



Legislative Bulletin.....June 24, 2005

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H.R. 3010—Amendments to the FY06 Labor/Health and Human Services/Education Appropriations Bill, **Part IV**

H.R. 3010, the FY06 Labor/Health and Human Services/Education Appropriations Bill, is scheduled to be considered on the House floor on Friday, June 24th. Below are the summaries of the amendments made in order under yesterday's UC. Note: summaries are based on RSC staff's review of actual amendment text. For a summary of the underlying bill, see the separate RSC Policy Brief distributed earlier.

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DeFazio (D-OR) #1: Prohibits available funds from being used “to carry out section 1860D-1(b)(4) of the Social Security Act.” According to the sponsor, “The Medicare Modernization Act (MMA) allows, and encourages, the Secretary of Health and Human Services to distribute the personal information of millions of Medicare and Medicaid beneficiaries to private companies for marketing purposes...[the amendment will] prevent this from happening.”

Tancredo (R-CO) #2: Prohibits available funds from being used to “pay the salaries and expenses of personnel to carry out the provisions of section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173).”

According to the sponsor, “the amendment would defund the salaries and expenses necessary to carry out implementation of...the provision that provides \$1,000,000,000 for reimbursement of health providers for undocumented alien care.” Additionally, the sponsor states, “Recently promulgated rules designed to implement the Section fall short of establishing any meaningful accountability measures for the money, and more importantly – they do not require information sharing with homeland security officials to ensure that illegal aliens are deported after their condition stabilizes. As a result, the same illegal aliens could conceivably receive medical care at taxpayer expense over, and over, and over again.”

Neugebauer (R-TX) #4: The amendment states that none of the NIH's National Institute of Mental Health funds may go to two grants (1) #MH047313 (Perceptual Bases of Visual Concepts in Pigeons) and (2) #MH060105 (Perceived Regard and Relationship Resilience in

Newlyweds). The pigeon study has received more than \$1.5 million from the Mental Health Institute over the last 15 years to study how pigeons can classify lifelike visual stimuli (such as “line drawings and computer renderings”) into natural and artificial categories. The other study, which received \$345,161 in FY05, involves “a daily diary study of newlywed couples ... [who] will complete 14-day electronic diaries and relationship-functioning assessments for 4 consecutive years.” The sponsor contends the funds at NIMH would be better spent on studying “serious mental illness.” The amendment does not cut funds to NIMH, but would prevent the Institute from funding these two grants, and would free up any funds that would otherwise go to this grant for other mental health research.

Kirk (R-IL) #5: Funds the Javits Gifted Education Program by \$11.1 million (from \$0 to \$11.1million). The sponsor indicates he intends this increase to come from a cut of \$11.1 million in the Education for Native Hawaiians account (from \$24.7 million to \$13.6 million). Note: there is not actually a decrease in the amendment text, because there is a lump sum for most of the education programs in the text of the bill, and the funding levels for individual education programs are detailed in the accompanying committee report. The Kirk amendment effectively delineates a portion of the lump sum in the bill for the Javits program, thus reducing the overall sum left for other programs. The sponsor states that the Javits program has supported programs in 125 state and local education districts since 1989, reaching two million gifted students nationwide. **Will not be offered.**

Some conservatives have in the past indicated concern with Native Hawaiian funding (which the Kirk amendment decreases), given that the funding is dispersed to a group of people based solely on their race, and disbursed in a manner that treats a race of people similar to an Indian tribe. (For more information on why Native Hawaiians are not a tribe and why they should not be made into a tribe, please see the following brief from the Senate Republican Policy Committee: <http://rpc.senate.gov/files/Jun2205NatHawSD.pdf>).

Filner (D-CA) #8: Prohibits available funds from being “used for placing Social Security account numbers on identification cards issued to beneficiaries under the Medicare program under title XVIII of the Social Security Act.” According to the sponsor, “the amendment requires DHHS to remove Social Security numbers from New Medicare Cards,” in order to help curb identity theft.

Flake/Shadegg/Kolbe (R-AZ) #10: Prohibits funds from being “used to enforce Determination ED-OIG/A05-D0008 of the Department of Education.” According to the sponsor, “The Amendment will ensure that all certified charter schools will continue to be eligible to receive special education and low-income funding. This year, the Department of Education made a sudden ‘determination’ that charter schools operated by for-profit organizations are not public schools – and are therefore ineligible for federal special education funding (under the Individuals with Disabilities Education Act (IDEA)) and Title I low-income student funding. But charter schools across the country are public schools: they operate with taxpayer dollars and abide by the same laws as traditional schools. Federal law lets states decide the qualifications for public schools. All charter schools must accept special education and low-income students on a first-come, first-served basis. Schools cannot deny these students.” **Passed on voice vote.**

Paul (R-TX) / Bartlett (R-MD) / Feeney (R-FL) / Gutknecht (R-MN) #11: Prohibits funds from being used to “create or implement any universal mental health screening program.”

