THE REPUBLICAN STUDY COMMITTEE

Rep. Jim Jordan, Chairman
Paul Teller, Executive Director

RSC

202.226.9717
rsc.jordan.house.gov

Legislative Bulletin………………………………….………December 13, 2011

Contents:

H.R. 3630—Middle Class Tax Relief and Job Creation Act of 2011 (Camp, R-MI)

Order of Business: The bill is scheduled to be considered on Tuesday, December 13, 2011, under a yet to be determined but presumably closed rule.

Cost to Taxpayers: The legislation reduces taxes by **$88.3 billion** over ten years, reduces mandatory spending by **$63.1 billion** over ten years, and would lower discretionary spending budget authority caps by **$29 billion** over ten years (which would lower resulting discretionary spending outlays by $26.2 billion over ten years). Consequently, the legislation would reduce total federal outlays (mandatory and discretionary combined) by **$89.3 billion**.

Overall, the legislation reduces the deficit by **$953 million** over ten years. Since the spending increase/tax cut provisions are temporary, one way to think of the score of this bill is that it looks better the further you get from 2012. In 2012, the deficit increases by $167 billion. Over ten years, the deficit declines by $953 million. And if CBO analyzed the numbers beyond that point, the deficit reduction impact would likely get bigger with time.

Summary:

Title I—Job Creation Incentives

Keystone Pipeline: The legislation requires the President to issue a permit for the Keystone XL pipeline project within 60 days of enactment. The President could waive this requirement if the President determined that the Keystone XL pipeline would not serve the national interest. If the President waived the requirement, the President would be required to send a report to Congress, within 15 days after determination, providing justification for the decision. If the President fails to make a determination regarding the approval of the Keystone XL pipeline, then within 60 days the permit for the pipeline shall be in effect by operation of law. This legislation lists several requirements the approved permit must follow, including the reconsideration of routing the pipeline within the state of Nebraska.

EPA Regulatory Relief: The legislation would require the EPA to issue rulings to replace four recently published, interrelated EPA rules setting Maximum Achievable Control Technology (MACT). These are commonly referred to as the "Boiler MACT rules." The legislation also extends the compliance dates for these regulations to at least 5 years, as opposed to 3 years. When making new rules, the Administrator shall ensure that emissions standards can be met under actual operating conditions.

The legislation directs the EPA to adopt the definitions of the terms "commercial and industrial solid waste incineration unit," "commercial and industrial waste," and "contained gaseous material" in the rule entitled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units." This provision is based on the House-passed version of H.R. 2250, which passed the House by a vote of 275 to 142 on October 13, 2011.

Extension of 100% Business Expensing: The 2010 tax extenders law allowed businesses to immediately deduct 100% of property placed in service between September 9, 2010 and December 31, 2011. This legislation extends that provision for an additional year, through the end of 2012. Further, the legislation extends the provision by making it easier for companies to claim AMT credits in lieu of bonus depreciation and allowing the "percentage of completion method" to be used instead of the bonus depreciation amount. ***$6.0 billion tax cut over ten years.***

Title II—Extensions

Payroll Tax Cut Holiday Extension: The legislation extends the 2 percent reduction on the employee side of the Social Security payroll for one year (through the end of 2012) from 6.2% to 4.2%. The employer portion would remain the same (as would the Medicare portion of the payroll tax). However, the self-employment tax is also lowered by 2 percentage points (since the self-employed have to pay both the employee and employee payroll tax). In short the total payroll tax is kept at 13.3% instead of going back up to 15.3%. ***$120.0 billion tax cut over ten years.*** The legislation also transfers the amount of revenue lost by the tax cut from the General Treasury to the Social Security Trust Fund (this does not have any impact on the federal budget).

The payroll tax was first created as part of the Social Security Act of 1935. From 1937 to 1949 it was a 2% tax (employer and employee combined) on the first $3,000 of income. See here for a table showing the full history of the tax.

Unemployment Extension/Reforms: The bill provides the ninth extension of the "temporary" expansion of the unemployment compensation program created in 2008. Specifically, the bill extends the program for an extra year (through 2012) at a cost of $34 billion. The bill, however, lowers the current 99-week cap on benefits to 59 weeks. ***$34.2 billion spending increase over ten years.***

In addition, the bill makes many reforms the unemployment insurance program, including:

- Requiring UI recipients (state and federal) to undertake the following activities aimed at leading to reemployment: **1)** work search activities; **2)** enroll in a GED program if without high school degree—the legislation specifies some exceptions to this requirement; and **3)** participate in training programs.

