RSC
Republican Study Committee
Rep. Jeb Hensarling (R-TX), Chairman
Russ Vought, Executive Director
132 Cannon House Office Building
Washington, DC 20515
www.house.gov/hensarling/rsc
ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin……………………………………..………December 10, 2008

Contents:

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 1

Total Cost of Discretionary Authorizations: Unknown. The bill authorizes "necessary" appropriations to replenish the "green car" fund.

Effect on Revenue: No CBO score is available.

Total Change in Mandatory Spending: No CBO score is available.

Total New State & Local Government Mandates: No CBO score is available.

Total New Private Sector Mandates: No CBO score is available.

Number of *Bills* Without Committee Reports: 1

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 7321— Auto Industry Financing and Restructuring Act *(Frank, D-MA)*

Order of Business: H.R. 7321 is expected to be considered on Wednesday, December 10, 2008. At press time, the text of the rule is not available, but the expectation is that the legislation will be considered under a closed rule.

Summary: H.R. 7321 provides up to $14 billion of loans to U.S. automakers. The legislation makes this money available by tapping $7.01 billion previously appropriated for the "green car" fund as part of the FY 2009 continuing resolution (P.L. 110-329). In addition, the legislation appropriates whatever unspecified amount of money (beyond the $7.01 billion) is necessary to support the full $14 billion of loans to the automakers. Highlights of the legislation:

$14 Billion in Direct Loans from the Advanced Technology Vehicles Manufacturing Incentive Fund: The Energy Independence and Security Act created an Advanced Technology Manufacturing Incentive Program (the so-called "green car" fund) to give direct loans to automakers under the condition that the money be used to manufacture cars with 25% greater fuel economy than similar vehicles sold in model year 2005. The FY 2009 CR appropriated $7.51 billion to cover the 30% subsidy share for this program, thus allowing loans to be made under the program.

H.R. 7321 allows access to $7.01 billion (so all but $500 million of the $7.51 billion originally appropriated for this purpose) from the "green car" fund to support bridge loans of up to $14 billion for U.S. automakers. Of note, none of the funding under the legislation comes from the Emergency Economic Stabilization Act (TARP). The legislation also appropriates any additional money needed beyond the $7.01 billion (up to an unspecified amount) necessary to support the $14 billion loan program created by H.R. 7321.

"Green Car" Fund: The legislation reserves $500 million of the money available in the "green car" fund, allows the Department of Energy to continue to process applications for this funding, and *authorizes* appropriations necessary to replenish the fund. Speaker Pelosi has indicated that Congress will appropriate new money for the "green car" fund within a matter of weeks, possibly as part of a larger stimulus bill.

"Car Czar:" The bill creates a new position to be appointed by the President, the "President's designee" (the so-called "car czar") to carry out the provisions of H.R. 7321. Among other things, the President's designee is tasked with facilitating negotiations that lead to "long-term viability" plans for each automaker receiving loans under the legislation.

Long-Term Viability Plans: H.R. 7321 directs the President's designee to facilitate negotiations leading to a long-term restructuring plan, for each automaker receiving financing under the legislation, negotiated to and agreed to by all interested parties—employees, retirees, trade unions, creditors, suppliers, automobile dealers, and shareholders. The legislation requires the President's designee to report to Congress no less than every 15 days on progress of efforts to achieve a negotiated plan.

The legislation requires each automobile manufacturer to submit to the President's designee, by March 31, 2009 (extendable for 30 days), a long-term restructuring plan that will lead to:

- repayment of all government-provided financing;
- compliance with the fuel efficiency standards of the Energy Independence and Security Act of 2007 and commencement of "domestic advanced technology vehicle manufacturing" (the "green car" fund that this legislation taps);
- the development of plans for new and existing products and capacity;
- achievement of a positive net present value using "reasonable" assumptions;
- efforts to rationalize costs;

- proposals to restructure existing debt; and
- a product mix and cost structure that is competitive in the U.S. marketplace.

Provision for Call of Loans: If the President's designee does not approve a long-term restructuring plan by March 31, 2009 (or 30 days thereafter with the extension), the President's designees is directed to require repayment of loans within 30 days. The President's designee may also call loans or require accelerated repayment of loans if:

- the President designee determines that the participating automaker has failed to make adequate progress toward a long-term restructuring plan; or
- once such a plan has been approved, if the automaker fails to make adequate progress in implementing it.

