

# THE NEW ENGLAND COUNCIL

*The Weekly Washington Report is organized by NEC committee category for weekly updates on specific issues relevant to our members, plus a report on general activity in Congress*

## WEEKLY WASHINGTON REPORT FRIDAY, MARCH 27, 2009

### **NEXT WEEK IN CONGRESS**

The House and Senate are expected to bring their respective Fiscal Year 2010 budget proposals to the floor next week, despite not having the Administration's detailed budget request. The Senate will begin 50 hours of debate on its budget proposal on Monday morning. In addition to consideration of its budget proposal, the House will likely consider bills to expand the Food and Drug Administration's regulatory power over tobacco products and limit excessive compensation under TARP funds. The House is also expected to clear the national service bill approved by the Senate this week and send it to the president's desk for signature. A two-week Congressional recess is scheduled to begin next Friday for Passover/Easter with Congress anticipated to return the week of April 20 for a five-week session leading up to Memorial Day.

### **BUDGET/APPROPRIATIONS**

Late last week the Congressional Budget Office (CBO) released its analysis of the Administration's \$3.67 trillion, macro-level Fiscal Year 2010 budget proposal released several weeks ago. CBO's long-term numbers are more pessimistic than those projected by the White House, estimating the President's budget would lead to a \$1.845 trillion deficit in the current fiscal year (\$930 billion larger than the Administration's estimates for this year's budget deficit) and accrue \$2.3 trillion more debt through FY19 than the Administration's estimate (\$9.27 trillion versus \$6.969 trillion). However, a number of circumstances could dramatically alter the budget picture, including future patches to the alternative minimum tax, the extension/expiration of the 2001 and 2003 tax cuts, and a possible cap-and-trade greenhouse gas emissions measure. In addition, a faster economic turnaround than is being assumed by CBO could improve deficit/debt numbers.

The CBO re-estimate came just days before Congressional budget writers introduced Fiscal Year 2010 budget proposals this week, both of which are similar to the Administration's blueprint. The House budget trims about \$7 billion

from non-emergency discretionary spending levels next year while the Senate mark cuts about \$15 billion from the President's budget request of \$1.096 trillion. Both the House or Senate budget include only five-year windows, do not plan for offsetting the reach of the alternative minimum tax throughout the entire five-year period, and do not include the \$250 billion placeholder sought by the Administration for a possible expansion of the Troubled Asset Relief Program (TARP). The limited budget window reflects the difficulty in accurately projecting spending and revenue numbers so far into the future, and given the strong likelihood the budget will stay in the red by 2015, prevents critics from pointing to larger overall federal debt numbers. The House Budget Committee passed its budget blueprint late Wednesday and the Senate Budget Committee followed suit during its mark-up yesterday afternoon.

Only the House budget includes reconciliation instructions (for health-care and education reform). The absence of reconciliation in the Senate budget does not preclude it from being added in a conference committee, although even if instructions are included in conference, reconciliation is still far from bulletproof. Reconciliation bills in the Senate are subject to rules limiting its contents to measures affecting revenues and 60 votes would be needed to overcome objections to "extraneous" provisions. The Senate budget includes a number of deficit-neutral reserve funds to give Senate committees flexibility to address those programs without using reconciliation.

Supports of the budgets argue a substantial federal commitment is needed to turn around our economy and create infrastructure for economic growth – specifically in the areas of energy, education, and health care. Opponents have seized on deficit and debt projections to argue the budget creates an unsustainable path, pointing to CBO estimates that show if the debt schedule were to materialize, in FY19 the federal government would face obligations of \$806 billion annually on interest on the debt -- a number representing 3.8% of gross domestic product and larger than the historic economic stimulus package passed last month.

## FINANCIAL SERVICES

Many critics of the federal government's response to the downturn in the mortgage and broader credit markets have pointed to the government's inaction in directly removing toxic assets from the balance sheets of banks and financial institutions. Earlier this week the Treasury Department announced an initiative to do just that, creating the Public Private Investment Program under which private investors will bid to control a batch of toxic (referred to as "legacy") assets voluntarily put up for sale by banks. The government would offer favorable financing (with help from the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve) on a vast majority of the overall cost and split any profits realized on the assets. The plan in part hinges on ensuring the auction price for a bundle of assets being sold by banks can generate sufficient interest for financial

institutions which may value even those toxic assets at a higher price. In theory, if the program is successful, lenders will see potentially money-losing assets removed for their portfolios and be able to increase lending practices and restore activity to sluggish credit markets. Treasury has stated it will use \$75-\$100 billion in money from TARP, when combined with private capital could achieve \$500 billion in purchasing power for legacy assets with the ability to grow to \$1 trillion. Treasury's announcement also included a Legacy Securities Program (folded into the existing Term Asset-Backed Securities Loan Facility program) to address mortgage-backed securities.

