THE REPUBLICAN STUDY COMMITTEE

Rep. Steve Scalise, Chairman

202.226.9717
rsc.scalise.house.gov

Legislative Bulletin……………………………….……….December 11, 2013

Bipartisan Budget Act of 2013 (Rep. Ryan, R-WI)
(Amendment #1 to the Senate Amendment to H.J. Res. 59)

Order of Business: The bill is expected to be considered on Thursday, December 12, 2013, or Friday, December 13, 2013, under what is expected to be a closed rule.

Summary: On net, the legislation reduces the deficit by approximately $22 billion over the next ten years. It does so by increasing spending in the early years and spreading offsetting cuts and new revenue generated from user fees over the ten year window. Specifically, the package increases the BCA discretionary spending caps for FY14 and FY15 by a total of $63.4 billion. That increase is offset by spending cuts of and revenue increases of approximately $85 billion spread over ten years.

A large portion of the offsets in the bill are found in Title I, which extends for two years (FY2022 and FY2023) the sequestration cuts in effect on mandatory spending (the most significant non-exempted mandatory spending is Medicare provider payments where cuts are capped at 2 percent). This saves approximately $28 billion. This section of the bill also waives Pay-Go requirements and makes a number of technical budgetary changes. For a title-by-title description of these changes and score from CBO, click here. For a title-by-title description from the House Budget Committee, click here.

Sequester Relief (Spending Increases)

FY14 BCA discretionary spending cap is increased in this legislation from $967 billion to $1,012 billion (an increase of approximately $45 billion)

- Defense discretionary increased from $498.1 billion to $520.5 billion (an increase of $22.4 billion)
- Non-defense discretionary increased from $469.4 billion to $491.8 (an increase of $22.4 billion)

FY15 BCA discretionary spending cap is increased in this legislation from $995 billion to $1,014 billion (an increase of approximately $19 billion)

- Defense discretionary increased from $512.0 billion to $521.3 billion (an increase of $9.3 billion)
- Non-defense discretionary increased from $483.1 billion to 492.4 billion (an increase of $9.3 billion)

<u>Offsetting Spending (Cuts and Revenue)</u>

(Scores are over ten years)

Unemployment Insurance Overpayments: This provision expands the use of the Treasury Offset Program (TOP) to all states (currently 37 states and the District of Columbia participate) and thereby increases their ability to recover certain unemployment insurance debts (fraudulent overpayments by the government and underpayment by individuals and companies). **Savings: $249 million ($159 million spending reductions plus $90 million in revenue).**

Medicaid Third-Party Liability: Millions of Medicaid beneficiaries have additional health insurance through third-party sources. If beneficiaries have another source of payment, that source should pay before Medicaid does, up to the extent of its liability. This bill strengths Medicaid third party liability by allowing states to delay reimbursement of certain claims (prenatal and preventative pediatric) when third parties are responsible– as long as it does not adversely affect access to care – to 90 days after the date the provider initially submitted a claim to a third party for payment. It also allows states to collect medical child support where health insurance is available from a non-custodial parent. Finally, it allows Medicaid to recuperate costs from beneficiary liability settlements. According to the CMS OIG, states have reported some challenges to that hinder the recovery of payments, by addressing these issues, the states and the federal government can begin to recoup costs that are being inaccurately paid. **Savings: $1.4 billion spending reductions.**

"Death Master File" Reform: This provision establishes a program using the Death Master File (described in detail here) that will, among other things, allow for the prevention of payment of tax refunds that are fraudulently claimed. **Savings: $786 million ($269 million in spending reductions plus $517 million in new revenue as a result of eliminating fraudulently claimed tax refunds).**

Improper Payments to Inmates: The legislation amends the Social Security Act to allow the Secretary of the Treasury to access the Prisoner Update Processing System (PUPS) for the purposes of identifying and preventing improper payments to incarcerated individuals**. Savings: $242 million ($80 million in spending reductions plus $162 million in increased revenues attributable to preventing payment of improper tax refunds).**

<u>Natural Resources</u>

Ultra-Deepwater Research Program Elimination: The Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research Program was created by the Energy Policy Act of 2005. The program is a public/private partnership in which the Secretary contracts with private entities to give awards for the ultra-deepwater development and demonstration of individual exploration and production technologies. The program is repealed. **Savings: $40 million reduction in direct spending.**

Mineral Leasing Act: The legislation reduces the amount owed to states (via sales, bonuses, and royalties) by 2 percent in order to offset the Administrative costs of carrying out the program. **Savings: $415 million reduction in direct spending.**

