board | <p>The board is required to “coordinate and conduct oversight of spending under [Division A] to prevent waste, fraud, and abuse.” Among other things, the board also is responsible for (1) ensuring that reporting about contracts and grants “meets applicable standards” and “specifies the purpose of the contract or grant and measures of performance”; (2) verifying that competition requirements for contracts and grants have been “satisfied”; (3) investigating spending to determine whether “wasteful spending, poor contract or grant management, or other abuses are occurring”; (4) reviewing whether there are “sufficient qualified acquisition and grant personnel overseeing spending under this Act”; and (5) reviewing whether acquisition and grant personnel receive “adequate training” and whether there are “appropriate mechanisms for interagency collaboration.” The board also is required to coordinate oversight activities with the Comptroller General and state auditor generals. [Division A, Title I, Secs. 1223 and 1228]</p> | <p>The board is required to “coordinate and conduct oversight of covered funds in order to prevent fraud, waste, and abuse,” where “covered funds” is defined as funds expended or obligated from appropriations made under Division A and “any other authorities provided under [Division A].” The board is required to undertake substantially similar functions compared to the House-passed version, with slightly different wording. [Division A, Title XV, Secs. 1513 and 1517]</p> | <p>be designated.</p> <p>The board is required to oversee provisions relating to Division A of both measures, but not Division B.</p> |
| Reporting requirements | <p>Requires the board to submit to Congress “flash reports” on “potential management and funding problems that require immediate attention.” Other reports shall be submitted as the board considers appropriate “on the use and benefits of funds made available in this act.” Quarterly reports shall be submitted to the President and Congress summarizing the board’s findings and the findings of IGs. The board shall prepare an annual, consolidated report “on the use of funds under this Act.” All reports are required to be publicly available and posted on the Internet website Recovery.gov, except that some portions “protected” from public disclosure under the Freedom of Information Act (FOIA) may be redacted. [Division A, Title I, Sec. 1223]</p> | <p>The board is required to submit quarterly reports to the President and Congress, including the House and Senate Committees on Appropriations, summarizing the findings of the board and agency IGs. Additional reports may be submitted. The board is required to submit annual reports to the President and the House and Senate Committees on Appropriations, “consolidating applicable quarterly reports on the use of covered funds.” All reports are required to be publicly available and posted on a website established by the board, except that any portion may be redacted that would disclose information that is not subject to FOIA. [Division A, Title XV, Sec. 1513]</p> | <p>The House-passed version requires “flash reports.” The specified recipients of reports are slightly different between the two versions. The House-passed version specifies the name of the website on which reports are required to be posted, but the Senate-passed version does not.</p> |

| Subject | House-Passed Bill (Received in Senate from House; H.R. 1) | Senate-Passed Bill (Engrossed Amendment; H.R. 1) | Brief Analysis |
|--|---|--|--|
| Board recommendations and agency responses | The board is required to make recommendations to federal agencies on “measures to prevent waste, fraud, and abuse.” Within 30 days of receipt of a board recommendation, a federal agency shall submit to the board, the President, and “the congressional committees of jurisdiction” a report on whether the agency agrees or disagrees with the recommendations and what steps it will take to implement the recommendations. [Division A, Title I, Sec. 1223] | Substantially similar board and agency requirements, but also a requirement for agencies to submit responding reports to the House and Senate Committees on Appropriations. [Division A, Title XV, Sec. 1513] | Beyond the 30-day requirement for agencies to submit a report responding to board recommendations, an agency is not required to report on subsequent implementation. |
| Powers of the board | The board is required or authorized to undertake several tasks, including coordinate audits of agency IGs, conduct reviews alone or in coordination with IGs, hold public meetings, meet at least once per month, secure “directly from any department or agency of the United States information necessary to enable it to carry out its duties,” and enter into contracts. Upon request of the board’s chair, the head of a department or agency “shall furnish” the requested information. [Division A, Title I, Sec. 1224] | The board is required or authorized to undertake similar tasks compared to the House-passed version. However, the board also is granted authorities for audits and investigations under the Inspector General Act of 1978 under that act’s standards and guidelines. Board personnel may conduct investigative depositions and issue subpoenas to compel testimony from individuals who are not federal officers or employees. The board also may transfer its own appropriated funds to support audits, investigations, or administrative support services of covered funds to any IG, OMB, GSA, or a Recovery Independent Advisory Panel. [Division A, Title XV, Sec. 1514] | The House and Senate versions contain somewhat differing investigatory powers, with broader authority in some respects for the Senate-passed version’s board. |
| Board staffing and administrative support | The chair may appoint and fix the compensation of an executive director and other personnel. The executive director shall be paid at the rate of basic pay for level IV of the Executive Schedule. At the board’s request, heads of federal departments or agencies may detail officials or employees to the board without reimbursement. The Executive Office of the President (EOP) shall provide office space to the board. [Division A, Title I, Sec. 1225] | The board may exercise most provisions of 5 U.S.C. § 3161 (relating to employment and compensation of employees in a temporary organization established by law or executive order), subject to time periods of appointment that may not exceed the board’s termination date at the end of FY2012. If information or assistance requested by the board is “unreasonably refused or not provided,” the board is required to report the circumstances to congressional committees of jurisdiction, including the House and Senate Appropriations Committees. GSA shall provide the board with administrative support services, including office space. [Division A, Title XV, Sec. 1515] | Pay provisions of 5 U.S.C. § 3161 allow the rate of basic pay for an executive director to be up to the maximum rate of pay for the Senior Executive Service (SES) under 5 U.S.C. § 5382, which under some conditions may be level II of the Executive Schedule. |
| Independence of IGs | IGs shall retain independent authority to determine whether to conduct an audit or investigation of spending under Division A. If the board requests that an IG conduct or refrain from conducting an audit and the IG rejects the request in whole or in part, | Substantially similar provision, but congressional committees of jurisdiction are to include the House and Senate Appropriations Committees. [Division A, Title XV, Sec. 1516] | Reporting provisions differ slightly. In the Senate version, the House and Senate Appropriations Committees are explicitly added to the “committees of jurisdiction.” |

