



A Summary of the Transparency and Accountability Provisions in the Enacted Economic Stimulus Package

The following is a summary of the transparency and oversight provisions of economic recovery package (H.R. 1) as signed into law by President Obama. While many of the provisions remain similar, if not virtually identical to House and Senate bill language, the enacted bill contains significant differences. The enacted bill generally combines the more specific and comprehensive transparency language from the two bills.

Key Changes from House and Senate Bills

The enacted bill steps back from the level of transparency proposed in the House and Senate bills in two crucial aspects. First, whereas the House bill would have required each contract awarded or grant issued to be posted on the Internet, *the enacted bill does not require that contracts or grants be made available as such.*

Second, the enacted bill adds the word “federal” before “government” in a couple of paragraphs that specify on which contracts data would be reported on the recovery website (e.g. “The website shall provide detailed data on contracts award by the *federal* government...”). The implication is that data from contracts awarded by state and local governments would not be required to be reported on the website.

But, unlike the House and Senate bills, the enacted bill does specify that the website shall post detailed information on contracts and grants “include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA)” – that is, elements that are required to be reported on the USASpending.gov website. While FFATA mandates that as of Jan. 2009 data on subcontracts and subgrants be posted on USASpending.gov (a requirement the government has been able to achieve), it does not specify which data fields to post.

Economic Recovery Website

The enacted bill would require that an Accountability and Transparency Board create a website that would be a “portal or gateway to key information related to this Act.” Provisions require the website include “data on relevant economic, financial, grant, and contract information;” “detailed data on contracts awarded by the Government;” and “a means for the public to give feedback on the performance of contracts.”

The bill would require *all recipients*, including states but not individuals, of recovery funds (grants, loans, and contracts) from a federal agency to report quarterly the following:

- Total amount of recovery funds received from the agency.
- Amount of funds expended or obligated to projects.
- A detailed list of all projects for which recovery funds were expended, including:
 - The name and description of the project.
 - An evaluation of the completion status of the project.
 - An analysis of the number of jobs created or retained by the project.
 - Detailed information on any subcontracts or subgrants, including data elements required by (FFATA) – that is, elements that are required to be reported on USASpending.gov

Federal agencies would be required to mandate that recipients provide this information within 180 days of receipt of funds. Subcontractors and subgrantees would also be required to register with the Central Contractor Registration database. To help defray the costs to recipients of gathering reporting the data enumerated in the bill, federal agencies would be allowed to “reasonably adjust” limits on administrative expenditures for contracts and grants.

Additionally, federal agencies that make stimulus funds available would be required to make these reports available on a website on a quarterly basis. The Government Accountability Office (GAO) and the Congressional Budget Office (CBO) would be required to comment on the analysis of the number of jobs created or retained.

The enacted bill would also require that for infrastructure investments made by state and local governments, those governments report the purpose, total cost, and the rationale of the infrastructure investment. State and local governments would also be required to provide the name of the person to contact at the agency if there are concerns with the infrastructure investment. Furthermore, the governor, mayor, or other chief executive would be required to certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars.

Accountability and Transparency Board

The enacted bill provides that an “Accountability and Transparency Board” be established to “to coordinate and conduct oversight of Federal spending under this Act to prevent waste, fraud, and abuse.” The Board would be chaired by the OMB Deputy Director, another presidentially appointed official for which consent of the Senate is required, or someone else with the “advice and consent” of the Senate. The enacted bill also authorizes the Board to hold public hearings, conduct investigative depositions, and issue subpoenas, provisions originally proposed in the Senate bill. The House bill did not specify such powers for the Board. The act provides \$84 million to fund “necessary expenses” of the Board to carry out the provisions in the transparency and accountability title of the bill (Title XV), which include the recovery website.

Contracting

“[T]o the maximum extent possible,” contracts would be competitively bid and fixed price. Contracts that are not would be posted in a special section of the stimulus website. The bill also stipulates that the GAO and IGs may examine the records of contractors and subcontractors. And as mentioned above, the bill would not require contract or grant language be made available.

Other Oversight

Importantly, “to facilitate tracking these funds through Treasury and agency accounting systems,” the conference report requires the Treasury establish special stimulus appropriations accounts.

Inspectors general would be required to investigate concerns raised by the public. Any findings, reviews, or audits resulting from such investigations would be posted on the stimulus website. The act also includes a provision that would require the Government Accountability Office to issue bimonthly reports on the use of funds by select states and localities. Those reports are to be made available to the public on the stimulus website.

Below is a detailed, side-by-side comparison of the transparency and accountability provisions enumerated in the House and Senate economic stimulus bills and the conference report.

A Comparison of the Transparency and Accountability Provisions in the House and Senate Economic Recovery Bills and Enacted Bill

Unless otherwise specified, the provisions noted below are virtually identical. Numbers under provision titles are the section numbers in which the provision appears. Struck text indicates that the conference committee excluded that language in the conference report; while language in regular was included. Text in "Conference Report" column is text that appears in conference report only.

