RSC Republican Study Committee
REP. TOM PRICE, M.D. (R-GA), CHAIRMAN
PAUL TELLER, EXECUTIVE DIRECTOR
424 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
rsc.price.house.gov ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin……………………………………..………August 10, 2010

Contents:

Key Conservative Concerns

Take-Away Points

--**Higher Taxes.** The legislation increases taxes on businesses by $9.8 billion over ten years. The tax increases included in this bill are not dedicated to reducing other taxes, as part of an effort at tax reform, but instead are used to partially pay for the new spending in the bill. Many conservatives would argue that these tax increases will kill jobs.

--**Rewards States for Irresponsible Spending.** From 1999 to 2009, state spending increased by an average of 6%, far in excess of economic growth or income growth. The new spending in the bill (the "Education Jobs Fund" and the FMAP extension) is meant to give states money to deal with their current fiscal problems. This will reward states for years of recklessness with their budgets. In addition, the legislation requires states to maintain spending on state elementary and secondary education funding in order to receive funding from the "Education Jobs Fund." This will make it more difficult for states to get back on the right track.

For more details on these concerns, see below.

Senate Amendments to H.R. 1586—The State Bailout Bill *(Rangel, D-NY)*

Order of Business: The bill is scheduled to be considered on Tuesday, August 10, 2010 under a yet to be determined rule.

Summary: The bill includes **$26.1 billion** of new spending, which is offset with **$9.8 billion** of new taxes and $17.7 billion of spending reductions (all ten year figures). The legislation creates a $10 billion "Education Jobs Fund," extends the higher Medicaid FMAP rates from the "stimulus" bill at a cost of $16.1 billion, and increases taxes by $9.8 billion over ten years. Highlights of the legislation:

"Education Jobs Fund"

Education Jobs Fund: The bill includes $10 billion for an "Education Jobs Fund" which may be used for "compensation and benefits and other expenses, such as support services, necessary to retain existing employees, to recall or rehire former employees, and to hire new employees, in order to provide early childhood, elementary, or secondary educational and related services." Per the bill, funds are awarded using the state's primary elementary and secondary funding formula or based on relative local educational agencies' shares of funds from Title I funds. The awards will go out no later than 45 days after enactment, to states that meet the requirements. Of note, <u>states must maintain current state elementary and secondary education funding levels in order to receive any funds from this bill. The funds may not be used for general administrative expenses and may not be used to reduce the state's debt or for a rainy-day fund.</u>

Texas: The bill imposes an additional requirement, *only on the state of Texas*, that the state maintain its state elementary and secondary funding at FY 2011 levels through FY 2013. No funds shall be given to Texas unless the Governor of Texas assures the Secretary that these requirements have been met.

Mandates on States to Use Federal Money: The bill requires that if a governor has not submitted an application within 30 days, the Secretary shall provide for the funds to be allocated to another entity in the state. *This, in essence, is a requirement for states to take this federal funding, even if they do not want it.*

<u>Conservative Concerns</u>: This money will not just be used for teachers, as continuously asserted by the Democrats, but could be used for other staff such as bus drivers and custodians and the funds do nothing to address underlying education reform or improving performance in the classroom. States are essentially required to use this money, rather than find ways to ease their budgetary burdens at a local level. This is a federal bailout that will create an increased dependency on states for federal dollars. It is a band-aid on a much larger problem of too much spending on education but not enough results in the classroom. Furthermore, almost $34 billion of the $100 billion in education funding provided in the "stimulus" has not yet been spent.

Medicaid Provisions

Extension of Additional Federal Medicaid Aid to States (FMAP) Under ARRA: The 6.2% increase in the share of Medicaid costs the federal government reimburses all states, <u>with additional relief tied to rates of unemployment</u>, was originally created in the "stimulus" bill and is set to expire on December 31, 2010. A similar FMAP increase was also included in previous legislation considered by the House, as well as an earlier version of the Democrats' government takeover of health care bill (H.R. 3962), though it was ultimately left out of the final bill.

The legislation would provide for this extension as follows:

- The legislation would increase by 6 months—through the end of June 30, 2011 (the end of states' fiscal year)—the share of Medicaid costs the federal government reimburses all states. The provision will phase down the increase from 6.2% to 3.2% over the first three months of 2011 and from 3.2% to 1.2% over the second three months of 2011.

