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H.R. 4213, THE 'EXTENDERS' BILL: AN UPDATE[1]

MORE TAXES, MORE SPENDING, AND MORE DEBT

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OVERVIEW

After a widespread backlash over its extravagant price tag, Democrats have created an illusion that their tax "extenders" bill costs less than earlier this week. In reality, however, they have made some provisions more generous, but simply shortened the "official" duration of the spending, while further increasing taxes. In the end, their sleight-of-hand fails to mask the truth: the measure remains a bloated replay of the "stimulus" doctrine that has failed to deliver on its promised job creation.

> "President Obama and Democrats on Capitol Hill are publicly fretting about the dangers of spending and debt, which can only mean one thing: Another big spending 'stimulus' bill is in the works."
>
> *The Wall Street Journal*, 25 May 2010

The legislation, scheduled for the House floor this week, was a $31-billion package when originally passed in the House (on 9 December 2009). It grew to $95 billion by the time it passed the Senate (on 10 March 2010); and by earlier this week, it had swollen into a $174-billion package. Recent modifications brought the official figure down to $127 billion, still a four-fold increase from where it started. Here are some key budget facts about the revised American Workers, State, and Business Relief Act of 2010 (H.R. 4213):

- It increases net spending by $127 billion over 10 years, bringing total spending increases since January 2009 to $1.9 trillion.
- It increases net taxes by $43 billion (a $3-billion increase over the prior version), bringing total tax increases since January 2009 to $713 billion.
- It increases the deficit by $84 billion over 10 years.
- It extends at least 10 "temporary" provisions from the 2009 "stimulus" bill.
- It double-counts $11.8 billion in increased taxes for the Oil Spill Liability Trust Fund to cover the cost of the Gulf Coast cleanup and to offset unrelated spending in the bill.
- It adds $44.5 billion to the cost of the recently enacted health care law, with the requirement of more spending to come.

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[1] This analysis has been updated from its previous version to reflect modifications in the legislation.

The final bill continues temporarily extending a handful of tax relief provisions that expired at the end of 2009, while permanently increasing other taxes. But the revised measure increases net taxes by an additional $3 billion compared to the version earlier this week, resulting in an even higher overall permanent tax burden than before. It also pretends to save money by shortening, by 1 month, the extension of the "stimulus" bill's "one-time" unemployment insurance and health insurance benefits, while leaving the extension of Medicaid assistance to States at its earlier levels. The updated package similarly reduces the length of the temporary "doc fix," to prevent cuts in Medicare physician payments, thereby reducing the bill's official cost by $40 billion. Meanwhile, the funding for the wide variety of miscellaneous provisions – ranging from changes in the highway spending formulas, pension relief for corporations, subsidies for local bonds for infrastructure projects, and even funding for the Wool Trust Fund – remain the same.

SPEND-AS-YOU-GO

The Majority's statutory pay-as-you-go [pay-go] law was passed with a claim that it would prevent the deficit from deepening. It is supposed to require that any legislation increasing mandatory spending or reducing taxes be "paid for" with offsetting spending reductions, tax increases, or a combination of both. In reality, pay-go has been flaunted or used to chase higher spending with higher taxes. This legislation is just the latest example.

Of H.R. 4213's $127 billion in new net spending, the Democratic Majority continues to deem the unemployment insurance, health insurance, Medicaid assistance to States, and many other provisions as "emergency spending," which exempts them from pay-go's offset requirement. Also written into the pay-go law is a loophole for the Sustainable Growth Rate [SGR] in payments for Medicare physicians. This automatic exemption for the so-called "doc fix" allows the Majority to technically meet the pay-go requirement and still increase entitlement spending. The latest version reduces the length of these payments from 3 years to 1 year (expiring on 31 December 2011 instead of 31 December 2013). The Congressional Budget Office [CBO] estimates that this shortened "patch" would cost $23 billion instead of $63 billion. Thus a total of $84 billion in spending in this bill will not be offset and will go on the Nation's credit card. The remainder of the non-exempt spending in the bill is "paid for" by $43 billion in net tax increases.

Perhaps the most egregious aspect of the pay-go rule is that the adjusted CBO score of H.R. 4213 now gives the Majority a $1.8-billion credit to the statutory pay-as-you-go score card. In other words, even though in reality Democrats are adding $84 billion to the deficit, they claim to *reduce* the deficit by $1.81 billion, and will be able to use this official credit to offset additional spending in the future.