- Allowing states to test UI applicants for drugs (the state would have the option of whether to do this or not); and
- Using federal unemployment money to create reemployment programs instead of writing checks.

According to the committee, this extension is $10 billion less than the President's request. The committee notes that previous extensions added $180 billion to the national debt, whereas this one is paid for with spending cuts.

TANF Extension: The legislation extends the Temporary Assistance for Needy Families (TANF) Program through September 30, 2012. The program would otherwise expire at the end of 2011. The funding level provided in the legislation is the same as the baseline (as well as current spending levels), $16.5 billion on an annualized basis. The legislation also prohibits TANF funds from being accessed at ATMs in strip clubs, liquor stores, and casinos.

Physician Payment Update ("Doc Fix"): The bill prevents a 27.4% physician reimbursement cut scheduled to take effect on January 1, 2012. Instead, it provides a 1% increase in reimbursement levels in 2012 and another 1% increase in 2013. It also requires reports from the Medicare Payment Advisory Commission (MEDPAC), Government Accountability Office (GAO), and the Department of Health and Human Services (HHS) about a permanent replacement to the current Sustainable Growth Rate (SGR) physician reimbursement payment system. ***$38.9 billion spending increase over ten years.***

Extension of Ambulance Add-On Payments: Provides a one–year extension through December 31, 2012, of increased Medicare payments for urban ground ambulance services (2% increase), rural ground ambulance services (3% increase), as well as for "super-rural" areas as calculated by the HHS Secretary. Also, the bill requires reports from GAO and from MEDPAC on ambulance provider costs and whether the ambulance fee scheduled should be reformed. ***$100 million spending increase over ten years*****.**

Medicare Therapy Caps Exceptions: Under current law, Medicare Part B outpatient physical and speech language therapy services have a combined cap of $1,880 per year. This provision would extend the Medicare therapy caps exceptions process for two years—in effect prior to the end of 2010—through December 31, 2013. It also revises the exception process by requiring rejection of all claims above the cap that do not include the proper billing modifying code as well as requiring manual review of high-cost beneficiaries' claims for only medically-necessary services. Additionally, the bill extends the spending caps to the hospital outpatient setting once the current exceptions process expires on December 31, 2013. Lastly, it requires MEDPAC to recommend outpatient benefits therapy improvements. ***$1.7 billion spending decrease over ten years.***

Extension of Medicare Physician Work Geographic Adjustment: Extends by one year through December 31, 2012, the additional payments for physician services in 54 of the Medicare program's 89 geographic areas. This is a straight-line extension that also requires

MEDPAC to analyze and report to Congress whether these adjustments should exist. ***$500 million spending increase over 10 years.***

Extension of the Qualified Individual (QI) Program: The bill extends for one year through December 31, 2012, the Qualified Individual (QI) program, the federal reimbursement program to states that assists certain low-income duel eligible individuals with their Medicare Part B premiums. Prior to last year's one-year extension, the previous one–year extension was enacted under the "stimulus" bill. ***$700 million spending increase over ten years.***

Extension of Transitional Medical Assistance (TMA): The bill extends this program by one year through December 31, 2012. The TMA program permits those with incomes below 185% of the federal poverty level (FPL) that are transitioning into the workforce to remain on Medicaid. ***$1.2 billion spending increase over ten years.***

Revisions to Current-Law Restrictions on Physician-Owned Hospitals: The bill permits those physician-owned hospitals who failed to be built and compliant with Medicare and Medicaid-provider agreements by Obamacare's December 31, 2010 deadline to move forward with their planned physician ownership investment. Also, it reduces the amount of requirements of those physician-owned hospitals grandfathered under Obamacare's prohibition on future physician-owned hospitals (Section 6001 of the law) for further expansion of their facilities. ***$300 million spending increase over ten years.***

