



# *Special* Report

March 2009

## **The American Recovery and Reinvestment Act of 2009 (H.R. 1)**

### **Introduction**

On Feb. 13, Congress approved the American Recovery and Reinvestment Act of 2009 (H.R. 1), a \$787 billion economic stimulus package aimed at jump-starting the economy. President Obama signed the bill into law Tuesday, Feb. 17.

This *Special Report* is to alert NRCA members to potential provisions of interest to the roofing industry in H.R. 1 that may prove to be useful in weathering the current economic downturn. This historic legislation includes numerous provisions that affect roofing contractors and their customers, including tax incentives for employers and consumers; billions of dollars in funding for energy efficiency and other improvements to federal buildings, schools, military facilities, etc.; and programs designed to improve access to credit for small businesses.

NRCA did not take a position of support for or opposition to H.R. 1 but did work with members of Congress and other construction-related organizations to make sure the bill included as many positive provisions for the roofing industry as possible. NRCA also worked successfully to ensure an amendment that would have imposed an immigration enforcement mandate on employers that was contained in the original House bill was stripped from the final legislation during consideration by a House/Senate conference committee.

In addition to providing billions of dollars to federal agencies for building infrastructure investment, H.R. 1 also provides substantial funds to state and local governments through a variety of appropriations, grants and tax provisions. As such, roofing contractors should be aware of new and/or expanded initiatives by state and local governments that may present business opportunities.

The White House has established a Web site ([www.recovery.gov](http://www.recovery.gov)) that provides general information and tracking of the funding allocated by H.R. 1. This Web site will have a section containing major announcements related to implementation of the legislation. Information about specific projects will be provided by federal agencies through their Web sites and the standard federal procurement process.

A detailed summary of provisions within H.R. 1 of potential interest to the roofing industry follows. Summaries of provisions are grouped into three main categories: tax provisions; building infrastructure-related funding provisions; and small-business financing provisions. This report is based on information from the conference report on H.R. 1 and information provided by congressional committees and federal agencies. If you have questions or need further information, please contact Duane Musser, NRCA's vice president of government affairs, at (800) 338-5765 or [dmusser@nrca.net](mailto:dmusser@nrca.net).

### **Provisions of Potential Interest to the Roofing Industry**

In aggregate numbers, the Congressional Budget Office estimates H.R. 1 provides \$185 billion in tax cuts and/or spending during the remaining months of fiscal year 2009 (which ends Sept. 30, 2009), \$399 billion in fiscal year 2010, \$134 billion in fiscal year 2011, and \$787 billion during the 2009-2019 fiscal year periods.

**NATIONAL ROOFING CONTRACTORS ASSOCIATION**

## **Tax Provisions**

H.R. 1 includes numerous tax provisions designed to stimulate economic activity among employers and consumers through state and local governments. Understanding the tax provisions designed for employers may help roofing contractors reduce their taxes and/or reduce the cost of needed investments during the economic downturn. In addition, understanding certain tax provisions aimed at consumers may provide new or expanded business and marketing opportunities for contractors.

Below is a brief explanation of those tax provisions in H.R. 1 that NRCA believes may be of interest to roofing contractors and/or their costumers. Further information regarding the implementation of these tax incentives will become available at [www.irs.gov](http://www.irs.gov).

### *Tax Incentives for Businesses*

#### Bonus Depreciation

H.R. 1 extends the bonus depreciation provision that was enacted for 2008 for one year— through the end of 2009. This provision allows an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property placed in service during 2009. The additional first-year depreciation deduction is allowed for regular tax and alternative minimum tax (AMT) purposes for the taxable year in which the property is placed in service. The basis of the property and depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. Generally, for a property to qualify for the additional first-year depreciation deduction, it must be property to which Modified Accelerated Cost Recovery System (MACRS) depreciation applies with an applicable recovery period of 20 years or less and must purchased and placed in service after Dec. 31, 2008, and before Jan. 1, 2010.

