RSC Republican Study Committee

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Contents:

Key Conservative Concerns

Take-Away Points

--**$31.5 Billion Bailout Fund.** The legislation establishes a $31.5 billion bailout fund modeled on the TARP program. Most conservatives would advocate ending infusions of taxpayer money into the banking system. The principle of this legislation is that the TARP model should be extended to evermore sectors of the economy.

--**Federalism Concerns.** The $1.5 billion Small Business Credit Initiative provides incentives for states to create programs intended to increase the amount of capital made available by private lenders to small businesses, which would punish states that chose to instead be frugal with taxpayer money. This turns the concept of federalism on its head.

--**Budget Gimmicks.** While the majority will assert that the bill is paid for, $5.6 billion of the "offsets" (the Roth provisions) consist of merely shifting future tax revenue into the ten-year budget outlook. This does nothing to improve the budget outlook. Furthermore, the legislation includes several provisions that authorize new spending. No CBO score is available to account for all of this spending, and the bill does not attempt to offset these provisions by reducing authorized spending on current government functions.

--**Corporate Welfare.** Aside from the bailout funds, the legislation is intended to provide various other subsidies to businesses (see the "small business provisions" in pages 3-5 of the bill). Many conservatives would argue that business subsidies cause the federal government to pick winners and losers, distort the free market, and divert talent away from producing things into trying to succeed at receiving handouts from the government.

For more details on these concerns, see below.

H.R. 5297—Small Business Jobs Act *(Frank, D-MA)*

<u>**Order of Business**</u>: The bill is scheduled to be considered on Thursday, September 23, 2010, under a closed rule that waives all points of order against consideration of the motion to concur

to the Senate amendment to H.R. 5297. The rule provides one hour of debate on the motion equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services, the chair and ranking minority member of the Committee on Small Business, and the chair and ranking minority member of the Committee on Ways and Means. The rule further requires that measures may be considered under suspension of the rules at any time through legislative day of October 1, 2010. Finally, the rule waives clause 6(a) of Rule XIII (requiring a two-thirds vote to consider a rule on the same day it is reported from the Rules Committee) against any resolution reported from the Rules committee through the legislative day of October 1, 2010.

Summary:

Small Business Lending Fund/State Small Business Credit Initiative

Small Business Lending Fund: The legislation establishes a $30 billion Small Business Lending Fund to be administered by the Secretary of the Treasury.

The bill defines eligible institutions as:

- Any insured depository institution that is not controlled by a bank holding company or savings and loan holding company that is also an eligible institution;
- Any insured depository institution that has assets equal to or less than $10 billion (as reported in fourth quarter 2009);
- Any insured depository institution that is not directly or indirectly controlled by any company or other entity that has total consolidated assets of more than $10 billion;
- Any bank holding company with assets equal to or less than $10 billion; and
- Any savings and loan holding company with total assets equal to or less than $10 billion.

Applications:

- Eligible institutions with **$1 billion or less** may apply to receive a capital investment from the fund in an amount not to exceed 5 percent of risk-weighted assets;
- Eligible institutions with assets of between **$1 billion and $10 billion** may apply to receive a capital investment from the fund not exceeding 3 percent of risk-weighted assets;
- For eligible institutions that are **banking holding companies**, total assets shall be measured based on the combined total assets reported in the call report of the insured depository institution subsidiaries as of the end of the fourth quarter of calendar year 2009, and risk-weighted assets shall be measured based on the combined risk-weighted assets of the insured depository institution subsidiaries, as reported in the call report immediately preceding the date of application; and
- The Secretary may use the fund to purchase preferred stock or other financial instruments from the top-tier bank holding company or savings and loan holding company eligible institutions that are **controlled by holding companies**.

Small business lending plan: To apply for a capital investment under the program, the applicant must deliver to the appropriate federal banking agency a small business lending plan describing how the applicant's strategy and operating goals will allow it to address the needs of small businesses in the areas it serves.

