Common-Sense Republican Reforms in the Spending Reduction Act of 2012

Earlier this year six House Committees reported legislation that will:

- Stop Fraud, by Ensuring that Individuals are Actually Eligible for the Taxpayer Benefits They Receive;
- Eliminate Government Slush Funds and Stop Bailouts;
- Control Runaway, Unchecked Spending;
- Restrain Spending on Government Bureaucracies; and
- Reduce Waste and Duplicative Programs.

The savings from these reforms will *replace* the arbitrary discretionary sequester cuts and lay the groundwork for further efforts to avert the spending-driven economic crisis before us.

When previously scored, the net deficit reduction from the proposals contained in the Spending Reduction Act was $237.8 billion (gross savings of $310.0 less the cost of partially replacing the sequester of $72.2 billion (FY 13-22). This assumed an October 1, 2012 enactment date and thus the score will have to be updated to reflect the delayed enactment.

Below is an outline of the reforms advanced by the six committees: Agriculture, Energy & Commerce, Financial Services, Judiciary, Oversight & Government Reform, and Ways and Means.

Note On Savings Estimates: The savings estimates in this memo are from the initial House consideration of the Sequester Replacement Reconciliation Act in May of this year. The figures will be updated to reflect the later enactment of the bill.

Stop Fraud by Ensuring that Individuals are Actually Eligible for the Taxpayer Benefits They Receive

Restricting Categorical Eligibility under the SNAP (Food Stamp) Program: Under current law, an individual can automatically qualify for SNAP based on receipt of benefits through other low-income assistance programs, including the Temporary Assistance for Needy Families (TANF) block grant, Supplemental Security Income (SSI), or state-run General Assistance (GA) programs.

The Obama Administration has actively encouraged states to implement a policy called “broad-based categorical eligibility,” which means states are conveying SNAP eligibility based upon a household receiving a TANF-funded brochure or access to an “800” number hotline.

As of May, there are now 43 jurisdictions – 40 States, the District of Columbia, Guam, and the Virgin Islands – implementing this policy. Of the 43 jurisdictions using broad-based categorical eligibility, 38 currently have no asset test and 27 have a gross income limit above 130% of the federal poverty guidelines.

The proposal from the House Agriculture Committee would restrict categorical eligibility to only those households receiving cash assistance from SSI, TANF, or a state-run General Assistance program. Receiving a TANF-funded brochure or a referral to an "800" number telephone hotline would no longer automatically make a household SNAP eligible. According to CBO, this proposal would save $11.7 billion over ten years.

Note: While this change would render some households no longer eligible for SNAP, any household that meets the eligibility requirements in SNAP law will continue receiving its SNAP benefits. This policy change would only affect those who are not truly eligible for the program under SNAP law.

Eliminating the SNAP "Heat and Eat" Loophole: Under current law, low-income households receiving any Low Income Home Energy Assistance Program (LIHEAP) payments also qualify for the SNAP Standard Utility Allowance (SUA) which automatically increases their SNAP benefits. Approximately 16 states and DC are abusing this interaction (often at the behest of advocacy groups) by sending $1 or $5 LIHEAP checks to low-income households so they may automatically take advantage of the SUA. In practice, if a participant receives $1 in LIHEAP, they can automatically deduct the SUA from their income, so their net income goes down and they receive more SNAP benefits. For example, this can trigger as much as $130 in additional SNAP benefits per month.

The proposal from the Agriculture Committee would change current law so that a LIHEAP payment no longer automatically triggers the SUA deduction, closing this loophole. This provision in no way prevents those households who are paying their utility bills out-of-pocket from receiving the SNAP SUA. Any household paying their utility bills can still receive this deduction. According to CBO, this proposal would save $14.3 billion over ten years.

Preventing Abuse in the Refundable Child Tax Credit: Current law provides for a child tax credit in the amount of $1,000 per child under the age of 17 ($500 per child beginning in 2013). This credit is partially refundable, meaning that taxpayers may, depending on their income and other tax obligations, receive a government check as a result of this credit. Such checks are considered spending for budget purposes. Under the rules in effect through 2012, the refundable portion of the child tax credit – sometimes referred to as the additional child tax credit (ACTC) – is capped at 15 percent of the taxpayer's earned income above $3,000.

