THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

April 20, 2012

To: Members of the Energy and Commerce Committee

From: Energy and Commerce Committee Staff

Re: Committee Prints: Proposed Matters for Inclusion in Reconciliation Recommendations

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On April 24, 2012, at 4:00 pm in room 2322 Rayburn House Office Building and April 25, 2012, at 10:00 a.m., in room 2123 of the Rayburn House Office Building, the Committee on Energy and Commerce will meet in open markup session to consider the following:

- Committee Prints: Proposed Matters for Inclusion in Reconciliation Recommendations;
- Discussion Draft of H.R. ___, the Gasoline Regulations Act of 2012; and,
- Discussion Draft of H.R. ____, the Strategic Energy Production Act of 2012.

Members must submit any amendments they may have two hours before they are offered during the markup. Members may submit amendments by email to peter.kielty@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

I. Committee Prints: Proposed Matters for Inclusion in Reconciliation Recommendations

Included in the Fiscal Year (FY) 2013 Budget resolution is a directive to specified authorizing committees to report their savings to the House Budget Committee no later than April 27, 2012. The Energy and Commerce Committee has been directed to propose legislation that will save $3.750 billion; $28.430 billion; and $96.760 billion over a one, five and ten-year periods, respectively. This memorandum outlines the policies to be considered during markup.

Repeal Prevention and Public Health Fund

Current Policy: The Patient Protection and Affordable Care Act (PPACA) created a new "Prevention and Public Health Fund" controlled by the Secretary of the Department of Health and Human Services (HHS) designed to supplement spending on public health programs (all programs within the Public Health Service Act are eligible for funding). The law created an advanced appropriation of $16 billion for the first ten years of the program and a permanent $2 billion annual appropriation for the fund in perpetuity.

Policy Proposal: This proposal would repeal the fund and rescind unobligated funds.

Repeal Unlimited State Exchange Grant Authority

Current Policy: PPACA provided the Secretary of HHS a direct appropriation of such sums as necessary for grants to States to facilitate the purchase of qualified health plans in newly created exchanges. The Secretary can determine the amount of spending and spend the funds without further Congressional action – an unprecedented authority that gives an Executive Branch official an unlimited tap into the Federal Treasury.

Policy Proposal: This proposal would strike the unlimited direct appropriation and rescind unobligated funds.

Defund the CO-OP Program

Current Policy: PPACA created the "Consumer Operated and Oriented Plan" (CO-OP) program to provide government-subsidized loans to qualified non-profit health insurance plans. The law appropriated $6 billion for such loans (H.R. 1173, the continuing resolution for FY 2011, reduced this amount to $3.8 billion). The President's Office of Management and Budget (OMB) estimates of potential taxpayer losses and awards given to potentially unqualified entities have raised serious concerns about CO-OPs.

Policy Proposal: This proposal would rescind all unobligated funds made available to the CO-OP program in PPACA.

Rebase the Disproportionate Share Hospital Allotments in Fiscal Year 2022

Current Policy: PPACA includes annual aggregate Disproportionate Share Hospital (DSH) allotment reductions for FY 2014 through FY 2020, but allotments revert to levels prior to PPACA in FY 2021. The reductions were included to reflect a projected increase in insured Americans and a declining need for uncompensated care funding. The Middle Class Tax Relief and Job Creation Act of 2012 (also known as the Medicare and Medicaid Extenders Package), which was passed on February 17, 2012, includes a rebasing of DSH payments for FY 2021.

Policy Proposal: This proposal would rebase the FY 2022 allotments to maintain the FY 2021 level of reductions.

Repeal the Medicaid Maintenance of Effort on States

Current Policy: Under current law, there is a Maintenance of Effort (MOE) requirement in place whereby a State is prohibited from having eligibility standards, methodologies, or procedures under its State Medicaid or Children's Health Insurance Program (CHIP) plans that are more restrictive than those in effect on March 23, 2010, the date of enactment of PPACA. The MOE requirement is a significant barrier for States trying to better manage their Medicaid and CHIP programs -- especially for those States wanting to implement program integrity measures that would ensure proper eligibility verification. In 2011, for example, inadequate eligibility review cost taxpayers approximately $15 billion in improper payments under the Medicaid program.