#### Small-business Expensing

H.R. 1 extends for one year, through tax year 2009, an expansion of small-business expensing rules that were put in place for 2008 by the economic stimulus legislation enacted in February 2008. In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct, or “expense,” such costs under Internal Revenue Code (IRC) section 179. Under H.R. 1, the maximum amount a taxpayer may expense for 2009 is \$250,000 of the cost of qualifying property placed in service during 2009 (before enactment of H.R. 1, the amount was \$125,000, indexed for inflation). Qualifying property is defined as property to which MACRS depreciation applies with an applicable recovery period of 20 years or less that is purchased for use in the active conduct of a trade or business. In addition, for tax year 2009, the \$250,000 amount is reduced by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$800,000 (before enactment of H.R. 1, the amount was \$500,000, indexed for inflation).

#### Net Operating Loss Carry Back

H.R. 1 provides an eligible small business with an election to increase the current carryback period for an applicable net operating loss (NOL) from two years to any whole number of years elected by the taxpayer if more than two and less than six. An eligible small business is a taxpayer with \$15 million of gross receipts or less. An applicable NOL is the taxpayer’s NOL for any taxable year ending in 2008 or, if elected by the taxpayer, the NOL for any taxable year beginning in 2008. However, any election under this provision may be made only with respect to one taxable year.

The provision is effective for NOLs arising in taxable years ending after Dec. 31, 2007. For NOLs for a taxable year ending before the provision’s enactment, the bill provides certain transition rules.

#### 3 Percent Withholding Law on Government Contacts

Under current law, beginning Jan. 1, 2011, payments received for goods or services provided to the federal

government and any state or local government entity with annual expenditures of \$100 million or more will face a withholding requirement of 3 percent of the total contract value. The final version of H.R. 1 delays the effective date of the 3 percent withholding requirement on most government contracts to Jan. 1, 2012.

Repealing the 3 percent withholding requirement on government contracts before it becomes effective has been a top legislative priority for NRCA. The House version of H.R. 1 contained a provision to repeal the 3 percent withholding requirement on government contracts, but the conference committee adopted the Senate amendment providing a one-year delay of the effective date. NRCA will continue working to repeal this provision before it becomes effective in 2012.

#### Special Rules Applicable to Qualified Small-business Stock

Under current law, individuals may exclude from taxable income 50 percent of the gain from the sale of certain small-business stock acquired at original issue and held for at least five years. Under H.R. 1, the percentage exclusion for qualified small-business stock sold by an individual has increased from 50 percent to 75 percent. As a result of the increased exclusion, gain from the sale of qualified small-business stock to which the provision applies is taxed at effective rates of 7 percent under the regular tax and 12.88 percent under the AMT. This provision is effective for stock issued after the date of enactment (Feb. 17, 2009) and before Jan. 1, 2011.

#### Deferral of Income for Discharge of Indebtedness

H.R. 1 permits a taxpayer to elect to defer cancellation of indebtedness income arising from a "reacquisition" of "an applicable debt instrument" after Dec. 31, 2008, and before Jan. 1, 2011. Income deferred pursuant to the election must be included in the gross income of the taxpayer ratably in the five taxable years beginning with: (1) for repurchases in 2009, the fifth taxable year following the taxable year in which the repurchase occurs or (2) for repurchases in 2010, the fourth taxable year following the taxable year in which the repurchase occurs.

An "applicable debt instrument" is any debt instrument issued by a C corporation or any other person in connection with the conduct of a trade or business by such person. A "debt instrument" is broadly defined to include any bond, debenture, note, certificate, or another other instrument or contractual arrangement constituting indebtedness.

A "reacquisition" is an "acquisition" of an applicable debt instrument by the debtor that issued (or is otherwise the obligor under) such debt instrument or any person related to the debtor within the meaning of IRC section 108(c)(4). An "acquisition" includes an acquisition of a debt instrument for cash, the exchange of a debt instrument for another debt instrument, the exchange of corporate stock or a partnership interest for a debt instrument, the contribution of a debt instrument to the capital of the issuer, and the complete forgiveness of a debt instrument by a holder of such instrument.

#### Modification of Built-in Gains Tax

The Built-in Gains (BIG) tax effectively forces businesses that convert from C to S corporation status to sit on appreciated assets for 10 years after conversion or otherwise face a 35 percent corporate tax on top of all other applicable taxes—reaching punitive levels as high as 65 percent in some states. This is potentially devastating in the current economy because S corporations have limited access to the public markets and fewer options for raising external capital.

