RSC Republican Study Committee

REP. TOM PRICE, M.D. (R-GA), CHAIRMAN
PAUL TELLER, EXECUTIVE DIRECTOR
424 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

rsc.price.house.gov
ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin……..……April 1, 2009

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Take-Away Points

-- ***King Geithner.*** The legislation gives the Treasury Secretary extremely broad discretion to define what compensation amounts to "unreasonable" or "excessive."

-- ***Not Just C.E.O's.*** While banks already have agreed to compensation limits on top management, H.R. 1664 is so overreaching it could apply to employees far down the employment chain.

-- ***Uncertainty.*** Since the legislation applies to *existing* compensation agreements, Congress is signaling to investors that it has the right to change the rules in the middle of the game.

For more details on these concerns, see below.

H.R. 1664—The Pay for Performance Act of 2009 *(Grayson, D-FL)*

Order of Business: The bill is scheduled to be considered on Wednesday, April 1, subject to a rule. Any amendments made in order under the rule will be summarized in a separate RSC document.

Summary: H.R. 1664 will prevent *any* executive or employee of a financial institution receiving TARP or HERA "capital investment" funds from compensation that is defined as "unreasonable" or "excessive" or any bonus that is not "performance-based." H.R. 1664 would apply to new and *existing* compensation arrangements.

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 was intended to provide a total of $700 billion of purchasing authority for the Treasury Secretary to purchase troubled assets from financial institutions.

On February 13, 2009, Congress enacted H.R. 1, the so-called "stimulus" bill, with House Republicans unanimously opposed to the legislation. This legislation included the following provision:

> "The prohibition required under clause (i) shall not be construed to prohibit any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009, as such valid employment contracts are determined by the Secretary or the designee of the Secretary."

Two weeks ago, House Democrats passed legislation (H.R. 1586) to impose a **90%** tax for bonuses received by an employee of a company that has received Troubled Assets Relief Program (TARP) funds in excess of $5 billion, as well as employees of Fannie Mae and Freddie Mac. However, media reports indicate the Senate is unlikely to consider this legislation as it carries serious Constitutional concerns. H.R. 1664 appears to be a second attempt to address the issue of executive compensation.

Committee Action: H.R. 1664 was introduced on March 23, 2009 and reported to the Committee on Financial Services. On March 26, 2009 the full committee held a mark-up and ordered the bill to be reported by a vote of 38 to 22.

Possible Conservative Concerns:

- **King Geithner.** Some conservatives would have concerns that the legislation allows the Secretary of the Treasury to arbitrarily define what compensation amounts to "unreasonable," "excessive" or "performance based". Many conservatives may believe Congress should formalize and execute a responsible exit strategy that ensures taxpayers are repaid.

- **Uncertainty.** Some conservatives have concerns over the scope of the prohibition since the term "capital investment" is not a defined term under either TARP or HERA.

- **Two Wrongs Don't Make a Right.** Most conservatives remain opposed to the massive taxpayer "bailouts" of private organizations. Without the bailouts, the taxpayers would never have been put in the position of their dollars being doled out for executive bonuses. But since the bonuses have been distributed, the solution is not to compound the problem with more inappropriate actions by the federal government. Two wrongs don't make a right.

- **Retroactive.** Under H.R. 1664, bonus restrictions imposed on TARP recipients will now apply regardless of the date on which the bonus agreement was entered into.

Administration Position: No statement of Administration policy is provided.

Cost to Taxpayers: According to CBO, "H.R. 1664 would have no significant impact on the federal budget and would not affect direct spending or revenues."

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill allows Congress to retroactively deny employees agreed to compensation.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. H.R. 1664 would impose a private-sector mandate, as defined in UMRA, to the extent that it would invalidate existing compensation arrangements between some financial institutions that have received funds from the TARP and executives or employees of those institutions.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: H.R. 1664 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: According to committee report 111-64, the "Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce)."

RSC Staff Contact: Bruce F. Miller, bruce.miller@mail.house.gov, (202)-226-9720.