



## Legislative Bulletin.....December 19, 2011

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Senate Amendment to H.R. 3630—Middle Class Tax Relief and Job Creation Act of 2011

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### Senate Amendment to H.R. 3630—Middle Class Tax Relief and Job Creation Act of 2011 (Reid, D-NV)

**Order of Business:** The motion to concur in the Senate amendment to H.R. 3630 is scheduled to be considered on Monday, December 19, 2011, under-a-yet-to-be-determined rule.

**Cost to Taxpayers:** The legislation reduces taxes by **\$20.2 billion** over ten years and reduces mandatory spending by **\$23.2 billion** over ten years. Overall, the legislation reduces the deficit by **\$3 billion** over ten years. In 2012, the deficit would increase by \$30.2 billion.

### Summary:

**Payroll Tax Cut Holiday Extension:** The legislation extends the 2 percent reduction on the employee side of the Social Security payroll for two months (through the end of February 2012) from 6.2% to 4.2%. The employer portion would remain the same (as would the Medicare portion of the payroll tax). [\\$20.1 billion tax cut over ten years.](#)

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 two months. [\\$8.4 billion spending increase over ten years.](#)

The Senate Amendment stripped out all of the House reforms to the Unemployment Insurance (UI) program. The reforms NOT in this legislation include:

- 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.

**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. This provision is very similar to the House-passed version.

**TANF Extension:** The legislation extends the Temporary Assistance for Needy Families (TANF) Program through February 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 Senate amendment eliminated a provision from the House bill that prohibited TANF funds from being accessed at ATMs in strip clubs, liquor stores, and casinos.**

**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. In addition, the Senate amended the bill to include provisions that require the Federal Housing Agency (FHA) to establish and collect annual premium payments for any mortgage for which the agency collects an annual premium. The bill requires that the amount of the FHA premium be 10 basis points of the remaining insured principal balance (*excluding the portion of the remaining balance attributable to the premium collected and without taking into account delinquent payments or prepayments*) with the number of basis points increasing incrementally over a two-year period. **\$35.7 billion spending cut over ten years.**

**Health Provisions:** Includes a “doc fix” and other extenders described below. **\$4.1 billion spending increase over ten years.**

- **Physician Payment Update ("Doc Fix"):** The bill prevents a 27.4% physician reimbursement cut scheduled to take effect on January 1, 2012, and instead, provides a zero percent increase in reimbursement levels until February 29, 2012. *The House-passed bill extended the Doc fix for two years and provided a 1% reimbursement increase each year.* **CBO estimates this provision will cost \$3.6 billion over ten years. Note—CBO estimates the remaining health care extenders described below will cost \$510 million over ten**

**years.** All health extensions in the Senate-passed bill are for two months unless otherwise noted.

- **Extension of Section 508 Reclassifications:** Extends this wage index reclassification that was originally created in the Medicare Modernization Act—and typically extended along with other Doc Fix extensions—for two months until February 29, 2012. This reclassification increases qualifying hospitals' inpatient and outpatient Medicare reimbursement rates through indexing the rates to a higher, nearby wage index area. *This provision was **not** included in the House-passed extenders package.*
- **Extension of Medicare Physician Work Geographic Adjustment:** Extends payments for physician services in rural states. *The House-passed bill extended this provision for one year and also required MEDPAC to analyze and report to Congress whether these adjustments should exist.*
- **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. The Senate Amendment extends the therapy caps exception process for two months. *The House-passed bill extended this provision for two years as well as applied the spending caps to the hospital outpatient setting once the current exceptions process expired on December 31, 2013.*
- **Extension of Payment for Technical Component of Certain Physician Pathology Services:** This two month extension of the inclusion of speech-language pathology services as a Medicare-billed service *was **not** included in the House-passed extenders bill.*
- **Extension of Ambulance Add-On Payments:** Extends increased Medicare payments for Ground Ambulance, Air Ambulance, and Super Rural Ambulance services. *The House-passed bill provided a one-year extension as well as reports from GAO and from MEDPAC on ambulance provider costs and whether the ambulance fee scheduled should be reformed.*
- **Extension of Physician Fee Schedule Mental Health Add-On:** Extends increased Medicare payments for mental health services with a 5% payment increase above the fee schedule otherwise applicable for specified services created under the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). *This provision was **not** included in the House passed extenders package.*
- **Extension of Outpatient Hold Harmless Provision:** Extends the temporary hold harmless treatment for certain rural hospitals amended under Obamacare, which expanded the hold harmless provision to all sole community hospitals, regardless of bed size. *This provision was **not** included in the House-passed extenders package.*
- **Extension of Minimum Payment for Bone Mass Measurement:** Extends Medicare payment policies for bone mass measurement testing (dual energy x-ray absorptiometry & vertebral fracture assessment) set to expire at the end of the year. *This provision was **not** included in the House-passed extenders package.*