As a means of freeing up much-needed capital, H.R. 1 reduces the BIG holding period from 10 to seven years. This provision is effective for tax years beginning in 2009 and 2010 but sunsets thereafter. This measure is expected to provide hundreds of thousands of longtime S corporations more timely and direct access to their capital and the ability to purchase new equipment, build new plants, and retain or hire employees.

#### Incentives to Hire Unemployed Veterans and Disconnected Youths

Under current law, businesses are allowed to claim a work opportunity tax credit equal to 40 percent of the first

\$6,000 of wages paid to employees of one of nine targeted groups. H.R. 1 creates two new targeted groups of prospective employees: unemployed veterans and disconnected youth. An individual qualifies as an unemployed veteran if he or she was discharged or released from the Armed Forces during the five-year period before being hiring and received unemployment compensation for more than four weeks during the year before being hiring. An individual qualifies as a disconnected youth if he or she is between the ages of 16 and 25 and has not been regularly employed or attended school during the past six months.

### *Energy-related Tax Provisions*

#### Removal of Limitations on Renewable Energy Tax Credits

Under previous law, businesses could claim a 30 percent tax credit for qualified wind energy property (capped at \$4,000). Individuals could claim a 30 percent tax credit for qualified solar water heating property (capped at \$2,000), qualified small wind energy property (capped at \$500 per kilowatt of capacity up to \$4,000), and qualified geothermal heat pumps (capped at \$2,000). H.R. 1 repeals the individual dollar caps so each of these types of renewable energy property is eligible for an uncapped 30 percent tax credit.

#### Repeal of Subsidized Energy Financing Limitations on the Investment Tax Credit

Before enactment of H.R. 1, the investment tax credit had to be reduced if the qualifying property was financed with industrial development bonds or any other government- subsidized financing program. H.R. 1 repeals this subsidized energy financing limitation on the investment tax credit in an effort to allow all businesses and individuals to qualify for the full amount of the credit regardless of the financing source.

#### Qualified Energy Conservation Bonds

H.R. 1 authorizes \$2.4 billion of qualified energy conservation bonds to finance state, municipal and tribal government programs designed to reduce greenhouse gas emissions and implement "green" community programs. The bill also clarifies that such bonds may be used for programs in which utilities provide ratepayers with energy-efficient property and recoup the costs of that property during an extended time period.

### *Tax Incentives for Consumers*

#### Tax Credits for Energy-efficiency Improvements to Existing Homes

H.R. 1 expands the existing 10 percent nonbusiness tax credit for individuals who purchase qualified energy-efficiency improvements to existing homes to 30 percent and extends it for one year, through 2010. The bill also eliminates the property-by-property dollar caps on this tax credit and instead provides an aggregate \$1,500 cap on all property qualifying for the credit and updates the energy-efficiency standards for such qualifying property.

A qualified energy-efficiency improvement is any building envelope component that meets or exceeds the prescriptive criteria for such a component established by the 2000 International Energy Conservation Code as supplemented and as in effect on Aug. 8, 2005 (or, in the case of metal roof systems with appropriate pigmented coatings, meets the ENERGY STAR® program); is installed in or on a dwelling located in the U.S. and owned and used by the taxpayer as the taxpayer's principal residence; the original use of which commences with the taxpayer; and reasonably can be expected to remain in use for a least five years.

Building envelope components are insulation materials or systems that are specifically and primarily designed to reduce the heat loss or gain for a dwelling; exterior windows (including skylights) and doors; and metal or asphalt roof systems with appropriate pigmented coatings or cooling granules that are specifically and primarily designed to reduce a dwelling's heat gain.

H.R. 1 updates the building insulation requirements to follow the prescriptive criteria of the 2009 International Energy Conversation Code. Also, the bill provides that qualifying exterior windows, doors and skylights must have a U-factor at or below 0.30 and a seasonal heat gain coefficient at or below 0.30.

The Internal Revenue Service (IRS) is expected to issue updated guidance regarding this tax credit, but in the interim, previous guidance can be found at [www.irs.gov/pub/irs-drop/n-06-26.pdf](http://www.irs.gov/pub/irs-drop/n-06-26.pdf).