Also under current law, individuals who are ineligible to work in the United States – and are thus ineligible for a Social Security Number (SSN) – can obtain an Individual Taxpayer Identification Number (ITIN) for tax purposes. In 1996, Congress enacted legislation making those without SSNs ineligible to receive the Earned Income Tax Credit (EITC), a similar refundable tax credit. However, when the refundable portion of the child tax credit was subsequently enacted in 1997, Congress included no similar limitation, and the Treasury Department has taken the position that it lacks the statutory authority to limit the ACTC to those with an SSN. Thus, the refundable portion of the child tax credit currently remains available to individuals who are unable to obtain an SSN because they are ineligible to work in the United States.

The proposal from the House Ways and Means Committee would close this loophole and individuals (or at least one spouse in the case of a joint return) would be required to include their SSN on their tax return in order to claim the refundable portion of the child tax credit. According to the Joint Committee on Taxation, this proposal would save $7.6 billion over ten years.

Fully Recapturing Exchange Subsidy Overpayments: The Democrats' health care law fails to adequately protect taxpayers from overpayments of health insurance Exchange subsidies, even in the case of fraud. Exchange subsidy eligibility is based on two-year old income tax return data. Because income can change (new job, promotion, spouse returns to the workforce, etc.), the government will conduct an annual review to determine if someone received more taxpayer-funded subsidies than he/she was entitled to.

If an overpayment was made, the recipient is required to repay some or all of the overpayment, subject to certain limits described below. Originally, under the health care law, the maximum amount a subsidy recipient was required to repay was $250 for an individual or $400 for a family, even if he/she/they received thousands of dollars in subsidy overpayments. Since the health care law's enactment, two laws have increased the maximum amount of improper Exchange subsidy payments the government can recoup, but in some instances still fails to require full repayment.

The proposal from the Ways and Means Committee would require those who receive Exchange subsidies to which they are not entitled to repay the full amount of overpayments. Individuals and families would still be allowed to keep the subsidies they are entitled to receive under the law. The Joint Committee on Taxation and CBO estimate this provision would reduce the deficit by $43.9 billion over ten years.

Eliminate Government Slush Funds and Stop Bailouts

Protecting Taxpayers by Eliminating the Dodd-Frank Bailout Fund: The Dodd-Frank Act granted the FDIC "Orderly Liquidation Authority" that gives government bureaucrats the authority to use taxpayer dollars to bail out the creditors of "too big to fail" institutions and treat similarly situated creditors differently. The Democrats have claimed that they created this new resolution authority to prevent a replay of the 2008 bailouts of Bear Stearns, AIG, Fannie Mae, Freddie Mac, Citigroup, Bank of America, GM and Chrysler. But in reality, Dodd-Frank's Orderly Liquidation Authority mechanism just perpetuates the very taxpayer-funded bailout regime it claims it to abolish.

The proposal from the House Financial Services Committee would end "too big to fail" by repealing this Dodd-Frank fund that paves the way for future bailouts. Eliminating the bailout fund will, according to CBO, save $22 billion over ten years for deficit reduction.

Terminating Ineffective Housing Bailouts: The Obama Administration claimed HAMP, its signature foreclosure prevention initiative, would help up to 4 million struggling homeowners. Instead, HAMP has resulted in only 840,835 loans being permanently modified and has been the target of widespread and bipartisan criticism. Of the $30 billion in TARP funds set aside for HAMP, $4.34 billion has actually been disbursed. The Special Inspector General for TARP (SIGTARP), the Congressional Oversight Panel, the Government Accountability Office and even *New York Times* editorial page have all reported on the ineffectiveness of HAMP and highlighted how this program has hurt, rather than helped, many struggling homeowners.

The Financial Services Committee approved H.R. 839, the HAMP Termination Act, on March 9, 2011, and the House voted to pass the bill 252-170 on March 29, 2011, but the Senate has yet to act. Terminating this costly and ineffective program as part of reconciliation will, according to CBO, result in deficit reduction of $2.8 billion over ten years.

Eliminating Prevention and Public Health Slush Fund: Obamacare created a new "Prevention and Public Health Fund" controlled by the Secretary of 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.

The proposal from the Energy and Commerce Committee would repeal the fund. An identical proposal introduced by Rep. Pitts passed the House 236-183. While some of the funds were used as an offset for the physician payment fix earlier this Congress, CBO estimates that this proposal will save approximately $11.9 billion over ten years.

