RSC Republican Study Committee

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Legislative Bulletin……………………………………….………January 14, 2009

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Key Conservative Concerns

Take-Away Points

--Does NOT disapprove of the President's request for the final $350 billion of TARP funding.

--Allows TARP money to be used for an auto bailout.

--Expands the allowable uses of TARP money to include support of state and local municipal bonds, consumer loans, and commercial real estate loans.

--Gives the Treasury Secretary very broad authority to decide how to enforce many of the provisions of the bill.

For more details on these concerns, see below.

H.R. 384—TARP Reform and Accountability Act of 2009 (*Frank, D-MA*)

Order of Business: The bill is scheduled to be considered later this week under a rule that has not been filed as of "press time."

Summary: H.R. 384 sets new requirements on how the final $350 billion of Troubled Asset Relief Program (TARP) money may be used. The bill does NOT disapprove the President's request to tap the final $350 billion, but is instead designed to accommodate it. Highlights of the legislation are as follows:

Title I—Modifications to TARP and TARP Oversight

New Reporting Requirement on Participating Companies: The legislation requires companies that are participating in the TARP program to report quarterly on how they are spending the money. This requirement is applied retroactively.

Authority of the Treasury Secretary to Set Additional Reporting Requirements: H.R. 384 gives the Treasury Secretary broad authority to set new reporting and information requirements for any "direct or ***indirect***" recipient of assistance under the TARP program. It is unclear what is meant by an "indirect" recipient, or how broadly the Treasury Secretary would interpret this language.

New Requirements on Use of Funds: The bill requires the Secretary to incorporate into agreements with companies that participate in TARP the manner in which the funds are to be used and the benchmarks the institution is required to meet. The bill requires the appropriate banking agency to review how a company is using TARP funds, and whether it is meeting the requirements, on an annual basis.

Prohibition on Use of TARP Funds for Acquisitions and Mergers: The bill prohibits a participating institution from merging with another company or acquiring the assets of another company. The legislation gives the Treasury Secretary the authority to overrule this prohibition if he believes that the merger or acquisition will reduce risk to the taxpayer or if he believes that the merger or acquisition could have occurred independent of taxpayer funding under the TARP program.

Executive Compensation and Corporate Governance: The legislation gives the Treasury Secretary broad authority to set corporate governance and executive compensation regulations for participating institutions. The bill directs the Treasury Secretary to include in these regulations a prohibition on bonus incentives that might lead to executives taking unnecessary risks, a provision for the recovery by a company of bonuses based on inaccurate earnings information reported by an executive, a prohibition on "golden parachutes," a prohibition on any bonus plan that might encourage manipulation of earning's information by an executive, and a prohibition on any bonuses at all to the 25 highest-paid executives at the company.

Divestiture of Private Airplanes: The legislation prohibits any participating institution from owning or leasing private airplanes, and requires that all "reasonable steps" be taken to sell any private airplanes that the company owns.

Board Observer: The Treasury Secretary may require the attendance of an observer (as a representative of the Treasury Secretary) at any meeting of the board of directors of any participating institution.

Reporting Requirement on New Lending Attributable to TARP: The bill requires participating institutions to include in their quarterly reports how much of their new lending is attributable to TARP funding. This provision is similar to an amendment offered by Representative Steve LaTourette to H.R. 7321 (Auto Industry Financing and Restructuring Act) in the 110th Congress.

Smaller Community Institutions: The legislation makes TARP funding available to smaller community institutions.

Increased Authority for Financial Stability Oversight Board: H.R. 384 gives the Financial Stability Oversight Board (made up of members of the executive branch) the power to overturn decisions of the Treasury Secretary (also a member of the executive branch) with a two-thirds vote. This provision would have the legislative branch place a new requirement on executive branch deliberations.

The legislation also adds three new members to the Financial Stability Oversight Board—the Chair of the FDIC and two members appointed by the President.

Title II—Foreclosure Mitigation Plan

Foreclosure Mitigation Plan: The legislation requires the Secretary of the Treasury to set aside between $40 billion and $100 billion (the exact figure would be left to the Secretary of the Treasury) for a plan to "prevent and mitigate foreclosures on residential properties." The Treasury Secretary, subject to approval of the Financial Stability Oversight Board, is given *very* broad discretion on how to design and implement this program, and what criteria should be used in deciding how to spend the money.

Title III—TARP Funding for Auto Bailout

"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 this title. 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.

Funding: H.R. 384 directs the "car czar" to make direct loans to the "Big Three," per the financial plans each of the companies submitted to Congress on December 2, 2008.

Long-Term Viability Plans: H.R. 384 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's 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.
- The bill 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 proposed 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. 384 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.

Anti-Trust Exclusion: The legislation exempts auto companies from anti-trust laws for purposes of achieving a negotiated plan under this legislation.