### Refundable First-time Home Buyer Credit

In 2008, Congress passed legislation to establish a refundable tax credit that is equivalent to an interest-free loan equal to 10 percent of the purchase of a home (up to \$7,500) by first-time homebuyers. The provision applies to homes purchased on or after April 9, 2008, and before July 1, 2009. Taxpayers receiving this credit are required to repay any amount received under this provision to the government within 15 years in equal installments or earlier if the home is sold. The credit phases out for taxpayers with adjusted gross incomes in excess of \$75,000 (\$150,000 in the case of a joint return). H.R. 1 eliminates the repayment obligation for taxpayers who purchase homes after Jan. 1, 2009, increases the maximum value of the credit to \$8,000, removes the prohibition on financing by mortgage revenue bonds and extends the availability of the credit for homes purchased before Dec. 1, 2009. The provision retains the credit recapture if the house is sold within three years of purchase.

### *Tax Provisions that Provide Infrastructure Funding to State and Local Governments*

#### Qualified School Construction Bonds

The bill creates a new category of tax credit bonds for the construction, rehabilitation or repair of public school facilities or the acquisition of land on which a public school facility will be constructed. There is a national limitation on the amount of qualified school construction bonds that may be issued by state and local governments of \$22 billion (\$11 billion in 2009 and \$11 billion in 2010). There is a national limitation on the amount of qualified school construction bond that may be issued by Indian tribal governments of \$400 million (\$200 million in each of 2009 and 2010).

#### Tax Credit Bond Option for State and Local Governments ("Build America Bonds")

For 2009 and 2010, H.R. 1 provides state and local governments with the option of issuing a tax credit bond instead of a tax-exempt governmental obligation bond. Because the market for tax credits is small given current economic conditions, this provision will allow state and local governments to elect to receive a direct payment from the federal government equal to the subsidy that would have otherwise been delivered through federal tax credit bonds. This will increase funds available to state and local governments for infrastructure investments.

### **Building Infrastructure-related Funding Provisions**

H.R. 1 contains billions of dollars of funding for building infrastructure and energy-related projects of interest to the roofing industry. Programs funded by H.R. 1 are spread across numerous federal departments and agencies.

Generally, the bill requires federal agencies to report to the Office of Management and Budget within 60 days of enactment (April 18, 2009) regarding how the funding is to be allocated. Federal agencies have been directed to begin issuing weekly status updates of their efforts to allocate funding beginning on March 3, 2009, and each Tuesday thereafter through May 12. Some agencies are directed by H.R. 1 to act more expeditiously on certain allocations of funding.

For federal *contract* awards of projects funded by H.R. 1, federal agencies are required to publish pre-solicitation and award notices of orders under task and delivery order contracts on the Federal Business Opportunities (FedBizOpps) Web site, [fedbizopps.cos.com](http://fedbizopps.cos.com).

For federal *grant* awards, agencies must post funding opportunity announcements to the Grants.gov Web site ([www.grants.gov](http://www.grants.gov)) within 20 days of enactment (March 13, 2009), and within 30 days of enactment (March 27, 2009), the Grants.gov announcement should link to the full announcement on the agency's Web site.

Information about how to obtain *loans and loan guarantees* provided by H.R. 1 will be posted on [www.govloans.gov](http://www.govloans.gov).

### Energy-efficiency Improvements to Federal Buildings/General Services Administration

H.R. 1 provides \$5.55 billion to the General Services Administration to be allocated for building infrastructure improvements to federal buildings between the date of enactment and Sept. 30, 2010, as follows:

- \$4.5 billion for conversion to high-performance green buildings as defined in Public Law 110-140 (the Energy Independence and Security Act of 2007)
- \$750 million for federal buildings and U.S. courthouses
- \$300 million for border stations and land points of entry

H.R. 1 also provides \$4 million in additional funds to the Office of Federal High-Performance Green Buildings and \$3 million for a training and apprenticeship program for construction, repair and alteration of federal buildings. GSA is required to submit a list of projects to receive funding within 45 days of enactment (April 3, 2009).