Control Runaway, Unchecked Spending

Eliminating the Indexing on SNAP Nutrition Education: Under current law, states have the option of providing nutrition education to SNAP recipients as part of their program operations; such education is 100% funded by the federal government. Funding for the SNAP nutrition education program is capped at $375 million but is indexed for inflation so that the amount spent increases each year.

The proposal from the Agriculture Committee eliminates the automatic annual spending increase and, according to CBO, saves $546 million over ten years.

Terminating the SNAP Increase from the Stimulus: The American Recovery and Reinvestment Act of 2009 (ARRA) included an across-the-board increase in SNAP benefits effective in April 2009. The ARRA effectively replaced the increase in SNAP benefits that occurs under the Food and Nutrition Act, which is normally based on annual food-price inflation indexing. The ARRA increase was to stay in place until food-price inflation "caught up" so that families did not see a decrease in their monthly SNAP benefit allotment. Therefore, the ARRA benefit increase was originally expected to terminate after FY 2018, when food-price inflation was estimated to "catch up" with the ARRA increase.

Last Congress, when the Democrat majority needed to pay for their other "priorities," including a teacher's union bailout and increasing school meal standards, the ARRA SNAP increase was used *twice* to offset other laws. They achieved their savings by moving up the ARRA termination date to October 31, 2013. This proposal from the Agriculture Committee terminates the ARRA increase on February 28, 2013.

Repealing Unlimited Obamacare State Exchange Grants: Obamacare 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.

The Energy and Commerce proposes to strike the unlimited direct appropriation and rescind any unobligated funds. Chairman Upton introduced an identical proposal that passed the House last year 238-183. CBO estimates that this proposal will save approximately $14.5 billion over ten years.

Defunding of the CO-OP Program: Obamacare 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. 1473, the continuing resolution for FY 2011, reduced this amount to $3.8 billion). OMB has warned of potential taxpayer losses and awards given to potentially unqualified entities have raised serious concerns about CO-OPs. In the proposed rule for CO-OPs, OMB estimated that up to "50 percent of all loans" will not be repaid – jeopardizing hundreds of millions of taxpayer dollars. Union entities, some of which appear to fail to meet basic statutory criteria for program eligibility, have been the primary recipients of awards under the CO-OP program.

The Energy and Commerce Committee proposes to rescind all unobligated funds made available to the CO-OP program in Obamacare, saving approximately $872 million over ten years according to CBO.

Rebasing the Disproportionate Share Hospital (DSH) Allotments in Fiscal Year 2022: Obamacare includes annual aggregate DSH reductions for FY 2014 through FY 2020, but allotments revert to levels prior to the Affordable Care Act 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, which was enacted on February 22, 2012, included a rebasing of DSH payments for FY 2021.

The Energy and Commerce Committee proposal would rebase the FY 2022 allotments to maintain the FY 2021 level of reductions. This policy was included in the President's Budget Proposal for FY 2013 and has been estimated by CBO to save $4.2 billion over ten years.

Repealing the Medicaid Maintenance of Effort (MOE) Requirement Imposed on States: Under current law, there is a Maintenance of Effort requirement (MOE) 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 Obamacare. This MOE 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 the taxpayers approximately $15 billion in improper payments under the Medicaid program.

This proposal by the Energy & Commerce Committee would repeal the maintenance of effort on states for Medicaid and the Children's Health Insurance Program (CHIP) as mandated by Obamacare. The repeal of the MOE merely allows states the same operational flexibility they have exercised since the beginnings of the Medicaid and CHIP programs. CBO has estimated that this proposal would save approximately $600 million over ten years.

Restrain Spending on Government Bureaucracies

Eliminating Automatic Funding of the New Bureaucracies: The centerpiece of the Dodd-Frank Act is the Consumer Financial Protection Bureau (CFPB), a large and powerful Federal agency that is – by design – accountable to neither the executive branch nor Congress. Its Director has the unprecedented and sole authority to decide which financial products Americans can and cannot use. In addition, the Dodd-Frank Act authorizes the CFPB to fund itself by drawing money directly from the Federal Reserve to whatever extent the CFPB Director deems "necessary" up to $548 million in FY 2012, $598 million in FY 2013 and 12 percent of the Fed's operating expenses each fiscal year thereafter. Not Congress, not the President, not even the Federal Reserve which provides its funding can oversee how the CFPB Director spends these hundreds of millions of dollars.