Terms and Conditions of Loans:

- Loans under this legislation are for seven years (or longer at the discretion of the President's designee). The rate of interest is set at 5% for 5 years and than 9% thereafter.
- The legislation includes no prepayment penalty.
- The legislation directs the President's designee to set limits on executive compensation as a condition of receiving loans.
- The legislation requires participating automakers to not buy any new private airplanes, and to try to sell those currently owned.
- The bill prohibits loan recipients from paying dividends.
- H.R. 7321 makes all other obligations and liabilities of a loan recipient subordinate to paying back loans received under this legislation.
- The legislation requires participating automakers to report any <u>proposed</u> asset sale, investment, contract, or transaction in excess of $100 million to the President's designee. The President's designee is authorized to prohibit any such action on the part of a participating automaker if the designee believes that it would harm the company's long-term viability.

Oversight and Audits:

- The bill requires the Comptroller General to conduct ongoing oversight of the activities and performance of the President's designee.
- The legislation gives the GAO access to all records of automakers receiving financing.
- The legislation requires the President's designee to issue various reports.

Automobile Manufacturers Study on Potential Manufacturing of Transit Vehicles: H.R. 7321 requires automakers to conduct a study on the possibility of using excess capacity to make vehicles for sale to public transit agencies.

Federal Stake in Companies: As a condition of receiving financing, an automaker would have to give warrants for non-voting stocks equal to 20% of the amount of financing received.

Option for President's Designee to Propose Plan to Reorganize Automobile Industry: If the President's designee determines by March 31, 2009, that progress is not being made toward a negotiated plan, the President's designee may propose a plan of his own—along with what legislative provisions would be needed to implement the plan.

Cost of Living Adjustment for Federal Judges: Authorizes a cost of living adjustment to federal judges.

Background: On September 24, 2008, Congress enacted H.R. 2638, the FY 2009 Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, which provided for $25 billion worth of loans to U.S. automakers.

In early November, General Motors warned that it had lost $21.2 billion in 2008 and might run out of cash in 2009. More recently, the company has warned that it risks having to file bankruptcy by the end of the year without Congressional action. Chrysler and Ford also have financial problems, though Ford has said it can operate with federal assistance through the end of 2009. The total amount of financing requested by the "Big Three" is $34 billion: $18 billion for GM, $7 billion for Chrysler, and $9 billion for Ford.

The financial problems of GM, Ford, and Chrysler can be traced to several factors including, but not limited to:

- *Labor costs:* The "Big Three" have compensation per hour equal to about $75 an hour while their competitors have compensation equal to about $45 an hour, a $30 differential.

- *The economy and higher gas prices:* The economy has reduced demand for new cars. In addition to that, higher gas prices in recent years have reduced demand for SUVs.

- *Consumer Ratings:* GM, Ford, and Chrysler rank below many of their competitors in consumer ratings. As CNN described the 2008 Consumer Reports, the "Big Three" had among the lowest overall scores. On Chrysler specifically, CNN reported: "The magazine blamed noisy, weak engines, poor interiors, cramped seating and bad visibility in recently introduced Chrysler products."

- *Excess Capacity:* Some economists calculate that Detroit has capacity to build at least 50% more cars than anyone is currently willing to buy.

Possible Conservative Concerns: Many conservatives have expressed concerns with using taxpayer money to provide loans to U.S. automakers. Some of these concerns are noted below:

- *The bailout could delay reforms:* Even when the economy recovers, Detroit's other structural problems will still remain—the wage differential, the lower consumer ratings, and the excess capacity. One danger of "bailing out" the automakers now is that it will delay solutions to these structural problems. This could cause the U.S. automakers to lose further ground against their competitors. Former Governor Mitt Romney wrote:

  > Without that bailout, Detroit will need to drastically restructure itself. With it, the automakers will stay the course - the suicidal course of declining market shares, insurmountable labor and retiree

> burdens, technology atrophy, product inferiority and never-ending job losses. Detroit needs a turnaround, not a check.