State Small Business Credit Initiative: The legislation establishes a $1.5 billion State Small Business Credit Initiative to be administered by the Secretary of the Treasury. The program would be intended to encourage states to set up small business lending programs. The formula would require that all states receive at least 0.9% of funds under program. For a state capital access program to be approved, it must:

- Provide portfolio insurance for business loans based on a separate loan-loss reserve fund for each financial institution;
- Require insurance premiums to be paid by the financial institution lenders and by the business borrowers to the reserve fund to have their loans enrolled in the reserve fund;
- Provide for contributions to be made by the state to the reserve fund in amounts at least equal to the sum of the amount of the insurance premium charges paid by the borrower and the financial institution to the reserve fund for any newly enrolled loan; and
- Provide its portfolio insurance solely for loans that have 500 employees or less or a loan amount that does not exceed $5 million.

Small Business Provisions

Section 7(a) Loan Limits: The legislation increases Small Business Administration 7(a) loan limits from $2 million to $5 million. The legislation also increases 504 loan limits from $1.5 million to $5.5 million. Further, the legislation increases the loan limits on microloans from $35,000 to $50,000. *This provision costs $26 million over ten years.*

Increase in Section 7(a) Guarantees: The legislation increases the 7(a) loan guarantee percentage from 75% to 90%. *This provision costs taxpayers $505 million over ten years.*

Small Business Intermediary Lending Program: The legislation creates a Small Business Intermediary Lending Pilot Program intended to assist small businesses in "areas suffering from a lack of credit due to poor economic conditions or changes in the financial market." The legislation sets loan limits under the program at $1 million, with terms of up to 20 years, and with an annual interest of 1%. The program is authorized at $60 million over three years.

Guarantees for Bonds and Notes Issued for Community or Economic Development Purposes: The program would make loan guarantees of up to $1 billion annually. The program is authorized at "such sums."

Temporary Express Loan Enhancement: The legislation increases the limit for Express Loans from $350,000 to $1 million.

Export Assistance Centers: The legislation requires that the number of export finance specialists is not less than the number of such employees on January 1, 2003. The legislation further requires that there be at least three export finance specialists in each region of the Small Business Administration. Both of these mandates could lead to more spending to support more federal employees.

State Trade and Export Promotion Grant Program: The legislation creates a new program to make grants to states to carry out export programs for eligible small businesses to—among other things—participate in a foreign trade mission, go on a foreign market sales trip, or receive subscriptions to services provided by the Department of Commerce. The legislation authorizes appropriations of $90 million over three years to carry out this program.

Small Business Teams Pilot Program: The legislation creates a pilot program to make grants to eligible organizations to provide assistance to teams of small business concerns seeking to compete for larger procurement contracts. The program would be authorized at $30 million over six years.

Waiver of Non-Federal Share for SBA Programs: The legislation allows the Administrator to waive or reduce the non-federal share requirement through FY 2012 for SBA programs.

Grants for Small Business Development Centers: The legislation authorizes $50 million of grants for the intended purpose of providing "targeted technical assistance to small business concerns seeking access to capital or credit, federal procurement opportunities, energy efficiency audits to reduce energy bills, opportunities to export products or provide services to foreign customers, adopting, making innovations in, and using broadband technologies, or other assistance."

Appropriations Provisions: The legislation appropriates the following amounts:

- $150 million for Small Business Administration, Salaries and Expenses.
- $37.5 million for the Business Loans Program Account under the Small Business Administration.
- $13.5 million for the Community Development Financial Institutions Fund Program.
- $505 million for Small Business Loan Guarantee extensions.

U.S. Trade Representative: The legislation authorizes appropriations of $5.2 million for the U.S. Trade Representative to Develop Market Access Opportunities for United States Small- and Medium Sized Businesses.

Small Business Penalty Reductions: The legislation lowers section 670A penalties for failing to disclose certain transactions to the IRS. The legislation sets the maximum penalty as $200,000 for corporations and $100,000 for individuals.

New SBA Website: Expresses sense of Congress that the Administrator of the Small Business Administration should establish a website that lists each lender that makes loans guaranteed by the Small Business Administration.