- The bill clarifies that states with Section 1115 waivers in effect as of December 31, 2009, covering non-pregnant childless adults, will qualify for meeting the the “stimulus” bill’s maintenance of effort requirements.

- The bill requires that from January 1, 2011 – June 30, 2011 the additional funding made available under the bill will be not available to a state unless the chief executive officer of the state certifies, within 45 days, that the state will request the funding (a move seen by many as politically motivated).

CBO estimates that this provision will cost $16.1 billion over ten years. **Some conservatives may be concerned that the federal government is forcing states to expand eligibility under the *Patients Protection and Affordable Car Act* when they are struggling to maintain current eligibility.**

Medicaid Average Manufacturer Price (AMP) Computation: The legislation amends the Patient Protection and Affordable Care Act to change the AMP calculation for outpatient drugs purchased by the Medicaid program. Currently the calculation of the AMP excludes certain payments and rebates to entities other than retail community pharmacies. The legislation states that the exclusion of rebates – except in the case of inhalation, infusion, implanted or injectable drugs that are not generally dispensed through a retail community pharmacy - will not apply to payments from, and rebates and discounts provided to, distributors or hospitals, clinic, doctors and other entities directly dispensing the drug. CBO has estimated the change will save $2 billion over ten years.

Of note, this provision has changed since the last time the House voted on it as part of H.R. 4899 (FY 2010 Supplemental). Specifically, the word “generally” was added giving CMS more flexibility in determining which drugs are not dispensed through a retail community pharmacy, and as such do not have to provide rebates to Medicaid. This change reduced the savings by $100 million (as compared to the previous CBO score for H.R. 4899).

Tax Increases

The legislation contains several tax increases on businesses that, combined, amount to $9.8 billion over ten years. The tax increases include:

Rule to prevent splitting foreign tax credits from income: This provision adopts a tax increase from the President’s FY 2011 budget that implements a rule that suspends the recognition of foreign tax credits from associated foreign income. *Increases taxes by $4.2 billion over ten years.*

Denial of foreign tax credit with regard to foreign income not subject to U.S. taxation by reason of covered asset acquisitions: This provision would prevent a U.S. taxpayer from claiming a portion of the foreign tax credits that can be claimed under current law, if the credits are due to the benefits of increased amortization and depreciation from the acquisition of a corporation. *Increases taxes by $3.6 billion over ten years.*

Limitation on use of section 956 for foreign tax credit planning: The bill limits the foreign tax credits that may be claimed with respect to a deemed dividend under Section 956 to the amount that would have been allowed with respect to an actual dividend. *Increases taxes by $704 million over ten years.*

Repeal of the 80/20 Rule: Under current law, interest and dividends paid from a U.S. corporation to a foreign individual are subject to a 30% withholding tax (unless lowered by treaty). However this withholding requirement can be waived, or lessened, if the U.S. corporation satisfies an 80% active foreign business requirement. This provision would partially repeal this "80/20" rule, thus subjecting more income to the 30% withholding tax. *Increases taxes by $153 million over ten years.*

Rescissions

Elimination of Advanced Earned Income Credit: Effective at the beginning of 2011, the legislation eliminates the Advanced Earned Income Credit. This program allows individuals to receive a portion of the Earned Income Income Tax Credit throughout the year in their paychecks. The program has an extremely high error rate: 80% of spending under the program is for individuals who violate at least one requirement for receiving assistance under the program. Representative John Linder (R-GA) has previously introduced legislation to repeal this program (H.R. 5885). Though included in the bill the majority brings to the floor this week, House Democrats voted against the proposal when it came before the House on the week of July 26, 2010.

Sunset of Higher Food Stamp Benefits: The bill sunsets the higher Food Stamp benefits, established by the "stimulus," effective March 31, 2014. According to CBO, this provision saves $11.9 billion over ten years. However, since the offset does not go into effect until 2014, there would be plenty of time for Congress to act to prevent it from ever going into effect—and thus there may be some doubt as to whether the savings will actually be realized.