Recapture of Obamacare Exchange Subsidies: This provision increases the amount of health care premium subsidies the Treasury Department can recapture from individuals who receive richer subsidies than should have originally been the case. Obamacare allows certain individuals to receive health care premium exchange subsidies in the form of an advanced tax credit that will be used to offset the cost of purchasing qualified health insurance in a state-based health exchange beginning in 2014. If the advanced credit received by an enrollee exceeds the amount of credit to which the enrollee is entitled to for the taxable year, the dollar amount for the excess payment must be reflected on the enrollee's income tax return. Originally, Obamacare limited the amount of overpaid subsidies that could be recaptured by the Treasury Department earning up to 400% of the FLP to $400/families ($250/individuals). Last year's Medicare and Medicaid Extenders Act of 2010 increased the amount of overpaid credit assistance the Treasury could recapture as did the Small Business Paperwork Mandate Elimination Act of 2011. This provision increases the maximum amount of subsidy overpayments that must be repaid according to the chart below. ***$13.4 billion spending cut over ten years, as well as reducing the number of people receiving health insurance in the state-based exchanges by 170,000 in 2021.***

Subsidy Recipients' Income (as percent of poverty level)	CURRENT LAW Maximum Amount of Overpayments Recaptured from Individuals (amounts double for households)	PROPOSAL Maximum Amount of Overpayments Recaptured from Individuals (amounts double for households)
Under 100%	$300	$300
At least 100% but less than 150%		$400
At least 150% but less than 200%		$500
At least 200% but less than 250%	$750	$750
At least 250% but less than 300%		$1,100
At least 300% but less than 350%	$1,250	$1,250
At least 350% but less than 400%		$1,600
400% or above	Full repayment	Full repayment

Chart supplied from the Committee on Ways and Means

Reductions in the Prevention and Public Health Fund: This fund is an Obamacare slush fund appropriated with federal funds in perpetuity at the disposal of the HHS Secretary for activities authorized by the Public Health Service Act. The House voted to repeal this fund on April 13, 2011. This provision reduces the funding for the Prevention and Public Health fund. ***$8 billion spending cut over ten years.***

Payment Parity for Hospital Outpatient Department Evaluation and Management Office Visit Services: This provision requires the same payment levels for Medicare office visit services whether the services are provided in a hospital outpatient department or in a physician office setting. Under current Medicare law, these services are paid at higher levels in hospital outpatient departments. According to the Ways and Means Committee, hospitals can expect to see a 0.6% reduction in total Medicare revenue under this provision. ***$6.8 billion spending cut over ten years.***

Bad Debt Payment Reductions: This provision lowers the percentage that Medicare reimburses hospitals for their uncollected bad debt that Medicare beneficiaries are expected to pay (but do not) through Medicare cost-sharing. Under current law, most hospitals are reimbursed for 70% of their uncollected bad debt. This provision lowers this reimbursement rate to 55% over a three-year period beginning in 2013. According to the Ways and Means Committee, President Obama recommended lowering this bad debt reimbursement payment rate to 25%. ***$10.6 billion spending cut over ten years.***

Medicaid Disproportionate Share Hospital (DSH) Allotments: This provision rebases the DSH allotments beginning in fiscal year 2021 and subsequent fiscal years according to this new rebased level. DSH hospitals receive adjustment payments to offset additional costs for serving a significantly disproportionate number of low-income patients who typically are not covered by Medicare, Medicaid, the Children's Health Insurance Program, or other health insurance. ***$4.1 billion spending cut over ten years.***

Title III—Flood Insurance Reform

H.R. 3630 reauthorizes the National Flood Insurance Program (NFIP) through Sept. 30, 2016. The legislation makes many reforms to the NFIP such as:

- differentiating between subsidized property insurance rates and unsubsidized property insurance rates, including by raising premiums for certain subsidized flood insurance policies;
- phasing in flood insurance rates for newly mapped areas;
- establishing a Technical Mapping Advisory Council, directing the council on mapping standards, and requiring FEMA to establish new insurance rate maps based on the council.

The flood insurance reform included in this bill is identical to H.R. 1309, which passed the House earlier this year. For a more detailed analysis and cost of the reforms please refer to the July 8, 2011 Legislative Bulletin.

Title IV—Spectrum Auction

Title IV of H.R. 3630 contains the majority of the language included in the Discussion Draft of the Jumpstarting Opportunity with Broadband Spectrum (JOBS) Act that the Energy and Commerce Subcommittee on Communications and Technology marked up on December 1, 2011. The subcommittee favorably reported this legislation by a bipartisan roll call vote of 17-6.