According to the sponsor, “HR 3010 contains \$26 million for ‘state incentive transformation grants’ to fund implementation of the New Freedom Commission recommendations for universal mental health screening and psychiatric drug treatment.” The sponsor states this amendment would “protect both children and adults from invasive screening that is based on vague, subjective, and politically motivated criteria that will result in labeling with dubious diagnoses.”

Rep. Paul sponsored a similar amendment on last year’s Labor/HHS Appropriations bill, and it failed by a vote of 95 – 315.

Hayworth (R-AZ) #14: Prohibits available funds made available from being “used by the National Labor Relations Board to exert jurisdiction over any organization or enterprise pursuant to the standard adopted by the National Labor Relations Board in San Manuel Indian Bingo and Casino and Hotel Employees & Restaurant Employees International Union, AFL-CIO, CLC and Communication Workers of America, AFL-CIO, CLC, Party in Interest, and State of Connecticut, Intervenor, 341 NLRB No. 138.”

According to the sponsor, “Until recently, the NLRB held that the National Labor Relations Act (NLRA) -- the primary law governing relations between unions and employers in the private sector -- did not extend jurisdiction over tribal activities that were located on Native American lands. This makes sense-- tribes are governments, and should be exempted from the NLRA, just as state and local governments are exempted. Since tribes use revenues from on-reservation economic development projects to fund essential government services such as fire and police protection, it is imperative that tribal governments receive the same treatment as state and local governments.” The sponsor states the amendment “will prohibit the NLRB from expending funds to implement this erroneous decision. Although this is not a final solution to the problem, this amendment will halt the NLRB’s active enforcement in Indian Country until a permanent fix can be implemented.”

Hayworth/Gingrey (R-AZ/R-GA) #15: Prohibits available funds from being “used by the Commissioner of Social Security or the Social Security Administration to pay the compensation of employees of the Social Security Administration to administer Social Security benefit payments under a totalization agreement with Mexico which would not otherwise be payable but for such agreement.”

According to the sponsor, the amendment limits funds from being used “to implement a Social Security totalization agreement with Mexico. Totalization with Mexico would allow Mexican nationals, who split their careers between working in Mexico and U.S., increased access to Social Security benefits. The Social Security Administration estimates that only 50,000 Mexican nationals would claim benefits in the next five years, but GAO has reported that these figures do ‘not directly consider the estimated millions of current and former unauthorized workers and family members from Mexico’ who are already residing in the United States, making the cost of the agreement ‘highly uncertain’.”

Hefley (R-CO) #16: Reduces funding in the Act by the \$1,425,140,000. This amount is equal to one-percent of the total amount of discretionary funding in the bill.

Brown-Waite (R-FL) #17: Decreases by \$25 million the available funds for Occupational Safety and Health Administration (OSHA) salaries and expenses; increases by \$25 million the available funds for the Mathematics and Science Partnership under the School Improvement Programs.

According to the sponsor, “this is one of the Department of Education's most successful programs, partnering high-need school districts with the faculty of institutions of higher learning. By contrast, the inefficiencies of OSHA are well documented, yet the program is funded at \$10 million over the President’s request. OSHA has a very small positive impact on worker safety; however, estimates place the cost of OSHA’s current health and safety standards at \$11 billion per year. The most optimistic figures show OSHA currently creating 3 times more costs than it generates in benefits.” **Will not be offered.**

Nadler (D-NY) #24: Increases by \$35.6 million the available funds for School Improvement Programs (from \$5,393,765,000 to \$5,358,165,000); reduces by \$35.6 million (from \$418,992,000 to \$383,392,000) the available funds for the Department of Education Organization Act under Title III, Departmental Management.

According to the sponsor, this increase in the School Improvement Programs will restore funding for Arts in Education programs. These programs were zeroed out in the Labor/HHS bill that was reported out of committee, and this would restore the \$35 million cut (providing level funding from FY05). **Failed by voice vote.**

King (R-IA): Prohibits available fund from being “used to reimburse, or provide reimbursement, for drugs prescribed for the treatment of impotence” According to the sponsor, “Coverage for dual use drugs, such as testosterone, would not be excluded when prescribed for a reason other than sexual performance. The Congressional Budget Office estimates this amendment will save \$105 million in Fiscal Year 2006.”