The Majority has turned its own pay-go rule into a *spend-as-you-go* mechanism, demonstrating no willingness to pay for increases with equal cuts elsewhere, only an ability to cover some of their new spending with tax increases. Assuming passage of H.R. 4213, pay-go will have enabled the Majority to add nearly $2 trillion in new spending, and to increase taxes by $713 billion, just since January 2009 (see Table 1 and Table 2) – all under the banner of "fiscal responsibility." These spending and tax burdens will stifle a still-weak economy and add to the Nation's unsustainable debt.

Table 1: New Spending by Obama/Democratic Congress Since 2009
(in billions of dollars)

Legislation	Spending
'Stimulus'	626
2009 Omnibus[a]	268
State Children's Health Insurance Program[b]	34.5
Increases to President's War Supplemental[c]	16
Appropriations Above Inflation[d]	448
Health Care Reconciliation[e]	382
UI and Other Temporary Benefits Extensions	8
'Extenders' Bill (H.R. 4213)	127
Total	**1,910**

[a] Congressional Budget Office [CBO] score of spending above baseline in H.R. 1105.
[b] Based on CBO analysis of H.R. 2 through 2013, including discretionary administrative costs.
[c] CBO score of non-defense spending in H.R. 2346.
[d] House Budget Committee Republican staff analysis of 2010 enacted appropriations versus CBO baseline budget authority excluding emergencies.
[e] Direct spending.
Source: Congressional Budget Office unless otherwise indicated.

Table 2: Tax Increases Enacted by Obama/Democratic Congress Since 2009[a]
(in billions of dollars)

Legislation	Tax Increase
Health Care Legislation (Public Law 111-148, Public Law 111-152)	569
State Children's Health Insurance Program (Public Law 111-3)	65.5
'Stimulus' (Public Law 111-5)	6.98
UI Benefits, Net Operating Loss Relief, Homebuyer Tax Credit (Public Law 111-92)	22.7
Hiring Incentives to Restore Employment [HIRE] Act	5.95
'Extenders' Bill (H.R. 4213)	43
Total	**713.13**

[a] The Ways and Means Committee Republican staff analysis can be found at:
http://republicans.waysandmeans.house.gov/UploadedFiles/DemTaxIncreases1.pdf
[b] Congressional Budget Office and Joint Committee on Taxation estimate of H.R. 4213 dated 20 May 2010.
Sources: Congressional Budget Office and Joint Committee on Taxation unless otherwise indicated.

MORE FAILED 'STIMULUS'

Just like the 2009 "stimulus," H.R. 4213 is being touted as a "jobs bill." But the promise is dubious at best, because the effects of the "stimulus" were grossly overestimated and its costs were equally underestimated. The Majority promised that the trillion-dollar American Recovery and Reinvestment Act [ARRA] would be temporary spending that would prevent unemployment from going beyond 8 percent. The current unemployment rate is 9.9 percent and expected to remain at around this level for the remainder of the current year.

> "[T]he underlying ['stimulus'] bill must be *temporary*. We need to get back to balancing the budget; we understand that."
>
> Senator Ben Cardin (D-MD)
> Debate on H.R. 1, the American Recovery and Reinvestment Act, 4 February 2009:
> *Congressional Record*, Page S1484

The administration also predicted that with "stimulus," the level of payroll employment would be 137.6 million by the end of 2010. The April employment level was 130.2 million. That means 7.4 million jobs will need to be created by the end of the year (925,000 per month) for the administration to reach its mark.[2]

Republicans also warned that much of the ARRA's provisions were not "stimulus," but rather down payments on provisions that would become permanent expenditures. A CBO analysis (of the House-passed bill), estimated that extending about half of the provisions in the "stimulus" bill would increase its cost to $3 trillion over 10 years.[3] But less than 2 weeks after the "stimulus" bill was signed, the President's fiscal year 2010 budget proposed making major components permanent, such as the Make Work Pay Tax Credit, the expansion of the Earned Income Tax Credit, and the increase in Pell Grants, to name a few. Similarly, Congress has extended Unemployment Insurance [UI] four times since enactment of the ARRA.[4]

Here again, H.R. 4213 extends at least 10 provisions from the "stimulus" and continues the same failed tax and spending policies that have worsened the Nation's fiscal condition, while failing to create jobs.

EVEN MORE HEALTH CARE SPENDING

The Majority promised their health care law would lower costs and reduce the deficit by $143 billion over 10 years. But the chief actuary at the Centers for Medicare and Medicaid Services [CMS] recently stated the law increases the Federal commitment to health care by $251 billion over 10 years, and now the updated health subtitle of H.R. 4213 adds another $44.5 billion to the cost of health "reform," with much more spending to come in the future.