This title allows the Federal Communications Commission to conduct incentive auctions in order to rearrange portions of the broadband spectrum. This will allow for more efficient use of the spectrum. The FCC will direct a portion of the incentive auction proceeds towards current licensee holders in return for their licenses (or spectrum). These returned licenses will then be re-auctioned.

This section of the bill reduces the deficit by approximately $15 billion. According to the Committee, this legislation creates "the contiguous, 20-MHz block of spectrum public safety officials say they need for broadband by reallocating the 700 MHz D Block and providing for the return of 700 MHz narrowband spectrum, making up to $6.5 billion in grants available for the construction of an interoperable public safety network, and creating a governance structure for construction and operation of the network. The legislation also addresses the relocation of federal government incumbents to make additional spectrum available for commercial services. Following the experiences of the AWS-1 band (1710-1755 MHz), the legislation adopts changes to the Commercial Spectrum Enhancement Act to streamline the existing relocation process, including providing NTIA with funding for spectrum planning prior to relocation auctions, permitting incremental updates to government systems through the relocation process, improving processes for the creation of relocation plans, and improving accountability."

More information from the Committee of Energy and Commerce can be found here. ***$16.5 billion spending cut over ten years.***

Title V—Other Offsets

GSE Guarantee Fees: The legislation requires the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to increase their fees for guaranteeing mortgage loans. The legislation establishes a standard that requires that the guarantee fee be increased to appropriately reflect the cost of capital and the risk of loss allocated to similar assets held by other private financial institutions. ***$35.7 billion spending cut over ten years.***

Improved Social Security Enforcement: The legislation requires use of Form 1099R to enforce Windfall Elimination Provision (WPO)/ Government Pension Offset (GPO) rules to prevent individuals from receiving Social Security overpayments. ***$3.2 billion spending cut over ten years.***

Require Social Security Number for Refundable Child Tax Credit: Requires verification of a Social Security number to be able to claim the refundable portion of the child tax credit. This is intended to prevent illegal aliens from receiving this benefit. ***$9.4 billion spending cut over ten years.***

Eliminating Entitlement Spending for Millionaires: The legislation prohibits millionaires from receiving food stamp benefits and unemployment insurance. ***$127 million spending cut over ten years.***

Federal Employee Retirement Reform: Increases the contributions to the Civil Service Retirement System (CSRS) from 7 percent to 8.5% and increases the employee contribution to FERS from 0.8% to 4.0%. Also, federal pensions would be calculated based on highest five years of pay instead of highest three. ***$36.7 billion revenue increase over ten years.***

Federal Workforce Pay Freeze: Extends the pay freeze on federal workers through 2013. Of note, the legislation also lowers the discretionary spending caps in the Budget Control Act by $29 billion over ten years in order to enforce this spending cut. ***$26.2 billion spending cut over ten years.***

The White House has provided misleading spin that this reduction (which is, again, a freeze on automatic pay increases for federal employees) would cut other discretionary spending. As White House Press Secretary Jay Carney said: *"The result would be cuts in non-defense discretionary programs, education, and clean energy, veterans programs."*

This is false in many respects. *First*, the amended Budget Control Act discretionary spending caps still provide a limit that allows for spending *increases*. By 2021, federal discretionary spending could be about $180 billion higher than it was in 2012. Most families would not call that amount of an increase a cut. *Second*, the legislation specifically makes the freeze to federal employee pay, and then just lowers the caps to make sure that this offset is used for deficit reduction instead of other new spending. It is not true to say that the bill just lowers the caps without envisioning what spending is specifically being lowered.

Increasing Medicare Premiums for High Income Beneficiaries: This provision increases Medicare Part B and Part D premiums for high-income beneficiaries beginning in 2017 by 15%. The bill also lowers the levels considered for high-income earners from $85,000/$170,000 to $80,000/$160,000 for individual/married income earners, respectively. ***$31.0 billion spending cut over ten years.***

Title VI—Miscellaneous Provisions

Repeals Various Corporate Timing Shifts from Previous Legislation: The legislation repeals corporate estimated tax payments timing shifts from five bills (see page 364 of the legislation).

