CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

Douglas W. Elmendorf, Director

March 10, 2011

Honorable Denny Rehberg
Chairman
Subcommittee on Labor, Health and Human Services,
Education, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

H.R. 1, the Full-Year Continuing Appropriations Act of 2011, as passed by the House of Representatives on February 19, included several provisions related to the implementation of last year's major health care legislation—the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010 (Public Laws 111-148 and 111-152). This letter describes the budgetary impact of section 4017, which would prohibit the use of any funds appropriated in H.R. 1 to carry out the provisions of PPACA and the Reconciliation Act.[1] The Congressional Budget Office and the staff of the Joint Committee on Taxation (JCT) estimate that section 4017 would reduce the deficit by about $1.4 billion in fiscal year 2011 but would increase deficits by a net amount of $5.7 billion over the 2011-2021 period (see the following table).

The budgetary effects of that prohibition are highly uncertain and depend largely on how the Administration would interpret the legislation—in particular, how broadly or narrowly the Administration would define what is meant by "carrying out" the provisions of those laws. CBO and JCT assume that the Administration will interpret that provision in conjunction with other statutes (including Public Laws 111-148 and 111-152) to give maximum effect to all laws wherever possible.

[1] Two other sections of H.R. 1 (sections 4016 and 4018) would have similar effects on spending. However, section 4016 would apply only to the use of funds provided in Title VIII of Division B of H.R. 1 and therefore would have no effect on revenues.

	By Fiscal Year, in Billions of Dollars												
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2011-2016	2011-2021
Changes in Spending													
Budget Authority	-2.0	3.5	0.3	0.2	1.6	0.3	0.3	0.4	0.4	0.3	0.3	3.9	5.6
Estimated Outlays	-1.6	3.1	0.3	0.2	1.6	0.3	0.3	0.4	0.4	0.3	0.3	3.9	5.6
Changes in Revenues	-0.1	*	*	*	*	*	*	*	*	*	*	-0.1	-0.1
Increase or Decrease (-) in Deficits	-1.4	3.0	0.3	0.2	1.6	0.3	0.3	0.4	0.4	0.3	0.3	4.0	5.7

Sources: Congressional Budget Office and the staff of the Joint Committee on Taxation.

Note: Numbers may not sum to totals because of rounding; * = change in revenues of less than $50 million.

Overall Effect on Spending and Revenues

CBO estimates that enacting the prohibition on using new fiscal year 2011 funding to carry out those laws would reduce spending by $1.6 billion during the remainder of 2011, but would increase spending by $3.1 billion in fiscal year 2012 and by smaller amounts in each of the fiscal years 2013 through 2021. Net additional costs would total $3.9 billion over the 2011-2016 period and $5.6 billion over the 2011-2021 period. In addition, CBO and JCT estimate that the prohibition would reduce federal revenues by $0.1 billion over both the 2011-2016 and 2011-2021 periods. Those estimates are based on the assumption that H.R. 1 will be enacted by April 1, 2011. (Later enactment could affect estimates for both 2011 and later years.)

Effects of H.R. 1's Prohibition on Implementing PPACA and the Reconciliation Act

Public Laws 111-148 and 111-152 provided some (mandatory) funding for implementation of the health care and revenue provisions contained in those two acts. However, that existing funding is not sufficient to support all of the activities required to implement all of the provisions of the 2010 legislation; some annually appropriated funds are also needed. Thus, a prohibition on the use of funds provided in H.R. 1 to carry out PPACA and the Reconciliation Act would delay agencies' actions to implement some provisions of those two laws, with resulting effects on spending and revenues.

In general, CBO and JCT expect that the prohibition on use of funds provided in H.R. 1 would affect spending and revenues through four mechanisms:

- Delaying completion of regulatory processes for ongoing programs (such as establishing payment rates for Medicare services furnished during 2012);

- Delaying the implementation of new programs;

- Preventing or delaying the obligation of funds for grant programs; and

- Reducing compliance with changes to the tax code (and other revenue effects from delayed regulatory implementation).

Without clear indication that the Congress intends a provision to be permanent, provisions contained in an annual appropriation act are presumed to be effective only for the fiscal year covered by that act.[2] Therefore, the prohibition in H.R. 1 would expire at the end of fiscal year 2011, and CBO and JCT assume that the Administration would then expedite the process of implementing Public Laws 111-148 and 111-152 beginning on October 1, 2011. This estimate assumes that sufficient funds to implement those laws would be appropriated for fiscal year 2012 and subsequent years.