DeLauro (D-NY): The sponsor’s office would not provide the text of the amendment. According to the sponsor, the amendment will prohibit the use of funds to carry out a settlement agreement between the Labor Department’s Wage and Hour division and Wal-Mart.

Engel (D-NY): According to the sponsor’s office, which would not provide the text, this amendment will be offered and withdrawn, since CBO determined that it would be “subject to an offset” (budget point of order).

According to the sponsor, this amendment would “grant states an extension to use their expiring, unexpended Ryan White CARE Act funds, appropriated in previous years, through fiscal year 2006. The amendment would therefore prohibit expiring funds from being returned to the Treasury before the end of FY06.”

Kind (D-WI): According to the sponsor, this amendment will be offered and withdrawn. Prohibits funds from being used to enforce the portion of the proposed rule (published in the Federal Register on May 4, 2005) which requires for new construction of a critical access hospital (CAH) to be considered a replacement facility, that the construction must be “within 250 yards of the current building or contiguous to the current CAH on land owned by the CAH prior to December 8, 2003.”

According to the sponsor, the amendment “would address a proposed Center for Medicare and Medicaid Services (CMS) regulation that would prohibit the vast majority of CAHs from rebuilding. The amendment prohibits any funds from being used to enforce the proposed regulation. The proposed regulation would force CAHs to reapply for their status if the hospital moves more than 250 yards from its current site, essentially stripping a hospital of its CAH designation. This arbitrary number would preclude land-locked hospitals from moving 500 yards or a mile away from its current site and could actually cost the government more because the costs of operating in an outdated building are far higher than that of building a new and more efficient building.”

Waxman (D-CA): Prohibits funds from being “used by the Department of Health and Human Services to appoint an individual to a Federal advisory committee on the basis of political affiliation, unless required by Federal statute.”

According to the sponsor, the amendment would “block the use of political ‘litmus tests’ for appointments to scientific advisory committees at the Department of Health and Human Services. Science is not liberal or conservative. It is not Democratic or Republican. In order to develop the best policy, our government needs to hear the facts from the most qualified experts, regardless of their political affiliation.” The sponsor quotes from the National Academy of Sciences, “When a federal advisory committee requires scientific or technical proficiency, persons nominated to provide that expertise should be selected on the basis of their scientific and technical knowledge and credentials and their professional and personal integrity. It is inappropriate to ask them to provide nonrelevant information, such as voting record, political-party affiliation, or position on particular policies.”

This amendment is likely subject to a point of order for authorizing on appropriations.

Miller (D-CA): Prohibits available funds from being used “by the Pension Benefit Guaranty Corporation to enforce or implement the ‘Settlement Agreement By and Among UAL Corporation and all Direct and Indirect Subsidiaries and Pension Benefit Guaranty Corporation’, dated April 22, 2005.

According to the sponsor, “the amendment says no funds shall be used to fund and enforce the side deal cut by the PBGC and United to terminate the plans...The termination of the United plans will result in a 30% to 60% cut in their pension benefits.” **Recorded vote pending**

Hinchey (D-NY): Prohibits available funds from being “used by any department, agency, officer, or employee (as defined by section 5701 of title 5, United States Code) of the United States to exercise any direction, supervision, or control over the content or distribution of

public telecommunications programs and services in violation of section 398(c) of the Communications Act of 1934 (47 U.S.C. 398(c)); or (2) in violation of section 396(a) of such Act 10 (47 U.S.C. 396(a)).”

According to the sponsor, the amendment “would reinforce the existing statutory prohibition against Mr. Tomlinson, who also serves as Chairman of the Broadcasting Board Governors, from exercising any direction, supervision, or control over the content or distribution of public broadcasting.”

Honda/Stark (D-CA): Prohibits available funds from being “used to require a local educational agency to provide student information to military recruiters pursuant to section 503(c) of title 10, United States Code, or section 9528(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7908(a)).”

According to the sponsor, the amendment would, prohibit the Department of Education from withholding fund “from school districts that do not provide private student information to military recruiters. The provision requiring school districts to provide military recruiters with private student information (names, addresses, telephone numbers) was included only recently in No Child Left Behind.”