TAX PROVISIONS

The legislation reduces taxes by $12.0 billion over ten years and increases revenues by $14.5 billion over ten years. The following are highlights of the tax provisions in H.R. 5297:

<u>Tax Cut Provisions</u>:

Small Business Tax Exclusion: Provides a 100% exclusion from capital gains for stock acquired by qualifying small businesses before 2011 and held for more than five years. *This provision would save taxpayers $518 million over ten years.*

General Business Credit of Eligible Small Businesses Carried Back Five Years: The legislation extends the one-year carryback of unused general business credits to five years for certain small businesses. *This provision saves taxpayers $107 million over ten years.*

General Business Credit Against Alternative Minimum Tax (AMT): The legislation allows certain small businesses to make use of general business credits against AMT liability. *This provision saves taxpayers $977 million over ten years.*

Section 179 Expensing for Real Property: The legislation increases the maximum phaseouts from $500,000 to $2 million for certain tangible personal property that is used in the active account of a trade or business. *This provision saves taxpayers $2.2 billion over ten years.*

One Year Extension of Bonus Depreciation: The legislation extends the additional, first year 50% depreciation for qualifying purchases (placed in service in 2010) through 2011. *This provision saves taxpayers $5.5 billion over ten years.*

Increased Deduction for Start-Up Expenditures: The legislation increases the amount of small business start-up expenses that may be deducted from $5,000 to $10,000 (with a $60,000 phase-out threshold). *This provision saves taxpayers $230 million over ten years.*

Self-Employed Health Deduction: The legislation allows, in 2010, the self-employed to deduct the cost of health insurance from their self-employment tax liability. *This provision saves taxpayers $1.9 billion over ten years.*

<u>Tax Increase/Revenue Increase Provisions</u>:

Reporting Requirement for Rental Property Expense Payments: The legislation requires certain reporting requirements of individuals receiving rental income from real property. *The provision is estimated to increase tax revenues by $2.5 billion over ten years.*

Penalties for Information Returns: The legislation increases penalties for failure to correctly, and in a timely manner, file returns with the IRS. The maximum calendar year penalties would be increased as follows:

- The first-tier penalty would be increased from $75,000 to $250,000;
- The second-tier penalty would be increased from $150,000 to $500,000; and

- The third tier penalty is increased from $250,000 to $1.5 million.

This provision is estimated to increase tax revenues by $421 million over ten years.

Application of Continuous Levy to Tax Liabilities of Certain Federal Contractors: The legislation allows the IRS to issue levies of unpaid tax liability to federal contractors <u>*prior*</u> to a collections due process hearing. *This provision is estimated to increase tax revenues by $1.1 billion over ten years.*

Retirement Savings Provisions: The legislation allows participants in government 457 plans to treat elective deferrals as Roth contributions. The legislation also allows 401(k), 403(b), and 457(b) plans to permit individuals to rollover their savings into Roth accounts. This would have the impact of taxing the savings in either 2011 or 2012 (the taxpayer could decide between those dates), but eliminating taxes on withdrawals at retirement. *Consequently, while these provisions increase tax revenues by $5.6 billion over ten years, in the long-term, they do not improve the budget outlook.*

Crude Tall Oil Ineligible for Cellulosic Biofuel Producer Credit: The provision would eliminate eligibility of the $1.01 per gallon tax credit for production of biofuel from cellulosic feedstocks in the case of fuels that have an acid number greater than 25. *Tax increase of $1.8 billion over ten years.*

Source Rule on Guarantees: The legislation subjects to withholding tax amounts received for guarantees of indebtedness by the payor issued after the date of enactment. *Tax increase of $2.0 billion over ten years.*

Corporate Estimated Tax Timing Gimmick: This provision would increase the estimated tax payments that certain corporations must remit to the federal government. This legislation would increase the payment due for the third quarter of calendar-year 2015 by 36 percentage points. The payment due for the fourth quarter of calendar-year 2015 would be reduced accordingly. This provision is merely a revenue timing shift, a gimmick used to comply with the House's PAYGO rule, yet would have real-world implications, as it forces certain companies to pay more of their tax payments earlier. Given the time value of money, earlier payments harm the bottom line of employers.

<u>Medicare Fraud Provision</u>

Sec. 4241, "Use of Predictive Modeling and Other Analytics Technologies to Identify and Prevent Waste, Fraud and Abuse in the Medicare Fee-for Service Program", was added in the Senate Amendment to H.R. 5297. This provision would require the Secretary of Health and Human Services (HHS) to contract with at least two private companies to conduct predictive modeling and other analytics technologies to identify and prevent payment of improper claims in Medicare fee-for-service programs (Part A and B) phased in over three implementation years. If proven to be successful, the program will be expanded to Medicaid and CHIP in the fourth implementation year. The Secretary would be given waiver authority to waive provisions such as prompt pay in order to implement the program. This provision would move away from

Medicare's current "pay and chase" model towards predictive modeling that is currently used by credit card companies to determine whether or not a transaction is fraudulent at the time of the transaction.