Shift for Merchandise Processing Fees: H.R. 2832, as enacted into law, required importers to prepay the Merchandise Processing Fee based on the amount of goods that they were expected to import. This section repeals the prepay requirement, so that importers will pay the Merchandise Processing Fee as the goods are imported. More information on the Merchandise Processing Fee can be found in this RSC Legislative Bulletin. ***$102.0 million tax cut over ten years.***

Committee Action: The legislation, in this form, has not been considered by any committee.

Potential Conservative Concerns/Supporting Arguments:

Supporting Arguments:

Net Spending Cut: The legislation cuts spending (on net) by $89.3 billion over ten years. This includes many spending cuts that conservatives have long advocated: reforms to federal pensions, a freeze to federal pay, cutting off some federal benefits to millionaires, reforms to Medicare through means testing, etc.

Net Tax Cut: The legislation cuts taxes by $88.3 billion over ten years. This includes not only the payroll tax holiday extension but also the one-year extension of 100% business expensing.

Makes Permanent Reforms to the Unemployment Insurance Program: The legislation makes substantial reforms to the Unemployment Insurance program that stay in place even when the current "emergency" program of additional weeks of benefits lapses. The reforms (among other things) require individuals to search for work.

Keystone Pipeline: Many conservatives argue that this provision will create jobs and lower the price of energy. This provision was included, among other things, in the RSC Jobs Through Growth Act.

Potential Conservative Concerns:

Extends Unemployment Insurance: Many economists argue that extending unemployment benefits creates incentives to delay returning to work, which has a negative effect on the economy. As Martin Feldstein states in testimony before the Senate Finance Committee in January 2009:

> "[w]hile raising unemployment benefits or extending the duration of benefits beyond 26 weeks would help some individuals ... it would also create undesirable incentives for individuals to delay returning to work. That would lower earnings and total spending."

The RSC FY 2012 budget called for not extending the additional weeks of unemployment benefits.

However, unlike previous extensions, the cap on number of potential weeks of benefits is reduced from 99 to 59 in this bill. Also, the extension is more than paid for (which was not the case with previous extensions of this program). And, as noted above, the extension comes paired with conservative reforms to the underlying program.

Payroll Tax Holiday: Some conservatives have argued that the employee-side payroll tax reduction, in the absence of other Social Security reforms, will put further strain on the Social Security system. And some conservatives would like to pay for a payroll tax cut with reforms to the Social Security system. As one example, Rep. Landry has a bill, H.R. 3551, the Social Security Preservation through Individual Choice Enhancement Act, to allow individuals to opportunity to elect the payroll tax holiday, but on condition of an actuarially equivalent delay in eligibility for Social Security benefits. Some conservatives would prefer other forms of tax cuts to a payroll tax cut. On the other hand, many conservatives favor keeping the payroll tax holiday in 2012 because it is a tax cut that allows families to keep more of their own money.

Deficit Impact in 2012: Some conservatives have argued that the new spending in this bill should be offset with cuts that occur in the same year (as opposed to being spread over the full budget window). Because the legislation contains temporary tax cuts/spending increases, and pays for that with permanent spending cuts, the legislation's impact on the deficit looks better the further away from 2012 one looks. Looking only at the impact for 2012, the legislation increases the deficit by $166.8 billion. Over ten years, it comes to a deficit cut of $953 million. Presumably, if we could see beyond that, the deficit reduction in the second ten years would be larger.

Administration Position: No Statement of Administration Policy is available at press time. The President has threatened to veto the bill based on the Keystone pipeline provision in the bill.

Does the Bill Expand the Size and Scope of the Federal Government?: No. On net, the legislation reduces the size of the federal government. Spending is reduced by $89.3 billion over ten years and taxes are reduced by $88.3 billion over ten years. The bill also includes other reforms meant to reduce dependency on government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No committee report with this information is available.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation does not appear to contain any earmarks.

Constitutional Authority: The author states: "Congress has the power to enact this legislation pursuant to the following: Clause 1 of Section 7 and Clause 18 of Section 8, of Article 1 of the United States Constitution."

Outside Organizations:

Supporting Bill (known at press time):
Americans for Tax Reform (ATR)
National Taxpayers Union (NTU)

RSC Staff Contact: Brad Watson, brad.watson@mail.house.gov, (202) 226-9719