Offshore Drilling in Gulf of Mexico: This language is similar to that of H.R. 1613, which was introduced by Rep. Duncan (R-SC) and passed the House on June 27, 2013, by a roll call vote of 256-171. This grants the Secretary of Interior the ability to implement the agreement between U.S. and the United Mexican States concerning transboundary hydrocarbon reservoirs in the Gulf of Mexico. CBO estimated this language would increase offsetting receipts from lease sales in the Outer Continental Shelf (OCS). The full RSC Legislative Bulletin for H.R. 1613 can be viewed here. **Savings: $25 million reduction in direct spending.**

Oil and Gas Royalty Repayment Reform: The legislation prohibits interest to be paid on any excessive overpayment under the Federal Oil and Gas Royalty Management Act. This section shall take effect on July 1, 2014. **Savings: $750 million reduction in direct spending.**

Strategic Petroleum Reserve Reform: **T**he legislation also repeals the authority that allowed the Secretary to acquire crude oil produced on federal lands, as well as the authority that allowed the Secretary to accept oil through a royalty-in-kind program to fill the SPR. The legislation rescinds any unobligated balances in the SPR Petroleum Account. The According to the GAO, revenues from all oil sales are deposited in the SPR Petroleum Account and require no further appropriation or budgeting to be used by the Department. These funds may only be used for the acquisition, transportation, injection of petroleum into the Reserve, and the cost of sales. **Savings: $3.2 billion reduction in direct spending.**

Federal Civilian and Military Retirement

Federal Employees' Retirement System (FERS) Reform: The package finds approximately $6 billion in savings from reforming the Federal Employees Retirement System. These savings are achieved by increasing the federal employee pension contribution by 1.3 percent of pay (for a total of 4.4 percent of pay) for individuals hired after December 31, 2013. Currently, federal employees hired before December 31, 2012, contribute 0.8 percent of pay and federal employees hired after December 31, 2012, contribute 3.1 percent of pay (CRS report on the subject here).

The total cost of FERS amounts to 12.7 percent of pay. Thus, for new hires (impacted by this change) the employee will pay 4.4 percent of pay and the employing agency will contribute 8.3 percent of pay, still nearly double the employee contribution.

Reforming federal employee pensions has been recommended (in differing degrees) by sources as diverse as President Obama's FY14 budget, the House and RSC FY14 budgets, as well as the National Commission on Fiscal Responsibility's final report.

In 2012, a CBO study found that, on average, the benefits earned by federal civilian employees cost 48 percent more than the benefits earned by similarly situated private-sector employees and that the government paid 16 percent more in total compensation. **Savings: $6 billion in increased revenues (increased employee contributions to their own retirement is scored as revenue by CBO).**

Military Retirement Reform: This provision changes the cost-of-living adjustments for all members and former members of the military under 62 years old by making adjustments equal to inflation minus one percent. It will not allow for a negative adjustment, instead no cost-of-living would be given that year. Rising personnel costs are a growing problem in the defense budget with real compensation cost per service member up 41 percent since 2001. This ensures no service members see a decrease in benefits. When those who were subject to this new adjustment turn 62, their retired pay will be recomputed – effective on the date of the next adjustment – as if their cost-of-living increase has been on full adjustment in previous years. They would then receive their full cost-of-living increase form them on. This section becomes effective on December 1, 2105. **Savings: $6.2 billion reduction in direct spending.**

Higher Education

Federal Family Education Loan (FFEL) Reform: A guarantee agency acts as a middle man between the government and student borrowers. When these agencies rehabilitate defaulted loans from the Federal Family Education Loan (FFEL) program, they can charge borrowers up to 18.5 percent of the outstanding principal and interest owed on the loan at the time of the sale. In addition, they can retain up 18.5 percent for the federal default reinsurance payment. This provision reduces the maximum borrower collection fee to 16 percent. These steps would make the compensation earned by guaranty agencies comparable to the compensation earned by the Department of Education's private sector contractors that rehabilitate defaulted loans. It would also lower costs to borrowers since collection fees are added to the loan balance when rehabilitated. **Savings: $2.1 billion reduction in direct spending.**

Student Loan Servicing Reform: As part of the Health Care and Reconciliation Act (HCERA) Congress eliminated the guaranteed student loan program. As a concession, it included a special carve out for non-profit firms to service student loans. Prior to this, the Department of Education awarded performance based contracts to four entities to service its portfolio federal student loans. Under the law the Department of Education was required to award at least 100,000 borrower loan accounts to each non-profit firm selected and mandatory funds were set aside specifically for this purpose. This section eliminates the special carve out for non-profit loan servicers and requires these entities to be paid with discretionary dollars just like their for-profit counterparts. **Savings: $3.1 billion reduction in direct spending.**

Transportation

Aviation Security Fees: The legislation increases the security fees paid by aviation passengers by $12.6 billion over ten years. It does so by eliminating fees paid by airlines (which were not transparent and were passed on to customers) and setting a flat fee of $5.60 per one-way trip. This translates into a $3.10 increase per one-way trip for air travelers who fly single-segment direct routes and a $0.60 increase per one-way trip for air travelers who fly multi-segment trips. Currently the security fee is $2.50 per segment with a $5 cap. This proposal reflects reforms contained in both House Republican and White House budgets.