Implementation Requirements: No later than January 1, 2011, the Secretary would be required to issue a request for proposals to carry out this provision by July 1, 2011, in 10 states identified by the Secretary as having the highest risk or fraud, waste, or abuse in Medicare. Based on the results of required reports and recommendations from Inspector General of HHS , the Secretary is required to expand the use of predictive analytics technologies on October 1, 2012, to an additional 10 states using the same criteria. For the third implementation year, the Secretary must once again expand (based on additional reports and recommendations) the program to the entire Medicare fee-for-service program by on January 1, 2014. Finally (based on additional reports and recommendations), on April 1, 2015, the program would be expanded to Medicaid and CHIP- phased in to the extent the Secretary determines appropriate. The Secretary must set aside a portion of funds appropriated to provide the states with assistance with their administrative expenses. If during the first, second, or third year, the Inspector General finds that no or only nominal actual savings are acquired, the Secretary may impose up to a 12 month moratorium on expansion in order to refine the use of predictive analytics technology to achieve greater savings.

Reporting Requirements: After the first implementation year, and each year thereafter, the Secretary must submit to Congress, a report that includes certification by the Inspector General of HHS, that specifies the actual and projected savings and return on investment from the use of predictive analytics technology as well as recommendations on whether the Secretary should continue use, modifications needed and a review of the effect on beneficiaries and providers. In the third year the report must include an analysis of the cost-effectiveness and feasibility of expanding the technology to Medicaid and CHIP as well as the effect of its application to claims on States and territories. Finally, 18 months after application to Medicaid and CHIP, the bill requires an independent evaluation and report.

Cost: CBO estimates the cost of this provision to be $930 million over the ten year period.

Conservative Concerns:

$31.5 Billion Bailout Fund: The legislation establishes a $31.5 billion bailout fund modeled on the TARP program. Most conservatives would advocate ending infusions of taxpayer money into the banking system. The principle of this legislation is that the TARP model should be extended to evermore sectors of the economy.

Federalism Concerns: The $1.5 billion Small Business Credit Initiative provides incentives for states to create programs intended to increase the amount of capital made available by private lenders to small businesses, which would punish states that chose instead be frugal with taxpayer money. This turns the concept of federalism on its head.

Budget Gimmicks: Democrats will claim that the legislation is paid for. However, $5.6 billion of “payfors” (the Roth provisions) merely shift tax revenue from the future to the present, and thus do nothing to improve the long-term budget outlook. Furthermore, the legislation authorizes an unspecified amount (no CBO score of authorized spending is available) of new spending that would be necessary to implement some of the provisions in the bill.

Corporate Welfare: Aside from the bailout funds, the legislation is intended to provide various other subsidies to businesses (see the "small business provisions" in pages 3-5 of the bill). Many conservatives would argue that there are various problems with providing business subsidies, including:

- They cause the federal government to pick winners and losers (something the federal government is very bad at doing).
- They distort the free market.
- They weaken the private-sector: the most talented individuals are drawn away from creating things, and instead put to work trying to succeed in receiving handouts from government.
- In many cases, they duplicate what the private-sector would otherwise do on its own anyway.

Committee Action: The legislation was introduced on May 13, 2010, and was subsequently considered by the House Financial Services Committee, and ordered to be reported (as amended), on May 19, 2010 by a vote of 42 to 23. The legislation passed the House on June 17, 2010 by a vote of 241-182. The Senate amended the bill, and passed it, on September 16, 2010 by a vote of 61-38.

Administration Position: No Statement of Administration Policy (SAP) is available at press time.

Cost to Taxpayers: The legislation increases tax revenue by $14.5 billion over ten years, cuts taxes by $12 billion over ten years, increases entitlement spending by $2 billion over ten years, and increases authorized spending (subject to appropriation) by an unknown amount.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, among other things, the legislation creates a **$31.5 billion** bailout fund modeled on the TARP program.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: As reported by the House, the CBO report states (for the version reported out of committee): "H.R. 5297 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments." No information for the Senate-passed bill is available.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: According to the committee report for the House-passed bill: "H.R. 5297 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI."

Constitutional Authority: According to the committee report for the House passed bill: "Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce)."

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