- **Extension of the Qualified Individual (QI) Program:** Extends this federal reimbursement program to states that assists certain low-income dual eligible individuals with their Medicare Part B premiums. *The House-passed bill provided a one-year extension.* Prior to last year's one-year extension, the previous one-year extension was enacted under the "stimulus" bill.
- **Extension of Transitional Medical Assistance (TMA):** Extends this program which permits low income individuals that are transitioning into the workforce to remain on Medicaid. Prior to last year's one-year extension, the previous one-year extension was enacted under the "stimulus" bill. *The House-passed bill provided a one-year extension.*

The Senate Amendment stripped out the following health care related provisions included in the House-passed bill:

- **Revisions to Current-law Restrictions on Physician-Owned Hospitals:** A provision permitting planned physician ownership investment in current physician-owned hospitals in construction before the end of 2010 (as well as some "grandfathered" hospitals) that *CBO estimated would cost \$300 million over ten years.*
- **Recapture of Obamacare Exchange Subsidies:** A provision that would increase 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. *The Joint Committee on Taxation (JCT) estimated this provision would reduce the deficit by \$13.4 billion over ten years and the number of people receiving health insurance in the state-based exchanges by 170,000 in 2021.*
- **Reductions in the Prevention and Public Health Fund:** A provision that would reduce funding for this Obamacare slush fund that the House voted to [repeal](#) on April 13, 2011. *CBO estimated this provision would reduce spending by \$8 billion over ten year*
- **Payment Parity for Hospital Outpatient Department Evaluation and Management Office Visit Services:** A provision requiring 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 that *CBO estimated would reduce spending by \$6.8 billion over ten years.*
- **Bad Debt Payment Reductions:** A provision that lowers the percentage Medicare reimburses hospitals for their uncollected bad debt that Medicare beneficiaries are expected to pay (but do not) through Medicare cost-sharing. *CBO estimated this provision would reduce spending by \$10.6 billion over ten years.*
- **Medicaid Disproportionate Share Hospital (DSH) Allotments:** A provision that rebases the DSH allotments beginning in fiscal year 2021 and subsequent fiscal years according to this new rebased level that *CBO estimated would reduce spending by \$4.1 billion over ten years.*

- **Increasing Medicare Premiums for High Income Beneficiaries:** A provision that increases Medicare Part B and Part D premiums for high-income beneficiaries beginning in 2017 by 15% and lowers the levels considered for high-income earners from \$85,000/\$170,000 to \$80,000/\$160,000 for individual/married income earners, respectively. *CBO estimated this provision would reduce spending by \$31 billion over ten years.*

**Committee Action:** The Senate amendment in the nature of a substitute passed the Senate by a vote of [89 to 10](#). The legislation has not otherwise been considered by any committee.

### **Conservative Concerns:**

- **Fails to Include Common Sense TANF Reforms From the House-Passed Bill:** **The Senate amendment eliminates a provision from the House bill that prohibits TANF funds from being accessed at ATMs in strip clubs, liquor stores, and casinos.** Instead, TANF funding is extended for two more months without including this provision.
- **Requires Congress to Act Again in Two Months:** The legislation allows the various tax and spending extenders to expire at the end of February. It may be argued that this timeline makes it less likely the total cost of the extenders will end up being offset. As is, the legislation reduces taxes by **\$20.2 billion** over ten years and reduces mandatory spending by **\$23.2 billion** over ten years. Overall, the legislation reduces the deficit by **\$3 billion** over ten years. However, subsequent legislation could increase the deficit, if these provisions are extended without offsetting spending cuts.
- **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). Looking only at the impact for 2012, the legislation increases the deficit by \$30.2 billion.
- **Does Not Include Many House-Passed Spending Cuts:** This includes a provision increasing Medicare premiums for high income beneficiaries. This provision would increase Medicare Part B and Part D premiums for high-income beneficiaries beginning in 2017 by 15% and lowers the levels considered for high-income earners from \$85,000/\$170,000 to \$80,000/\$160,000 for individual/married income earners, respectively. *CBO estimated this provision would reduce spending by \$31 billion over ten years.*
- **Extends Unemployment Insurance Without House-Passed Reforms:** 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.

Furthermore, the Senate amendment dropped various reforms to the Unemployment Insurance program included in the House-passed bill. Those reforms NOT in this legislation include:

- 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
- Allowing states to use federal unemployment money to create reemployment programs instead of writing checks.

**Administration Position:** No Statement of Administration Policy is available at press time.

**Does the Bill Expand the Size and Scope of the Federal Government?:** The legislation contains some provisions that increase the size of the federal government, and some that reduce it.

**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 stated for the House-passed version of the bill: “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.”

No similar statement is available for the Senate-passed bill.

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