Title IV—Other Expanded Uses for TARP Funding

Consumer Loans: The bill expands the potential use of TARP money to include "availability of consumer loans, including loans for autos and other vehicles and student loans…"

State and Local Governments: The bill expands the potential use of TARP money to include support to state and local governments and other issuers of municipal securities.

Commercial Real Estate Loans: The bill expands the use of potential TARP money to include supporting the availability of commercial real estate loans.

Title V—Changes to "Hope for Homeowners" Program

In general, this title of the bill is designed to increase the number of loans refinanced through the Hoper for Homeowners program. CBO estimates the program has a 15% subsidy cost, and that over ten years, this title of the bill would increase mandatory spending by $675 million.

Eliminates Borrower Certifications: The legislation eliminates the requirement under existing law that, to be eligible for assistance under the Hoper for Homeowners Program, an individual certify that he or she has: "never ***intentionally*** defaulted on the mortgage or any other debt. Certifications, and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for the purpose of obtaining any eligible mortgage."

Eliminates an Income Documentation Requirement: The legislation eliminates the requirement that an individual receiving assistance under this program verify their income by providing income tax return information.

Title VI—Home Buyer Stimulus

Home Buyers Stimulus Program: The bill requires the Treasury Secretary to carry out the "Home Buyer Stimulus" program authorized by Section 1117 of the Housing and Economic Recovery Act of 2009.

Title VII—FDIC

FDIC: The bill increases the amount of deposits insured by the Federal Deposit Insurance Corporation and the National Credit Union Administration from $100,000 to $250,000 and increases the FDIC's borrowing authority from $30 billion to $100 billion.

Additional Background: On October 3, 2008, Congress passed H.R. 1424, the Emergency Economic Stabilization Act of 2008, by a vote of 263 to 171. The President subsequently signed the bill into law.

This legislation provided a total of $700 billion of purchasing authority for the Treasury Secretary to purchase trouble assets from financial institutions. But the legislation divided the $700 billion into three tranches: $250 billion of the funding was made available immediately available; $100 billion was made available subject to a certification from the President that the money is needed; and the final $350 billion was made available with a presidential request and absent the enactment of a joint resolution disapproving the action (such a joint resolution would be subject to a presidential veto and a two-thirds vote to override).

Yesterday, President Bush requested the final $350 billion of TARP funds available under the Emergency Economic Stabilization Act.

RSC Bonus Fact: As of last month, the federal government has committed more than [$8 trillion](#) of federal resources in various bailouts meant to combat the financial crisis.

Committee Action: The legislation has not been considered by any committee.

Possible Conservative Concerns: The following are some of the concerns that conservatives may have with this legislation:

- *Does NOT Block the Remaining $350 Billion of TARP Funds:* Instead, the intent of H.R. 384 is to accommodate the President's request for the final $350 billion.

- *Allows TARP Funds to be Used for an Auto Bailout:* The bill includes language similar to H.R. 7321 from the 110th Congress, which allows the "Big Three" to receive taxpayer-financed direct loans. Many conservatives opposed this legislation on the argument that the loans would delay needed structural reforms at the "Big Three," set a dangerous precedent that any failing company can count on a federal bailout, and dramatically increase the federal government's interference in the American auto industry.

- *Greatly Increases Federal Involvement in the Financial Services Sector:* Among other things, the legislation would have the federal government tell participating companies how much they can pay their employees, what mergers and acquisitions are acceptable, and would give the Treasury Secretary the authority to send a representative to *any* meeting of the board of directors of a participating company.

- *Expands the Allowable Uses of TARP Money:* The bill expands the allowable uses of TARP money to include support of state and local municipal bonds, consumer loans, commercial real estate loans, and automobile companies.

- *Gives the Treasury Secretary VERY Broad Authority*: The legislation gives the Treasury Secretary, among other things, the authority to send a representative to any board meeting of a participating company, very broad authority on how to design a $40 billion-$100 billion "Foreclosure Mitigation Plan," and broad authority on how to enforce a host of other reporting/regulatory requirements created by the bill. Some conservatives may believe that Congress should not delegate such vast authority to a member of the executive branch.

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

Cost to Taxpayers: According to CBO, the bill will increase mandatory spending by $14.8 billion over the FY 2009-2013 period and decrease it by $13.3 billion over the FY 2009-2018 period. Because H.R. 384 increases the deficit over the first five years, the legislation in its current form violates PAYGO.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill greatly expands the role of the federal government in the private-sector.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO, the legislation preempts state law and contains some private-sector mandates. However, it does not exceed the annual threshold established by the Unfunded Mandates Reform Act.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: An earmarks/revenue benefits statement required under House Rule XXI, Clause 9(a) was not available at press time.

Constitutional Authority: No committee report citing constitutional authority is available.

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