### Weatherization Assistance Program/Department of Energy

H.R. 1 provides \$5 billion for the Weatherization Assistance Program at the Department of Energy (DOE) for the purpose of improving energy efficiency in “modest-income homes.” The funding will expire Sept. 30, 2010, and priority is to be given to projects ready to go within 120 days. More information on this program can be obtained at [apps1.eere.energy.gov/weatherization/](http://apps1.eere.energy.gov/weatherization/).

### Energy Efficiency and Renewable Energy Program/Department of Energy

H.R. 1 provides \$16.8 billion for DOE’s Office of Energy Efficiency and Renewable Energy (EERE), which supports multiple initiatives designed to enhance U.S. energy efficiency and productivity and bring renewable-energy technologies to the marketplace. Further information may be found at [www1.eere.energy.gov/office\\_eere](http://www1.eere.energy.gov/office_eere).

### Energy Efficiency and Conservation Block Grant Program/Department of Energy

H.R. 1 provides \$3.2 billion for the Energy Efficiency and Conservation Block Grant (EECBG) program at DOE, which was established for the purpose of reducing fossil fuel use; reducing total energy usage; and improving energy efficiency in the transportation, building and other sectors. Of the total amount of funding, \$400,000 is to be awarded on a competitive basis to grant applicants. Eligible entities include state and local governments and Native American tribes. Further information may be obtained at [apps1.eere.energy.gov/wip/block\\_grants.cfm](http://apps1.eere.energy.gov/wip/block_grants.cfm).

### State Energy Program/Department of Energy

H.R. 1 provides \$3.1 billion for the State Energy Program (SEP), which is a partnership between DOE and the states. SEP provides grants to state governments to design and carry out renewable-energy and energy-efficiency programs. Funding for SEP goes to state energy offices in all states and U.S. territories, and the projects are managed by the state energy offices. Goals for SEP include increasing the energy efficiency of the U.S. economy, reducing energy costs, developing alternative and renewable energy resources, promoting economic growth with improved environmental quality, and reducing the U.S. reliance on imported oil. Further information about this program may be obtained at [apps1.eere.energy.gov/state\\_energy\\_program](http://apps1.eere.energy.gov/state_energy_program).

### Innovative Technology Loan Guarantee Program/Department of Energy

H.R. 1 provides \$6 billion in loan guarantees through DOE’s Innovative Technology Loan Guarantee Program. This program provides loan guarantees for renewable-energy technologies and energy transmission technologies and is aimed at encouraging early commercial use of new or improved energy technologies. The program is targeted at early commercial use only, *not* energy research, development and demonstration projects. More information about this program can be obtained from the DOE’s Loan Guarantee Program at [www.lgprogram.energy.gov/features.html](http://www.lgprogram.energy.gov/features.html).

### School Construction/Department of Education

H.R. 1 provides \$53.6 billion for a State Fiscal Stabilization Fund operated by the Department of Education to fund public education needs. Of this total, about \$8.8 billion may be used for modernization, repair and renovation of public schools and institutions of higher learning. This funding will be distributed to state governors and then to school districts and higher learning institutions. Funding must be used to restore aid to school districts under the state's existing primary elementary and secondary education funding formula and restore state support of public institutions of higher learning. More information about this program may be found at [www.ed.gov/policy/gen/leg/recovery/index.html](http://www.ed.gov/policy/gen/leg/recovery/index.html).

### Department of Defense

H.R. 1 provides \$4.2 billion for Department of Defense (DOD) facilities sustainment, restoration and modernization, including energy-efficiency upgrades. The bill also provides \$2.88 billion for new facility construction at DOD, including troop housing, child development centers, warrior transition complexes, hospitals, energy conservation and alternative energy projects. The secretary of the defense must submit to the House and Senate Appropriations Committees an expenditure plan no later than 30 days after enactment.

### Community Development Block Grants/Department of Housing and Urban Development

H.R. 1 provides \$1 billion for Community Development Block Grant (CDBG) program operated by the Department of Housing and Urban Development (HUD) for economic development projects. CDBG is a flexible program that provides communities with resources to address a wide range of community development needs. It provides annual grants on a formula basis to state and local governments. More information about CDBG can be obtained at [www.hud.gov/offices/cpd/communitydevelopment/programs/](http://www.hud.gov/offices/cpd/communitydevelopment/programs/).