For FY14, CBO estimates that security fees will total $2.12 billion against a total TSA budget of approximately $7 billion. Thus fees currently offset 30 percent of the TSA budget. According to the House Budget Committee, this reform will increase the percentage of the TSA budget offset by fees to 43 percent.

This provision increases a dedicated stream of revenue for the Transportation Safety Administration (TSA) – an agency that many conservatives have argued should be streamlined or privatized. The committee report for H.R. 2217 notes the TSA's wide-ranging struggles: "The Committee believes there must be a better balance between personnel and technology, public and private capabilities, and increased use of risk-based strategies in organization, operations, staffing, and acquisitions." These problems are longstanding. In 2011, the TSA's unwarranted resistance to expansion of a successful screening privatization pilot program was exposed by a Transportation and Infrastructure Committee report (summary here). Just last month, a GAO report found that the TSA's highest-profile risk-based program, Screening of Passengers by Observation Techniques (SPOT), was wasteful and ineffective. Nearly $900 million have been spent on SPOT since 2007. **Savings: $12.6 billion reduction in direct spending (user fees paid by airline fliers are scored by CBO as a reduction in direct spending rather than an increase in revenue).**

Food Aid Transport Reform: This provision saves $731 million by repealing the requirement for the Maritime Administration to reimburse other federal agencies for the extra costs associated with shipping food aid on U.S.-flagged ships.

The Maritime Administration, a division of the U.S. Department of Transportation, is responsible for administering the Cargo Preference Act of 1954 (P.L. 480). According to the Maritime Administration, the Cargo Preference Act requires that 50 percent of U.S.-compelled food aid be shipped on U.S.-flagged ships. The Maritime Administration pays U.S. agencies the difference in cost between shipping with a foreign carrier and a U.S. flagged carrier. A recent Congressional Research Service (CRS) report discusses this practice in detail (CRS report here). According to CRS, "excess" costs are incurred because U.S.-flagged carriers are more generally more expensive than foreign flagged vessels. The CRS report references a criticism of cargo preference requirements that "they did not succeed in meeting the law's objectives of maintaining a U.S. merchant marine and that eliminating cargo preference could enable an increase in food aid commodities provided." **Savings: $731 million reduction in direct spending.**

Transportation Security Administration (TSA) Maintenance of Sterile Areas of Airports: This provision continues the requirement that the TSA monitor the sterile area exit lanes at the 155 airports that currently are being monitored by the TSA. No score is currently available for this provision.

The TSA currently monitors exits from the "sterile areas" of 155 airports. According to the TSA, the "sterile area is commonly considered to be the concourse area beyond the screening checkpoint where the exit gates to the aircraft are located." The TSA does not currently monitor the exits from "sterile areas" of two-thirds of U.S. airports. In October 2013, the TSA notified the 155 airports where it monitored sterile area exits that the airports would have to assume that responsibility beginning in January, 2014. Several airports sued the TSA seeking to halt the shift in responsibility. This is partly paid for by security fees that are charged to passengers and airports. The TSA has argued that it should be responsible for secure area entries and not exits. Information about the issue can be found here. **Score: Not specified.**

Miscellaneous Provisions

Pension Benefit Guaranty Corporation (PBGC) Reform: This provision raises the per-beneficiary fee (premiums) that corporations must pay to participate in the PBGC program. This increases government revenue by approximately $7.9 billion over ten years. By increasing the overall cost of providing defined-benefit pensions, this provision could cause some companies to move away from defined-benefit pension plans. Many conservatives argue that this is a salutary secondary effect unsustainable defined benefit plans.

Some conservatives may be concerned that by PBGC fee increases can *either* be used as an offset *or* to help make PBGC actuarially sound. By doing both, these new revenues are being double counted. In other words, the revenues are counted once to offset higher spending in FY14/FY15 and a second time to offset potential losses by PBGC. **Savings: $7.9 billion reduction in direct spending (increased premiums are scored by CBO as a reduction in direct spending rather than as revenue).**