House (HR 1)	Senate (HR 1 AS2)	Enacted Bill
Stimulus Spending Website		
<i>All bills would both require that an Accountability and Transparency Board create a website that would be a "portal or gateway to key information related to this Act" and include "data on relevant economic, financial, grant, and contract information;" "detailed data on contracts awarded by the Government;" and "a means for the public to give feedback on the performance of contracts."</i>		
Establishment of a Stimulus Spending Website		
1226	1519	1526
Website is to be called Recovery.gov	A waiver is to be granted to posting certain contracts to protect national security	Website to be created no later than 30 days after enactment of act
Requirements for Federal, State, and Local Agencies to Post Certain Information on Internet		
1201	1551	1512
Requires that each infrastructure project be listed, along with a description, purpose of the project, total cost, rationale the agency used for funding the project, and contact info for a person in charge of project be listed on Recovery.gov. For "operational funding," a description of the intended use of the funds and the number of jobs created are required to be posted online Also required is that a certification from the governor, mayor, or other chief executive that a given infrastructure is an "appropriate use of taxpayer dollars" All contracts and grants issued as stimulus spending would be posted online	Any recipient of stimulus funds, including states, must report to the federal agencies that made available those funds the total amount of funds received; the amount of funds expended or obligated to projects or actives. Also required is a detailed list of all projects including the name and description of the project; an evaluation of the completion status of the project; and an analysis of the number of jobs created or retained by the project. These recipient reports would be sent to the authorizing agency quarterly. Federal agencies would then make these reports available on the website quarterly. CBO and GAO would be required to comment on the reports' analysis of number of jobs created or retained	As a condition of receiving funds, any recipient must post within 180 days of receipt of funds detailed information on use of funds (e.g., amount of funds received, number of jobs created, etc.). Subcontractors and subgrantees receiving funds under this act must register with Central Contractor Registration database. Website data on contracts and shall include data as specified in the Federal Accountability and Transparency Act of 2006 (FFATA) (i.e. the data that are reported through USASpending.gov. The website will provide links to estimates of number jobs created or sustained; solicitations for contracts to be awarded; other government websites with information concerning covered funds including federal and state websites. The website will also provide information on federal allocations for formula grants and awards of competitive grants. And, "to the extent practical," it will include information about job opportunities.

Accountability and Transparency Board

Both House and Senate bills provide that an "Accountability and Transparency Board" be established to "to coordinate and conduct oversight of Federal spending under this Act to prevent waste, fraud, and abuse."

Establishment of the Accountability and Transparency Board		
1221	1511	1521
Composition of the Board		
<p align="center">1222</p> <p>Chaired by the Chief Performance Officer</p> <p>Composed of 6 members designated by the President from IGs or deputy secretaries from Education, Energy, HHS, Transportation, or other</p>	<p align="center">1512</p> <p>Chaired by OMB Director, some officer who was appointed to a position that was approved by the senate, or someone else with the "advice and consent" of the Senate</p> <p>Composed of IGs from Agriculture, Commerce, Education, Energy, HHS, HS, Justice, Transportation, Treasury, TIGTA and any other IG from an agency that expends funds authorized by this act.</p>	<p align="center">1522</p>
Functions of the Board		
<p align="center">1223</p> <p>Contains a provision to provide "flash" reports on potential funding problems that require immediate attention</p>	<p align="center">1513</p>	<p align="center">1523</p>
Powers of the Board		
<p align="center">1224</p>	<p align="center">1514</p> <p>Board may hold public hearings, conduct investigative depositions, and issue subpoenas</p>	<p align="center">1524</p>
Personnel Policies of the Board		
<p align="center">1225</p> <p>Allows Board chair to appoint an executive director</p>	<p align="center">1515</p>	<p align="center">1525</p>
Funding of the Board		
<p align="center">1230</p> <p align="right">\$14,000,000</p>	<p align="center">1520</p> <p>Funds "authorized to be appropriated such sums as necessary"</p>	<p align="center">Title V (no section number) & 1529</p> <p align="right">84,000,000</p>
Termination of the Panel		
<p align="center">1231</p> <p>12 months after 90% of funds under act have been expended</p>	<p align="center">1521</p> <p>Sept. 30, 2012</p>	<p align="center">1530</p> <p>Sept. 30, 2013</p>

Independent Advisory Panel

Both House and Senate bills provide that an "Independent Advisory Board" be established to "make recommendations to the Board on actions the Board could take to prevent waste, fraud, and abuse."

Establishment of an Independent Advisory Panel		
1229	1531 A little more specific (i.e. defines "quorum")	1541
Duties of the Panel		
N/A	1532 Language under this section is similar to that under the House bill's sec. 1229	1542
Powers of the Panel		
N/A	1533 Panel may hold hearings, secure information from agencies, use the mail system like other agencies, may accept gifts or donations	1543
Personnel Matters of the Panel		
N/A	1534 Specifies compensation and travel expenses policies	1544
Funding of the Panel		
N/A	1534 Funds "authorized to be appropriated such sums as necessary"	1546
Termination of the Panel		
N/A	1535 Sept. 30, 2012	1545 Sept. 30, 2013

Other Transparency and Oversight Provisions		
IG Reviews		
1202	N/A	1514
IGs are to investigate concerns raised by public. Findings, reviews, and audits resulting from such concerns are to be posted on Recovery.gov		
GAO Reviews and Reports		
1203	901	901
Council of Economic Advisers Reports		
1204	1541	1513
	Specifies date when first report is due	
Special Contracting Provisions		
1205	N/A	1554
The Federal Acquisition Regulation shall apply to contracts awarded under this act.		
"To the maximum extent possible" contracts should be fixed-price and competitively bid. Any contracts that aren't are to be listed on Recovery.gov		
Limitations on Non-Competitive Contracts		
1241	N/A	N/A
Specifies how long non-competitively contracts may be used for this act		
Access to GAO and IG Offices to Certain Employees		
1242	902	1515
Inspector General Independence		
1227	1516	1527
Coordination with the Comptroller General and State Auditors		
1228	1517	1528
Funding Accounts		
N/A	N/A	1551
		The Treasury Secretary will ensure that all funds appropriated under the act will be established in separate Treasury accounts.
Set-Aside for Reporting Expenses		
N/A	N/A	1552
		Federal agencies may adjust limits on federal contract overhead expenses to help awardees defray the costs of data collection requirements.