Other rescissions: The bill rescinds a total of $6.7 billion of discretionary budget authority, which CBO says will lead to a $2.8 billion reduction in outlays:

- $122 million—Department of Agriculture, Rural Development;
- $302 million—Department of Commerce, Broadband Technology Opportunities Program;
- $21 million—Department of Defense, Aircraft Procurement;
- $21 million—Department of Defense, Procurement of Weapons and Tracked Combat Vehicles;
- $17 million—Department of Defense, Procurement of Ammunition (Army);
- $75 million—Department of Defense, Other Procurement (Army);
- $26 million—Department of Defense, Weapons Procurement (Navy);
- $42 million—Department of Defense, Other Procurement (Navy);
- $13 million—Department of Defense, Procurement (Marine Corps);
- $102 million—Department of Defense, Aircraft Procurement (Air Force);
- $28 million—Department of Defense, Missile Procurement (Air Force);
- $7 million—Department of Defense, Procurement of Ammunition (Air Force);
- $130 million—Department of Defense, Other Procurement (Air Force);

- $33 million—Department of Defense, Defense-Wide
- $377 million—Department of Defense, Research, Development, Test and Evaluation;
- $1 million—Department of Defense, Operation, Test and Evaluation;
- $703 million—Department of Defense, Operation and Maintenance;
- $260.5 million—Department of Defense, Operation and Maintenance (from the "stimulus");
- $122.0 million—Department of Defense, Procurement (from FY 2008 supplemental);
- $203 million of other Department of Defense funding;
- $20 million—Department of Energy, Nuclear Energy;
- $18 million—Nuclear Regulatory Commission;
- $1.5 billion—Innovative Technology Loan Guarantee Program;
- $100 million—General Services Administration, Federal Building Fund;
- $6.8 million—Bureau of Indian Affairs, Indian Guaranteed Loan Program;
- $2.6 million—Environmental Protection Agency, Hazardous Substance Superfund
- $9.2 million—Environmental Protection Agency, Leaking Underground Storage Tank Trust Fund;
- $10 million—Environmental Protection Agency;
- $11.2 million—National Park Service;
- $3 million—Fish and Wildlife Service;
- All unobligated balances from the FY 1995 Labor, Health and Human Services, and Education Appropriations Act;
- $47 million—Commissioner of Social Security;
- $110 million—National Emergency Grants;
- $50 million—Department of Education, Education for the Disadvantaged;
- $82 million—Department of Education, Student Aid Administration;
- $10.7 million—Department of Education, Innovation and Improvement;
- $340 million—Military Construction, Army;
- $110 million—Military Construction, Navy and Marine Corps;
- $50 million—Military Construction, Air Force;
- $6.1 million—Veterans Affairs;
- $5 million—Information Technology Systems;
- $50 million—Millennium Challenge Corporation;
- $40 million—Civilian Stabilization Initiative;
- $30 million—U.S. Agency for International Development;
- $7.9 million—FAA; and
- $2.2 billion—federal-aid highways.

Committee Action: H.R. 1586, the FAA Air Transportation Modernization and Safety Improvement Act, was considered by the House on March 19, 2009 on a motion to suspend the rules and agree to the legislation. The Senate passed an amended version of the legislation on March 22, 2010. Subsequently, the House passed an amendment to the Senate amendments on March 25, 2010. On August 5, 2010, the Senate used the FAA bill as a vehicle to pass the Education Jobs and Medicaid Assistance Act.

Administration Position: The Administration has released a Statement of Administration Policy (SAP) in support of the bill.

Cost to Taxpayers: The legislation increases tax revenues by $9.8 billion over ten years, and increases net spending by $8.4 billion over ten years.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the legislation increases taxes by $9.8 billion over ten years, and increases net spending by $8.4 billion over ten years.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO report listing potential private-sector mandates is available.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No committee report citing any earmarks is available.

Constitutional Authority: No committee report citing constitutional authority is available.

RSC Staff Contact: Brad Watson, brad.watson@mail.house.gov, (202) 226-9719
Natalie Farr, Natalie.Farr@mail.house.gov, (202) 226-0718
Emily Henehan Murry, Emily.Murry@mail.house.gov, (202) 225-9286