Extension of Customs and Border Protection (CBP) Fees: This section allows the Bureau of Customs and Border Protection to continue collecting user fees through FY2023, currently they can only be collected through FY2021. These fees were initially established processing fees for air and sea passengers, commercial trucks, rail cars, private vessels, dutiable mail packages, and Customs broker permits. According to Customs and Border Patrol, The User Fee was established to offset inspection costs that were previously funded solely by general taxpayer revenue. User fees are defined by the CBO as “money that the federal government charges for services, or for the sale or use of federal goods or resources, that generally provide benefits to the recipients beyond those that may accrue to the general public. The amount of a user fee is typically related to the cost of the service provided or the value of the good or resource used.” **Savings: $6.8 billion reduction in direct spending (increased CBP user fees are scored by CBO as a reduction in direct spending rather than as revenue).**

Natural Resources Conservation Service Fees: The legislation authorizes a user fee for conservation planning and technical assistance provided by the Natural Resources Conservation Service. The fee is authorized of up to $150 per conservation plan. The Secretary may waive these fees in cases of the Beginning Farmer and Rancher program, the Socially Disadvantaged Farmers and Ranchers program, and others. **Savings: $39 million reduction in direct spending (NRCS fees are scored by CBO as a reduction in direct spending rather than as revenue).**

Federal Employees Health Benefits (FEHB) Program: This provision allows the Federal Employee Health Benefit Program to open up coverage for self plus one coverage in addition to what it currently it allows for an individual or for self and family. According to testimony by the Office of Personnel Management, “Allowing the FEHB program to offer a "self plus one" enrollment option, places the program in line with other large private employers as well as state and local governments.” The President’s budget mentioned modernizing FEHBP and one solution was to open it up to self plus one coverage. **Savings: $3 billion reduction in direct spending.**

Rescissions: The bill rescinds $693 million of unobligated balances in the Department of Justice's Assets Forfeiture Fund and rescinds $867 million of unobligated balances in the Treasury Forfeiture Fund. **Score: Not available.**

Government Contractor Pay Cap: The bill limits how much a contractor can charge the federal government for an employee's compensation to $487,000, indexed to inflation using the Employment Cost Index. **Score: Not available.**

Conservative Viewpoints:

Conservative Support

Deficit Reduction: Some conservatives support this legislation because on net it reduces deficits over the ten year window by $23 billion.

Defense: Some conservatives support this legislation because it protects the Department of Defense from a portion of scheduled sequestration cuts in FY14 and FY15. They argue that national security spending is the primary responsibility of government and should not continue to bear a disproportionate and unsustainable share of spending cuts.

Regular Order: Some conservatives support this legislation because its topline discretionary spending caps for FY14 and FY15 represent a compromise between the House ($967 billion topline for FY14) and Senate ($1,058 billion topline for FY14) budgets that: (1) will reduce the likelihood of a government shutdown in 2014 allowing Republicans to focus attention on the ACA and other issues, and (2) could allow for a return to regular order in the appropriations process for FY15.

Conservative Concerns

Entitlements: Some conservatives may be concerned that this legislation does not include structural reforms to the programs that are the primary drivers of the federal government's overspending and long-term fiscal insolvency.

Offsets: Some conservatives may be concerned that this legislation trades near-term *spending reductions* for *deficit reduction* measures (revenue and spending cuts) that are spread out over ten years. They argue that many of these cuts could easily be undone by future acts of Congress and that projected revenue may not materialize either due to faulty scoring assumptions or future acts of Congress. Further, they argue that some offsetting provisions "double count" revenue dedicated to future federal liabilities, such as pension fund guarantees, as current deficit reduction.

Budget Control Act (BCA): Some conservatives may be concerned that this legislation weakens the BCA caps and makes their eventual elimination more likely. They argue that precedent will be set by this deal for major revisions offset by a mix of spending cuts and revenue with no structural reforms to entitlement programs.

Omnibus: Some conservatives may be concerned that this legislation sets the stage for passage of an omnibus appropriations bill in January, or series of minibuses, that is unlikely to incorporate policies offered by rank-and-file Members and is likely to be considered under a closed rule with no amendment opportunities.

Administration Position: The Administration has issued a statement of support (here).

Outside Organizations:

Opposing:
American Conservative Union
Americans for Limited Government
Americans for Prosperity (will Key Vote)
CATO
Coalition to Reduce Spending
Conservative Action Project (Consortium of conservative group leaders)
Club for Growth (will key Vote)
FreedomWorks (will Key Vote)
Heritage Action
NTU
Koch Industries

Supporting:
Business Roundtable

RSC Staff Contact:

Will Dunham (Budget/Appropriations), will.dunham@mail.house.gov, Ex. 6-0718
Rebekah Armstrong (Health/Education), rebekah.armstrong@mail.house.gov, Ex. 6-0678
Curtis Rhyne (Natural Resources), curtis.rhyne@mail.house.gov, Ex. 6-8576
Scott Herndon (Transportation), scott.herndon@mail.house.gov, Ex. 6-9143

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