Delaying Completion of Regulatory Processes for Ongoing Programs. The prohibition on use of funding in H.R. 1 would prevent HHS from incorporating, in its routine regulatory processes for the remainder of fiscal year 2011, some of the changes that PPACA and the Reconciliation Act made to ongoing programs. In particular, that restriction would affect some of the annual updates to payment rules in the Medicare program. CBO anticipates that, because of the funding prohibition, those payment rules would generally be modified to conform with PPACA and the Reconciliation Act with a three-to-six month delay. In other words, some of the changes scheduled to take effect in October 2011 or January 2012 would be postponed until part-way through 2012.

Moreover, CBO assumes that the delayed revisions to the payment rules would generally provide for retroactive payments when the payment

---

[2] See GAO, Principles of Federal Appropriations Law, Vol. I, 2-34 (3rd ed. 2004).

amounts due exceeded the amount that was paid before the revisions were implemented, but would generally not seek to recoup overpayments made before those revisions. That asymmetry arises because the provision would not alter Medicare's statutory obligation to pay the larger amount, but would also not provide an effective mechanism for recouping prior overpayments. As a result, CBO estimates that delaying the completion of regulatory processes this year would increase spending by about $1.0 billion over the 2011-2012 period; nearly all of that increase would occur during fiscal year 2012.

Delaying the Implementation of New Programs. PPACA and the Reconciliation Act established several initiatives—such as quality initiatives, steps to reduce hospital readmissions, and changes in the delivery system for health care that will be tested and implemented by the Center for Medicare and Medicaid Innovation—that involve significant research and development activities before the savings from those initiatives can be realized. Delaying or reducing work on those research and development activities for the rest of fiscal year 2011 would delay the realization of expected savings. In addition, regulatory development for some initiatives—such as establishing a new regulatory pathway for approval of biological products that are highly similar to or interchangeable with their brand-name counterparts—would probably be delayed. In aggregate, delaying the implementation of new programs, and thus delaying the savings that would result from them, would increase spending by about $4.9 billion over the 2011-2021 period; most of that increase would occur after fiscal year 2012.

Preventing or Delaying the Obligation of Funds. The ability to obligate and disburse some of the mandatory funding provided in PPACA and the Reconciliation Act depends on the availability of appropriated funds. In general, to the extent that the mandatory funding remains available for obligation in 2012 or subsequent years, the prohibition on the use of funds appropriated in H.R. 1 to implement PPACA and the Reconciliation Act would simply delay the spending of such mandatory funds without significantly affecting the amount that ultimately would be spent. However, for certain activities—such as the Pell Grant program (as modified by the Reconciliation Act)—some of the grants not processed during 2011 would never be issued. For that reason, CBO estimates that the limits on the obligation of funds during 2011 would reduce spending by about $0.3 billion over the 2011-2021 period; most of those effects would be realized in 2011 and 2012.

Impact on Revenues. CBO and JCT estimate that the prohibition on using H.R. 1 funding to implement PPACA and the Reconciliation Act would reduce federal revenues by $0.1 billion over the 2011-2021 period. That prohibition could affect the administration of several tax provisions in those laws that are in effect for 2010 or 2011. For most of those tax provisions, preliminary regulations and adjustments to tax returns have been implemented. Thus, for example, taxpayers are able to claim new credits, such as the refundable portion of the adoption credit and the tax credit available to small businesses that purchase health insurance for their employees, on their 2010 and 2011 returns. Similarly, regulations and forms are available for taxpayers to pay the excise tax on tanning facilities that was enacted in the 2010 laws.

If the Internal Revenue Service is prohibited from expending resources to administer the above credits and taxes, however, it will be unable to send out notices in the case of taxpayer error in filling out the 2010 or 2011 tax returns. Therefore, there would probably be some underpayment of the new excise taxes and some over-claiming of the new tax credits as a result of the H.R. 1 provision.

In addition, the estimate reflects lower receipts of income and payroll taxes in 2013 and beyond as a result of delaying the implementation of a new regulatory pathway for approval of biological products that are highly similar to or interchangeable with their brand-name counterparts.

I hope this information is helpful to you. The CBO staff contact is Tom Bradley.

Sincerely,

Douglas W. Elmendorf
Director

cc: Honorable Rosa De Lauro
Ranking Member

Honorable Hal Rogers
Chairman
Committee on Appropriations

Honorable Norm Dicks
Ranking Democratic Member

Honorable Steve King