The final health care law dropped a "doc fix" provision that would have prevented a 21-percent cut to physician payments scheduled to take effect next month. CBO estimates a 10-year "doc fix" costs $208 billion. The earlier version of H.R. 4213 would have delayed this cut for an additional 4 years, but only by employing a funding "cliff" that would have resulted in a 35-percent cut to physician payments in January 2014. The updated version steepens this cliff in two ways: 1) it shortens the duration of the "patch"; and 2) it increases the payment rate by an additional 2.2 percentage points for the remainder of this year, and 1 percentage point for next year. The combination leads to a potential 37-percent cut in physician payments in 2014. This gimmick allows the Majority to artificially bring down the cost of this temporary fix to $22.9 billion, yet hides the $185 billion that will still be needed to ensure doctors continue treating Medicare patients in the future.

Moreover, the bill continues to include an additional $24 billion for Medicaid, a program already projected to grow at 23 percent this year.

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[2] For a discussion see: http://www.economy.com/mark-zandi/documents/The_Job_Impact_of_the_American_Recovery_and_Reinvestment_Plan.pdf

[3] Congressional Budget Office letter to Representative Paul D. Ryan, 11 February 2009: http://www.cbo.gov/ftpdocs/99xx/doc9988/hr1extendProvisionsRyanLtr.pdf

[4] Public Laws 111-92, 111-118, 111-144, 111-157.

DOUBLE-COUNTING OIL SPILL MONEY

The Majority further employs increases to the Oil Spill Liability Trust Fund to make the cost of H.R. 4213 appear smaller. While the revised bill keeps the liability cap increase from $1 billion to $5 billion, it increases the per-barrel tax that finances the fund from 8 cents to 34 cents – an increase of more than 400 percent. (The previous version would have increased the tax to 32 cents.) The Joint Committee on Taxation increased the estimate the proposal will raise from a net $10.9 billion to $11.8 billion in revenue over 10 years. The Majority continues to count these funds twice: each dollar goes toward the Trust Fund and also gets counted as offsetting unrelated spending in the legislation.

A NEW FUNDING CLIFF

H.R. 4213 changes the Federal highway funding formula authorized in the Hiring Incentives to Restore Employment [HIRE] Act (Public Law 111-147). The formula in the HIRE Act for two of the Federal highway programs was based on the amount of earmarked funding each State received in those programs in the 2005 surface transportation authorization bill. The changes proposed to this formula by the earlier version of H.R. 4213 drew strong opposition because it would have reduced funding to 13 States and the District of Columbia, and redistributed the funding to the 37 other States. To garner needed support, the revised legislation includes a provision that holds those 13 States harmless, by authorizing an additional $423 million in annual contract authority. This additional spending, however, runs out in December 2010, at which time there will be immense pressure to continue this funding to prevent any "cuts" to these 13 States going forward.

OTHER MISCELLANEOUS SPENDING PROVISIONS

H.R. 4213 continues to contain a number of extraneous provisions, including:

- A sum of $4.6 billion for two lawsuits.[5] The Cobell settlement concerns the government's management of more than 300,000 Native American trust funds. The Pigford settlement addresses a decades-old discrimination lawsuit against the Department of Agriculture brought by African American farmers.
- A tax credit of $145 million for Energy Efficient Windows.
- A $38-million 1-year extension of the depreciation rule for motorsports entertainment complexes.
- A total of $46 million to extend for 1 year the expensing of the first $15 million to $20 million for U.S. film and television productions.
- A $20-million increase in tariffs to fund the Wool Trust Fund. This provision increases import duties that will be deposited into the trust fund to compensate the wool industry for damages from global competition.

[5] Cobell and Pigford class action lawsuit settlements.

ADDITIONAL INFORMATION

Additional information about this bill can be found at these sources:

- *The Wall Street Journal*: "American Jobbery Act," 25 May 2010: http://online.wsj.com/article/SB10001424052748704113504575264532051783298.html

- Keith Hennessey.com: *The Hypocrisy Act of 2010*, 24 May 2010: http://keithhennessey.com/2010/05/24/hypocrisy-act/
  Keith Hennessey.com: *Proud to underfund employee penions?, 26 May 2010*: http://keithhennessey.com/2010/05/26/underfund-pensions/

  Keith Hennessey.com: *A $50 B fig leaf, 27 May 2010*: http://keithhennessey.com/2010/05/27/fig-leaf/

- *The Washington Post*: "New spending plans belie Congress's deficit worries," 25 May 2010: http://www.washingtonpost.com/wp-dyn/content/article/2010/05/24/AR2010052403585.html

- Committee on Ways and Means, Republican staff: *Tax Extenders Summary*, H.R. 4213: http://republicans.waysandmeans.house.gov/Extenderssummary/

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