To correct this glaring lack of accountability, the Financial Services Committee proposes to make the CFPB subject to the ordinary congressional appropriations process and authorize the appropriation of $200 million to the agency for FY 2012 and FY 2013. This will ensure proper oversight and accountability, and according to CBO achieve savings of $5.4 billion over ten years.

Requiring Federal Employees to More Equitably Share in the Cost of Their Retirement Benefits: Federal employees benefit from one of the most generous pension programs in the country. In addition to having both a defined contribution and defined benefit plan, federal employees pay a relatively modest amount towards their defined benefit retirement. While in the private sector the cost of retirement benefits are split relatively evenly between the employer and the employee, under the defined benefit portion of the Federal Employee Retirement System, federal employees contribute only a sixteenth of the cost of their pension – less than one percent of their pay toward their defined benefit pension. In other words, for every $1 that a federal employee contributes towards the cost of their defined benefit pension, the taxpayer is on the hook for $15.

The proposal from the Oversight and Government Reform Committee increases pension contributions by 5 percent of salary over five years for current federal employees. Members of Congress will pay an additional 8.5 percent of salary. These increases bring the employee contribution to approximately 50 percent of the normal pension cost and according to CBO will save taxpayers approximately $80 billion.

Eliminating the Early Retirement Social Security Equivalent Benefit for Federal Employees: Under current law federal employees receive a special benefit not available to those in the private sector. Federal employees who voluntarily early retire before age 62 receive a special benefit on top of their retirement until they reach age 62. Essentially, the current pension system pays workers more if they retire before reaching Social Security retirement age.

The proposal from the Oversight and Government Reform Committee eliminates this special benefit for new hires. The proposal permits individuals who are subject to mandatory early retirement (such as law enforcement and air traffic control officers) to continue to be eligible.

Reduce Waste and Duplicative Programs

Repealing the Social Services Block Grant: The Social Services Block Grant (SSBG) is a flexible source of Federal funds that states use for a wide variety of social services. Begun in 1956 as a way to match State spending on services to help families leave welfare, the SSBG is now a 100 percent Federal funding stream that can be used to provide almost any service to anyone regardless of their income. Many of the services funded by SSBG are duplicative of other federal programs including the Community Services Block Grant, Head Start, Foster Care and Adoption Assistance, Promoting Safe and Stable Families, the Child Care and Development Block Grant, Child Welfare Services, Chafee Foster Care Independence Program, and Temporary Assistance for Needy Families, among many others.

Because there are so few strings attached, some of the most common services supported by SSBG funds are:

- Information and Referral Services: The most common service supported with SSBG funds is information and referral to other social welfare programs. In other words, a significant amount of SSBG is spent not to provide services, but to provide people with information about and referrals to other services.

- Case Management Services: States also use the SSBG to pay for "the arrangement, coordination, and monitoring of services." In other words, SSBG may be used for administrative costs.
- Other Services: Even with a flexible, unaccountable program like SSBG, States frequently report spending on "other" activities and services.

The proposal from the Ways and Means Committee would eliminate the SSBG program saving taxpayers almost $17 billion over 10 years, according to CBO.

Eliminating the 50/50 Cost Share for the SNAP Employment and Training (E&T) Program: Each fiscal year, USDA provides federal formula grants to state agencies for states to operate a SNAP Employment and Training (E&T) program. In addition to this funding, states have the option of providing more funding towards their state E&T program, which USDA is required to match. According to GAO, there are 47 federal employment training programs and almost all federal employment and training programs overlap with at least one other program in that they provide similar services to similar populations.

The proposal from the Agriculture Committee would maintain the federal formula grants for employment training, but eliminate the 50/50 cost share thus resulting in savings for federal taxpayers and, according to CBO, save $3.1 billion over ten years.

Eliminating State Performance Bonuses Under SNAP: States are responsible for administering the SNAP program and it is their duty to process applications in a timely manner, ensure households receive the accurate amount of SNAP benefits, and make certain the program is administered in the most effective and efficient manner. Under current law, states can receive a bonus for doing a good job. Annually, these bonuses total $48 million.