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| | the IG shall within 30 days of the request submit a report explaining the rejection to the board, the agency head, and the congressional committees of jurisdiction. [Division A, Title I, Sec. 1227] | | |
| Protections for state and local government and contractor whistleblowers | Employees of nonfederal employers receiving funds may not be discharged, demoted, or otherwise subject to a reprisal for disclosing to the board, an IG, the Comptroller General, a Member of Congress, a federal agency head, or their representatives, several kinds of information about mismanagement, waste, danger to public health or safety, or a violation of law. Provides for investigation of complaints, remedy, and enforcement authority. [Division A, Title I, Sec. 1243] | Substantially similar provisions in comparison to House-passed version. [Division A, Title XV, Sec. 1518] | Substantially similar provisions in House and Senate versions. |
| Establishment of website | Requires the board to establish and maintain an Internet website to be named Recovery.gov, which “shall be a portal or gateway to key information related to [Division A] and provide a window to other Government websites with related information.” The board is tasked with ensuring the website includes or provides materials about what Division A means for citizens; accountability information; data on relevant economic, financial, grant, and contract information; detailed data on contracts awarded; printable reports of funds made available, obligated by month to each state and congressional district; a means for the public to give feedback on the performance of contracts; and links to access job opportunities at entities receiving funding under Division A. A contract that is awarded that is not fixed-price and not awarded using competitive procedures “shall be posted in a special section of the website Recovery.gov.” Each federal agency shall publish on Recovery.gov a plan for using funds made available by Division A and also publish all related announcements for grant competitions, allocations of formula grants, and awards of competitive grants. Federal, state, and local government agencies are required to post on Recovery.gov notification about infrastructure | Requirements for the board to ensure a website includes or provides information are substantially similar in comparison to House-passed version. However, the Senate-passed version does not include requirements to post several categories of information, including: links to access job opportunities; contracts that are not fixed-priced and not awarded using competitive procedures; federal agency plans for using funds; federal agency announcements for grant competitions, allocations of formula grants, and awards of competitive grants; and information from federal, state, and local agencies about infrastructure investments and grants for operational purposes. Authorizes the board to exclude posting information on website “when necessary to protect national security,” a provision not included in the House-passed measure. The requirement for state or local officials to certify that an infrastructure investment has received “full review and vetting” is included in the Senate-passed version, but is not required to be posted on the board’s website. Agency reports on recipients’ use of funds are not specifically required to be posted on this website. [Division A, Title XV, Secs. 1519 and 1551; Title XVI, Sec. 1605] | The two versions are substantially similar in some respects. However, as described in detail in the previous column, the Senate-passed version does not include requirements to post several categories of information. Also, the Senate-passed version authorizes the board to exclude some national security-related information. In the Senate version, the requirement for state or local officials to certify that an infrastructure investment has received vetting is not required to be posted on the board’s website, whereas the House version requires this information to be posted. In the Senate version, agency reports also are not specifically required to be posted on the board’s website. |