### Public Housing Construction/Department of Housing and Urban Development

H.R. 1 provides \$4 billion to HUD to assist public housing authorities in rehabilitating and retrofitting public housing units, including energy-efficiency upgrades and critical safety repairs. Of the total funding provided, \$3 billion will be distributed to public housing authorities through the existing formula and \$1 billion will be competitively awarded. The funding to be allocated by formula must be allocated by HUD within 30 days of enactment, and funding for competitive awards must be allocated by HUD by Sept. 30, 2009. Priority is to be given to projects that can be started within 120 days, projects already under way or included in the five-year capital funds plans and projects that rehabilitate vacant rental units.

### HOME Investment Partnerships Program

H.R. 1 provides \$2.25 billion to HUD's HOME Investment Partnerships Program to coordinate with the Low Income Housing Tax Credit to fill financing gaps caused by the collapse of the tax credit market and jump-start stalled housing development projects. HOME is the largest federal block grant program to state and local governments designed to create affordable housing for low-income households. HOME funds are awarded annually as formula grants to participating jurisdictions. More information about this program can be obtained at [www.hud.gov/offices/cpd/affordablehousing/programs/home/](http://www.hud.gov/offices/cpd/affordablehousing/programs/home/).

### Assisted Housing Stability and Energy and Green Retrofit Investments

H.R. 1 provides \$2 billion for full-year payments to landlords participating in the Section 8 Project-Based program. The bill also provides \$250 million for a program to upgrade HUD sponsored low-income housing to increase energy efficiency, including new insulation, windows and furnaces.

### Veterans Administration

H.R. 1 provides \$1 billion to the Veterans Administration for nonrecurring facility maintenance, including

energy-related projects. The bill requires the secretary of veterans affairs to submit to the House and Senate Appropriations Committees an expenditure plan no later than 30 days after enactment.

#### Green Jobs Worker Training/Department of Labor

H.R. 1 provides \$500 million to the Department of Labor (DOL) that is designated for projects that prepare workers for careers in energy efficiency and renewable energy as described in the Green Jobs Act of 2007 (H.R. 2847 in the 110th Congress). The legislation authorized national and state job training programs aimed at green industries, such as energy-efficient buildings and construction and renewable energy sources. The legislation was authored by former Rep. Hilda Solis (D-Calif.), who was confirmed by the Senate as the new secretary of labor. More information is expected to be issued by DOL on this program in the near future.

#### Department of Homeland Security

H.R. 1 provides \$420 million to the Department of Homeland Security for construction and related activities at land ports of entry facilities of the U.S. Customs and Border Protection Agency.

#### Miscellaneous Federal Agencies

In addition to specific funding provisions mentioned, H.R. 1 provides funding for facility construction at several other federal agencies, including the Department of State, Social Security Administration, etc. Roofing contractors are urged to inquire at federal agencies other than those discussed about new construction work that may be generated by funding in H.R. 1.

#### **Small-business Financing Provisions**

H.R. 1 contains a package of loan fee reductions, higher guarantees, new Small Business Administration (SBA) programs, secondary market incentives and enhancements to current SBA programs that are designed to help unlock credit markets for small businesses. The bill provides \$730 million to SBA and changes the agency's lending and investment programs so it can reach more small businesses that need help. The bill also authorizes refinancing for certain SBA loans so borrowers can expand their businesses on favorable terms.

Following is a brief summary of the small-business-related provisions in H.R. 1. More information about these programs may be obtained at [www.sba.gov/recovery/index.html](http://www.sba.gov/recovery/index.html).

#### 90 Percent Guarantee

H.R. 1 allows SBA to raise its loan guarantee from current levels to as much as 90 percent for some loans. Currently, SBA can guarantee loans up to 85 percent on loans up to \$150,000 and up to 75 percent on loans greater than \$150,000. The 50 percent guarantee on SBA Express loans remains unchanged. Increasing the SBA guarantee percentage will encourage lenders to extend more capital to small businesses by increasing the share covered by an SBA guarantee.

#### Business Stabilization Loans

The bill creates a new SBA loan program to provide deferred-payment loans of up to \$35,000 to viable small businesses to make payments on existing qualifying loans for up to six months. These loans will be 100 percent guaranteed by SBA. Repayment would not have to begin until 12 months after a loan is fully disbursed. The bill provides \$255 million for this new program.