Policy Proposal: This proposal would repeal the MOE on States for Medicaid and the CHIP as mandated by PPACA. The repeal of the MOE merely returns to States the operational flexibility they have exercised since the beginnings of the Medicaid and CHIP programs.

Repeal the Increased Federal Medicaid Funding Cap and Match Rate for Territories

Current Policy: PPACA increased the Federal Medicaid match rate for the territories from 50 percent to 55 percent beginning in FY 2011. Additionally, the law increased the cap on Federal Medicaid spending directed to the territories by $6.3 billion over 10 years.

Policy Proposal: This proposal would reverse both the increased Medicaid Federal match and cap for the territories as provided under PPACA.

Adjust the Provider Tax Threshold to 5.5 Percent

Current Policy: States are able to use revenues from health care provider taxes to help finance the State share of Medicaid expenditures. Under current law, States are limited to a provider tax threshold of no higher than 6 percent of the net patient service revenues. The provider tax threshold was 5.5 percent up until October 1, 2011.

Policy Proposal: This proposal would adjust the provider tax threshold back to 5.5 percent beginning in FY 2013. The President's Budget Proposal for FY 2013 would have phased down the provider tax threshold to 3.5 percent.

Medical Liability Reform

Current Policy: The Nation's medical liability system imperils patient access and imposes tremendous costs on our Nation. It has forced doctors out of practicing in certain specialties; it has caused trauma centers to close; it has forced pregnant women to drive hours to find an obstetrician. This badly broken system also imposes tremendous financial burdens: Americans spend over $200 billion every year in unnecessary "health care" costs.

Policy Proposal: The language would be identical to the medical liability legislation that passed the Committee in 2011.

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Should you have any questions regarding the markup of the Committee Prints, please contact Howard Cohen or Ryan Long at (202) 225-2927.

II. H.R. __, THE GASOLINE REGULATIONS ACT OF 2012

A discussion draft of H.R. __, the "Gasoline Regulation Act of 2012" was released on March 21, 2012. On March 28, 2012, the Subcommittee on Energy and Power held a legislative hearing on the proposed legislation. On April 16 and 17, the Subcommittee on Energy and Power forwarded the discussion draft, as amended, to the full Committee. H.R. __, the "Gasoline Regulation Act of 2012" would:

- Establish a temporary interagency committee, chaired by the Secretary of Energy, to estimate the cumulative impacts of certain Environmental Protection Agency (EPA) rulemakings and actions on gasoline, diesel and natural gas prices, jobs, the economy, as well as other cumulative costs and cumulative benefits, and submit a final report to Congress within 210 days after enactment.

- Defer at least 6 months after submission of the final report the following new regulations: (i) Tier 3 motor vehicle emission and fuel standards; (ii) new or revised performance or emissions standards applicable to petroleum refineries; and (iii) new ozone standards.

- Require EPA consider cost and feasibility in setting new ozone standards.

H.R.__, the "Gasoline Regulations Act of 2012" includes the following sections:

Section 1: Section 1 provides the short title of "Gasoline Regulations Act of 2012."

Section 2: Section 2 establishes an interagency committee (the "Committee") for the cumulative analysis of rules that impact gasoline, diesel and natural gas prices. Section 2(b) provides that the Committee will be chaired by the Secretary of Energy, and will include the Secretaries of Transportation, Commerce, Labor, Agriculture, and Treasury; the Administrator of the Environmental Protection Agency; the Chairman of the United States International Trade Commission; and the Administrator of the Energy Information Administration. The Committee will terminate 60 days after submitting a final report.