- *This may not be the final bailout Detroit will require:* Since this bailout will not fix the industry's larger problems, it is very possible that Congress will soon be asked to pass another bailout. As Megan McArdle wrote:

> I'd wager even the supporters in the DC area would admit that GM is probably going to be back for more within the year. The company has the capacity to produce 17 million cars, a little more than it sold two years ago. Projected sales next year are under 12 million. Their cash burn rate right now is $2 billion a month, which could well get worse. Unless GM starts slashing jobs, closing plants, and shuttering venerable marques like Buick, $25 billion is about a year's worth of lifeline.

Support for this legislation could make it harder to oppose any additional bailout request for the automakers down the road.

- *Market dynamism:* In his post "Breathtaking Capital Destruction," Will Wilkinson points out that investment in GM and Ford since 1980 has led to a net reduction of capital worth $465 billion. Wilkinson goes on to note, that with this amount of money, "GM and Ford could have closed their own facilities and acquired all of the shares of Honda, Toyota, Nissan, and Volkswagen." Many conservatives argue that it is harmful when a private company's failure is cushioned by the government. As David Brooks concludes in his column "Bailout to Nowhere:"

> But the larger principle is over the nature of America's political system. Is this country going to slide into progressive corporatism, a merger of corporate and federal power that will inevitably stifle competition, empower corporate and federal bureaucrats and protect entrenched interests? Or is the U.S. going to stick with its historic model: Helping workers weather the storms of a dynamic economy, but preserving the dynamism that is the core of the country's success.

- *Subsidy to unions:* The legislation does not set any hard benchmarks (such as what Senator Corker has proposed) requiring unions to make concessions that would lower compensation for the "Big Three" to the level of their competitors.

- *Sets precedent for other bailouts:* The airlines will lose $5.2 billion this year, Circuit City has declared bankruptcy, the newspaper industry is losing revenue, and Starbucks profits are down 97 percent. Countless small businesses have less well publicized financial problems of their own. Many conservatives may wonder whether this legislation could lead to other bailouts not now under consideration.

- *No requirement that automakers are put on sustainable path:* Some conservatives have argued that the approach this legislation does not do enough to cause structural reforms at the "Big Three." Instead the legislation requires that a plan be negotiated between the parties and be approved by the President's designee. Some conservatives argue that the December 2nd plans submitted to Congress by the "Big Three" were deficient. Jim Manzi, in a post entitled "GM's Magical Thinking," argues:

> I guess somebody who's never read a real business plan might mistake this document for one, but it's a joke. It's basically a list of assertions of amazing improvements, entirely discontinuous with actual performance to date, that they will achieve. What's missing is any real indication of how they will go about accomplishing this.

- *Federal intervention in automobile industry:* The legislation imposes all sorts of new mandates on how automakers run their companies. These include new environmental requirements, new regulations on what kind of cars the automakers will make, what kind of investment decisions they can make, etc. In general, this legislation would have the federal government become much more involved in regulating the American automobile industry. As Jeffrey Garten puts it: "I don't know that we've seen anything like this since the government told the automakers what kind of tanks to make during World War II."

- *Ownership Stake in Automobile Companies:* The legislation gives the federal government warrants for stock equal to 20% of the amount of loans. This could set the precedent for future government ownership in private companies.

Administration Position: No Statement of Administration Policy (SAP) for H.R. 7321 is available at press time.

Committee Action: The bill was filed on December 10, 2008.

Cost to Taxpayer: H.R. 7321 allows access to all but $500 million (so the remaining $7.01 billion) from the "green car" fund for bridge loans up to $14 billion for U.S. automakers. The legislation also appropriates any additional money needed beyond the $7.01 billion (up to an unspecified amount) necessary to support the $14 billion loan program created by H.R. 7321. Reportedly, if this legislation is enacted, Congress will consider legislation to replenish the "green car" fund early in the 111th Congress.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the legislation increases federal intervention in the U.S. automobile industry and may set a precedent for other bailouts to the U.S. auto industry, or to other troubled companies.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO score is available to determine compliance with the Unfunded Mandates Reform Act of 1995, though many new regulations are imposed on automakers, but as a condition of receiving financing under the bill.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: A committee report designating compliance with clause 9 of rule XXI is unavailable, and no statement was filed in the Congressional Record.

Constitutional Authority: A committee report citing constitutional authority is unavailable. House Rule XIII, Section 3(d)(1), requires that all committee reports contain a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution. *[emphasis added]*

RSC Staff Contact: Brad Watson, brad.watson@mail.house.gov, 202.226.9719.