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| | investments (including certification from state or local officials that the infrastructure investment has received “full review and vetting,” among other things, or else a state or local agency may not receive the funding) and information about grants for operational purposes. [Division A, Title I, Secs. 1201, 1205, and 1226] | | |
| Establishment of independent advisory panel | Establishes a panel of five presidentially appointed members to advise the board on how to prevent waste, fraud, and abuse under Division A. Panel members may receive reimbursement for travel expenses, including per diem in lieu of subsistence. [Division A, Title I, Secs. 1229] | Similar provisions to the House-passed measure, but with greater detail about the panel's operations and perhaps larger scope of activity (initial meeting, quorum, selection of chairperson and vice chairperson, powers, personnel matters relating to an executive director and staff for the panel, and termination at the end of FY2012). [Division A, Title XV, Secs. 1531 through 1535] | Similar provisions in both versions. The Senate version contains significantly more direction in terms of the advisory panel's operations and scope of activity. |
| Funding and termination | Appropriates \$14 M to carry out subtitle establishing board, website, and advisory panel, available until end of FY2010. The board shall terminate 12 months after 90% of funds made available under Division A have been expended, as determined by the Director of OMB. [Division A, Title I, Secs. 1105, 1230, and 1231] | Appropriates \$7 M to a Recovery Act Accountability and Transparency Board to carry out provisions of Title XV, to remain available until end of FY2010. Authorizes such sums as necessary to be appropriated. The board shall terminate at the end of FY2012. [Division A, Title V, and Title XV, Secs. 1520 and 1521] | Senate-passed version has a discrepancy. It appropriates funds in Title V to the board, albeit with a name slightly different from the name of the board established in Title XV. |
| IG and GAO Reviews | | | |
| IG reviews | Any IG of a federal department or executive agency shall review, as appropriate, “any concerns raised by the public about specific investments using funds made available in [Division A].” Findings are required to be “relayed immediately” to the head of each department and agency. The findings of such reviews, along with any audits conducted by an IG of funds made available in Division A, shall be posted on the Internet and linked to the website Recovery.gov. IGs are authorized to “examine any records related to obligations of funds made available in [Division A].” [Division A, Title I, Sec. 1202] | No comparable provision. | The Senate-passed version does not provide for an equivalent to the IG reviews required in the House version. |
| GAO reviews and reports | Requires the Comptroller General to conduct bimonthly reviews and prepare reports on these reviews, focusing on the use by selected states and localities of funds made available in Division A. The | Similar to the House-passed provisions, except the provision notes that “any portion of a report or audit ... may be redacted when made publicly available, if that portion would disclose information that is not subject to disclosure” under | The two versions are similar, with some exceptions. The Senate-passed version describes how GAO may redact certain information that is not subject to disclosure |

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| | <p>reports, along with any audits of such funds conducted by the Comptroller General, shall be posted on the Internet and linked to the website Recovery.gov. The Comptroller General is authorized to “examine any records related to obligations of funds made available in [Division A].” Requires that each contract using funds made available in Division A shall provide that the Comptroller General and his representatives, or any representatives of an appropriate IG, are authorized to examine records of a contractor, subcontractor, state agency, or local agency that directly pertain to the contract or subcontract and to interview any current employee regarding such transactions.</p> <p>[Division A, Title I, Secs. 1203 and 1242]</p> | <p>FOIA. (GAO is not covered as an “agency” under FOIA, 5 U.S.C. § 552(f).) The provision also requires that each contract using funds made available in Division A shall provide that the Comptroller General and his representatives are authorized to examine records of a contractor, subcontractor, state agency, or local agency that directly pertain to the contract or subcontract and to interview any current employee regarding such transactions. However, representatives of an appropriate IG are not so authorized under this provision. [Division A, Title IX, Sec. 901]</p> | <p>under FOIA. The House version explicitly authorizes IGs to examine contractor records, but the Senate version does not contain an equivalent provision.</p> |

Source: CRS

- a. CRS Report RL31351, *Presidential Advisers’ Testimony Before Congressional Committees: An Overview*, by name redated and name redated.

Author Contact Information

(name redacted)

Analyst in Government Organization and
Management

[redacted]@crs.loc.gov, 7-....

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