According to Education Committee, which opposes this amendment, “No Child Left Behind provides equal access for military recruiters. Not special access, or extra access, but the same access that is given to other recruiters like colleges or businesses. **Schools must provide, upon request, student names, addresses, and telephone listings, and parents have the right under NCLB to opt out.** They can choose not to allow information about their children to be released without prior written parental consent – and school districts are required to notify parents of this option. The amendment does nothing to ‘return privacy rights to students’ because under current law, parents must be notified of their right to refuse information to colleges and military recruiters. This amendment simply makes it more difficult for our armed forces to continue to ensure our nation’s safety.” The provision in NCLB was first offered by then-RSC Member David Vitter. **Struck on a point of order.**

Obey (D-WI): The sponsor will not release the amendment text. According to the Committee, “the amendment would add \$7.844 billion for education and related programs, \$738 million for job training and other Labor Department programs, \$2.180 billion for health care, biomedical research and public health programs, \$105 million for public health and hospital preparedness grants, \$755 million for human services programs at the Department of HHS, \$100 million for the Corporation for Public Broadcasting, and \$109 million for the Social Security Administration. Additional appropriations would be offset by a provision reducing the tax cuts enacted in 2001 and 2003 for taxpayers with incomes exceeding \$1 million.” (This amendment is likely subject to a point of order)

When asked for additional information regarding Mr. Obey’s amendment, the Committee staff was only willing to provide information concerning the increase in funding for the Corporation for Public Broadcasting(CPB), which provides for a \$100 million increase in CPB (which funds PBS) funding.

Van Hollen (D-MD): Text of the amendment and additional information is not available. According to CQ, the amendment “would prohibit the use of funds to pay certain lenders a rate of return on student loans that is 6% higher than the return lenders receive on regular student loans.”

Markey (D-MA): Prohibits available funds from being “used to implement any strategic plan under section 3 of Executive Order 13335 (regarding interoperable health information technology) that lacks a provision that requires the Department of Health and Human Services to give notice to any patient whose information maintained by the Department under the strategic plan is lost, stolen, or used for a purpose other than the purpose for which the information was collected.”

According to the sponsor, the amendment will “require patients to be notified if their medical records accessible in a new health information network are lost, stolen or used for an unauthorized purpose...The following 13 states already have enacted legislation to require notification of individuals whose private information has been stolen from computer databases: Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Maine, Minnesota, Montana, Nevada, North Dakota, Texas and Washington.”

Brown (D-OH): The amendment states, “None of the funds made available in this Act may be used for funding the operations of the Medicaid Commission (established on May 19, 2005, and chartered under section 222 of the Public Health Service Act and the Federal Advisory Committee Act).” According to the sponsor’s office, the amendment will prevent HHS from using federal funds “to finance the operations of the Administration’s Medicaid Commission. ... The Administration established a commission to cut billions from the Medicaid program, and ‘invited’ Congress to nominate eight non-voting members. It’s our job -- not the Administration’s -- to develop Medicaid policy. ...If a commission would be useful, then it should be a health care commission. The members of Congress who supported a Medicaid Commission bill voted for a more responsible version of this Commission, one with balanced representation able to assess underlying health care issues without specific bias against “a big government program.” **Recorded vote pending.**

RSC Note: While news reports indicated that part of the negotiated deal for Congress passing the FY06 Budget was the creation of a Medicaid Commission, there was no legislative language on a commission included in the Budget signed into law. The creation of the commission was reportedly a verbal agreement between Congress and the Administration, specifically the HHS Secretary. Therefore, there was no official authorization of funding or legislative requirements for the commission, though presumably it will be funded out of the Secretary’s discretionary or administrative budget.

Regula (R-OH): While the UC agreement includes a Regula amendment “regarding Veterans Programs of the Department of Labor, LIHEAP, section 503 of H.R. 3010, or a limitation on the use of certain education funds,” according to the sponsor’s office the text is not yet finalized and is still being “worked out.” (More details will be provided when available).

Price (R-GA): Increases funding for part D of Title V of ESEA by \$70 million, which the sponsor indicates he intends to go toward the new Teacher Incentive Fund program (from \$100 million to \$170 million) and reduces funding for AmeriCorps by the same amount (from \$270 million to \$200 million). The Teacher Incentive Fund is funded for the first time in the underlying bill, and according to the committee report is a pilot program (under the recruiting and training high quality teachers and principals fund) “to develop and implement innovative ways to provide financial incentives for teachers and principals who raise student achievement and close the achievement gap in some of our Nation's highest-need schools.” The President requested \$500 million for this new initiative. The Committee report says that the funds are intended for the Secretary “to award competitive grants to local educational agencies (LEAs), including charter schools that are LEAs, States, or partnerships of (1) a local educational agency, a State, or both and (2) at least one non-profit organization to design and implement fair, differentiated compensation systems for public school teachers and principals based primarily on measures of gains in student achievement, in addition to other factors, for teachers and principals in high-need areas.”

According to the President’s budget, he intends the to “reward teachers and schools that are raising student achievement and closing the achievement gap, provide incentives for effective teachers who choose to teach in low-income schools, and provide funds for the development of performance-based teacher compensation systems.”

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