#### Microloans

H. R. 1 expands SBA's Microloan program, which provides small loans (up to \$35,000) paired with technical assistance to start-up, newly established or growing small businesses. The bill provides funding to increase loans from SBA to participating micro lenders by \$50 million through Sept. 30, 2010, and adds \$24 million in grants to provide technical assistance to borrowers.

## Refinancing

The bill also gives SBA the power to use the 504 Certified Development Company program to refinance existing loans for fixed assets, providing fresh support for small-business expansion. This change is designed to help business owners expand their current development projects.

## Secondary Market Expansion

H.R. 1 authorizes SBA to establish a secondary market for pools of "first lien" loans under the 504 program. These "first lien" loans from commercial lenders currently have no SBA guarantee. The bill authorizes SBA to deploy federal guarantees for pools of these first lien loans so they can be sold to investors in a secondary market. Providing liquidity for these first mortgages will help encourage lenders to continue participating in SBA's 504 loan program, which provides a key source of capital for community development and other projects.

The bill also empowers SBA to set up a Secondary Market Lending Authority that would make direct loans to broker-dealers that participate in the secondary market for SBA-guaranteed 7(a) loans. These broker-dealers would use the funds to purchase SBA-backed loans from commercial lenders, assemble them into pools and sell them to investors in the secondary loan market. This program may help address some issues facing the secondary market for SBA loans and may ultimately help SBA lenders make new loans to borrowers.

## Investment Program

The bill helps SBA-licensed Small Business Investment Companies (SBICs) and families of SBIC funds better leverage the capital they use to invest in small businesses. The bill sets maximum levels of funding the agency can provide to these companies at up to three times the private capital raised by those companies or \$150 million, whichever is less. It also raises the percentage any one SBIC can invest in a single small business to 10 percent of total capital and raises from 20 percent to 25 percent the percentage of any licensee's dollar investments that must be made in "smaller" businesses.

## Surety Bonds

The bill also raises the maximum contract amount that can be covered by an SBA guaranteed surety bond from \$2 million to \$5 million and, under certain circumstances, for contracts amounting to \$10 million. It also provides additional funds to cover the costs of expanding this program. SBA guarantees surety bonds to small businesses that private surety companies would not otherwise be able to extend.

## **Other Provisions**

### Davis-Bacon

H.R. 1 includes a Davis-Bacon provision that requires that federal contractors and subcontractors pay no less than the local prevailing wage as determined under the Davis-Bacon Act on any project funded by the bill.

### COBRA Requirement for Employers

H.R. 1 provides a new subsidy of COBRA premiums for unemployed workers that imposes new obligations on employers. The provision requires employers to pay 65 percent of the COBRA premium and former employees to pay the remaining 35 percent for up to nine months for any individual involuntarily terminated between Sept. 1, 2008, and Dec. 31, 2009. H.R. 1 allows employers to reduce the 65 percent premium payment from FICA and federal income taxes they withhold from their current employees' wages.

This subsidy is effective for any COBRA premium due and payable on March 1, 2009. H.R. provides employers with a 60-day period within which they may refund the 65 percent subsidy to their former employees or provide a credit for future COBRA premiums.

Individuals eligible for COBRA on or after Sept. 1, 2008, but decline coverage or who selected it but lost coverage are given a 60-day "special election period" to join or rejoin. Should the individual elect the coverage during this 60-day period, the start date will be March 1, 2009, and coverage will end when the coverage would have otherwise ended. In other words, joining COBRA during the special election period does not extend the coverage beyond the individual's original COBRA end date.

The special election period ends 60 days after notice describing this opportunity to join COBRA is provided to the individual from his or her former employer. DOL is required to craft model notices for employers to use when disseminating information regarding the new employer subsidy and the new 60-day special election period; however, the law gives DOL 30 days within which to create these notices. As such, these notices may not be completed until March 19, 2009.

It is likely there will be significant administrative hurdles involved with implementing this new COBRA plan. Employers may wish to contact their third-party COBRA administrator and/or health plan provider for further guidance on complying with this new COBRA requirement provided by H.R. 1.