The proposal by the Agriculture Committee eliminates the bonuses that are given to states for essentially doing their job and would, according to CBO, save $480 million over ten years.

Reforming the Medical Liability System: Many state supreme courts have judicially nullified reasonable litigation management provisions enacted by state legislatures, many of which sought to address the crisis in medical professional liability that reduces patients' access to health care and increases overall health care costs. Consequently, in such states, passage of federal legislation by Congress may be the only means of addressing the state's current crisis in medical professional liability, restoring patients' access to health care, and controlling unnecessary costs.

To address these issues, the House Judiciary and Energy and Commerce Committees proposed the HEALTH Act, modeled after California's decades-old and highly successful health care litigation reforms. This reform addresses the current crisis in health care by reining in unlimited lawsuits and thereby making health care delivery more accessible and cost-effective in the United States. California's Medical Injury Compensation Reform Act

("MICRA"), which was signed into law by Governor Jerry Brown in 1976, has proved immensely successful in increasing access to affordable medical care.

MICRA's reforms, which are included in the HEALTH Act, include:

- A $250,000 cap on noneconomic damages;
- Limits on the contingency fees lawyers can charge;
- Provisions creating a "fair share" rule, by which damages are allocated fairly, in direct proportion to fault;
- Reasonable guidelines – but not caps – on the award of punitive damages; and
- A safe harbor from punitive damages for products that meet applicable FDA safety requirements.

The HEALTH Act will accomplish reform without in any way limiting compensation for 100% of plaintiffs' economic losses (anything to which a receipt can be attached), including their medical costs, their lost wages, their future lost wages, rehabilitation costs, and any other economic out-of-pocket loss suffered as the result of a health care injury. The HEALTH Act also does not preempt any state law that otherwise caps damages.

According to CBO, "under [the HEALTH Act], premiums for medical malpractice insurance ultimately would be an average of 25 percent to 30 percent below what they would be under current law." Lower health care lawsuit liability premiums would reduce health care costs for everyone and increase the supply of vital doctors by allowing more doctors to continue practicing, including in higher-risk medical fields.

Further, abusive state tort laws drive what is known as "defensive medicine," which occurs when doctors are forced by the threat of lawsuits to conduct tests and prescribe drugs that are not medically required, simply to avoid liability exposure. Defensive medicine practiced in a variety of federal health care programs costs federal taxpayers billions of dollars. CBO pronounced that the legal reforms contained in the HEALTH Act would reduce the federal budget deficit by an estimated $40 billion over the next ten years.

Reduce the Medicaid Provider Tax Threshold to 5.5 Percent: States are able to use revenues from health care provider taxes to help finance the state share of Medicaid expenditures and receive federal matching funds even in instances where the taxes are largely rebated to the health care provider. 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.

This proposal by the Energy and Commerce Committee would reduce the provider tax threshold back to 5.5 percent beginning in FY2013. A significantly more restrictive policy was included in the President's Budget Proposal for FY 2013 which would have phased down the provider tax threshold to 3.5 percent. This proposal saves approximately $11.25 billion over ten years according to CBO.

Repeal of Bonus Payments for States for Increasing Their Medicaid Enrollment: The Children's Health Insurance Reauthorization Act of 2009 (CHIPRA) authorized "bonus" payments to states that increase their Medicaid enrollment above a defined baseline from the prior year. This provision violates the standards for program integrity in the Medicaid program by providing bonus payments to states that implement oversimplified eligibility review procedures such as express lane eligibility and continuous eligibility periods. While on one hand, states have been prohibited from implementing more aggressive eligibility review procedures due to the Maintenance of Effort, states are receiving hundreds of millions to implement much less restrictive eligibility review methods through the CHIP bonus payment funding stream. CMS has noted that in FY2011, Medicaid cost the American taxpayers more than $15 billion in federal overpayments due to poor eligibility review.

The Energy and Commerce committee proposes to repeal these bonus payments savings taxpayers approximately $400 million over ten years according to CBO.

Other Savings:

Repealing the Increased Federal Medicaid Funding Cap and Match Rate for Territories: Obamacare 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.

This proposal from the Energy & Commerce Committee reverses both the increased Medicaid federal match and cap for the territories as provided under Obamacare. CBO has estimated that this policy would save $6.3 billion over ten years.