Section 3: Section 3 describes the analyses that the Committee will conduct for the years 2016 and 2020, including estimates of changes in gasoline, diesel and natural gas prices, capital investments, global economic competitiveness, other cumulative cost and cumulative benefit impacts, and jobs. The Committee will also provide a discussion of the cumulative impact of the covered rules and actions on consumers, small businesses; regional economies; State, local, and tribal governments; low-income communities; public health; and local and industry-specific labor markets.

Section 3 also identifies the covered rules and actions that are to be analyzed. These covered rules and actions include EPA's Tier 3 Motor Vehicle Emission and Fuel Standards, new or revised standards of performance or emission standards under section 111 or 112 of the Clean Air Act applicable to petroleum refineries, new Renewable Fuels Program rules, the 2008 National Ambient Air Quality Standards for Ozone and any subsequent rule revising or supplementing those standards, and Greenhouse Gas permitting under the Prevention of Significant Deterioration and Title V programs.

Section 4: Section 4 requires a preliminary report be made public and submitted to Congress not later than 90 days after enactment. Public comments are to be accepted on the preliminary report for 60 days. The final report is then due within 60 days after the close of the public comment period.

Section 5: Section 5 defers at least 6 months after submission of the final report the following new rules: EPA's Tier 3 Motor Vehicle Emission and Fuel Standards, new or revised standards of performance or emission standards under section 111 or 112 of the Clean Air Act applicable to petroleum refineries, and any new rule revising or supplementing the National Ambient Air Quality Standards for Ozone issued in 2008.

Section 6: Section 6 requires that revisions to any National Ambient Air Quality Standards for Ozone shall take into account feasibility and cost.

III. H.R. __, THE STRATEGIC ENERGY PRODUCTION ACT OF 2012

A discussion draft of H.R.__, the "Strategic Energy Production Act of 2012" was released on March 23, 2012. On March 28, 2012, the Subcommittee on Energy and Power held a legislative hearing on the proposed legislation, and on April 16, 2012, the Subcommittee favorably reported the legislation to the Full Committee. H.R.__, the "Strategic Energy Production Act of 2012" would:

- Require that upon the first drawdown from the Strategic Petroleum Reserve (SPR), the Secretary of Energy (in consultation with the Secretaries of Agriculture, Interior, and Defense) must develop a plan to increase the percentage of Federal lands leased for oil and gas exploration, development, and production.

- Require that the plan (i) be consistent with a national energy policy to meet present and future energy needs of the U.S.; (ii) promote the interests of consumers through the provision of an adequate and reliable supply of domestic transportation fuels at the lowest reasonable cost; and (iii) not result in the percentage of Federal lands leased to exceed 10 percent or include lands managed under the National Park System or National Wilderness Preservation System.

H.R.__, the "Strategic Energy Production Act of 2012" includes the following sections:

Section 1: Section 1 provides the short title of "Strategic Energy Production Act of 2012."

Section 2: Section 2 amends the Energy Policy and Conservation Act to require the Secretary of Energy upon the first drawdown from the SPR to develop a plan to increase the percentage of Federal lands under the jurisdiction of the Secretary of Agriculture, Secretary of Energy, Secretary of the Interior, and Secretary of Defense leased for oil and gas exploration, development and production.

Section 2 also requires that the plan developed by the Secretary: (1) be consistent with a national energy policy to meet present and future energy needs of the U.S., consistent with economic goals, and (2) promote the interests of consumers through the provision of an adequate and reliable supply of domestic transportation fuels at the lowest reasonable cost.

Section 2 also provides that the plan shall not result in the percentage of Federal lands leased to exceed 10 percent or include lands managed under the National Park System or National Wilderness Preservation System.

Section 2 requires the Secretary of Energy to consult with the Secretary of Agriculture, Secretary of Energy, Secretary of the Interior, and Secretary of Defense in development of the plan and requires these Secretaries to comply with the plan.

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If you have any questions regarding the "Gasoline Regulations Act of 2012," please contact Ben Lieberman or Mary Neumayr at (202) 225-2927, and if you have any questions regarding the "Strategic Energy Production Act of 2012," please contact Garrett Golding at (202) 225-2927.