On Thursday Treasury Secretary Tim Geithner appeared before the House Financial Services Committee to outline the Obama Administration's proposal for increased regulations of the financial services industry, saying, "the United States came into this crisis without adequate tools to manage it effectively." The proposal includes the creation of a systematic-risk regulator, with the Secretary calling on Congress to, "establish a single entity with responsibility for systemic stability over the major institutions and critical payment and settlement systems and activities... The regulator of these entities will also need a prompt, corrective action regime that would allow the regulator to force protective actions as regulatory capital levels decline, similar to that of the FDIC with respect to its covered agencies." Secretary Geithner identified three other areas besides systemic risk including, "consumer and investor protection, eliminating gaps in our regulatory structure; and international coordination." This includes requiring, "All advisers to hedge funds (and other private pools of capital, including private equity funds and venture capital funds) whose assets under management exceed a certain threshold should be required to register with the SEC." A more comprehensive summary of the framework can be found at: <http://www.treasury.gov/press/releases/tg72.htm>

Earlier in the week the Treasury Secretary along with the Chairman of the Federal Reserve Ben Bernanke appeared before the Committee to argue for an expansion of the government's authority to allow federal takeovers of non-bank financial institutions that threaten the overall financial system. Secretary Geithner testified that, "The U.S. government does not have the legal means today to manage the orderly restructuring of a large, complex, non-bank financial institution that poses a threat to the stability of our financial system." The Secretary went on to say that he supports granting the federal government the same powers it has over deposit institutions, allowing, "the government to provide financial assistance to make loans to an institution, purchase its obligations or assets, assume or guarantee its liabilities, and purchase an equity interest." Details of the Treasury's proposal can be found at: <http://www.treasury.gov/press/releases/tg70.htm>. The House Financial Services Committee is expected to take up a larger financial services industry reform bill (see above) in the coming weeks.

On Tuesday the Senate Banking Committee held a hearing on plans to modernize bank regulation, with Chairman Chris Dodd (D-CT) stressing that increased consumer protection does not necessarily mean decreased economic growth and that the relative success of many smaller, community banks illustrate that new regulatory tactics are needed. Several witnesses testified that the most effective plan might include regulators outside of the Federal Reserve addressing specific areas of concern. Christopher Whalen of Institutional Risk Analytics said that, “the United States needs a single safety-and-soundness regulator for all financial institutions,” apart from the authority of the central bank. He told the committee that the culture of the Fed is dominated by economists who are mainly concerned with monetary policy and not with bank supervision.

This week the Senate confirmed by voice-vote former Washington Governor Gary Locke to be the Secretary of Commerce. Secretary Locke is known as a strong supporter of free-trade but has assured members of Congress he will actively enforce existing trade laws. The Commerce Department will play a key role in a number of policy discussions in the coming months and years, most notably the inevitable transition to digital television, the 2010 census, and the role played by the National Oceanic and Atmospheric Administration in climate change legislation. Secretary Locke’s confirmation leaves only the Secretary of Health and Human Services left to be approved to complete the President’s cabinet.

## HEALTHCARE

Earlier this week, America’s Health Insurance Plans and the BlueCross Blue Shield Association wrote a letter to the Senate Committee on Health, Education, Labor and Pensions and to the Senate Finance Committee saying that if all U.S. residents were required to obtain health insurance coverage, their members would consider foregoing the common practice of charging different health insurance premiums or denying coverage based on a customer’s health status, although other individual factors would still weigh in on premiums. Concerns over rising costs of providing health insurance for sick individuals could be assuaged if those costs and risks were spread out over a larger group, they wrote. In addition, they would be willing to accept increased regulation over certain aspects of their operations, and suggested that this would render a public insurance provider such as the one favored by the Obama administration and other lawmakers unnecessary.

America’s Health Insurance Plans President and CEO Karen Ignagni testified at a Senate Committee on Health, Education, Labor, and Pensions hearing on Tuesday which focused on individual and small group insurance markets. “Rather than build on the existing regulatory structure, we are proposing a fundamental overhaul that would bring all individuals into the system, and allow major changes to be made that would ensure that all Americans can obtain affordable health insurance and do so irrespective of their health care history”

Ignagni said. Senator Jeff Bingaman (D-NM) who chaired the hearing in Sen. Kennedy's absence said that the private industry's willingness to compromise is a hopeful sign on the road to reaching a consensus.

## ENERGY/ENVIRONMENT

On Monday, President Obama met with a number of clean energy researchers and entrepreneurs to speak on his plans for investing in the promotion and funding of renewable energy research and development. He stated that \$59 million from the economic stimulus bill will be dedicated to investment and tax incentives for clean energy and energy efficiency, along with \$150 billion over ten years in his proposed budget. This will be, "the largest investment in basic research funding in American history," he said. Included in the \$150 billion total is \$75 billion to extend the research and development tax credit for ten years in order to stimulate private investment as well as \$1.2 billion for research through the Department of Energy. The President's renewable energy plans were couched in a broader strategy for addressing the overall economy and he noted that clean energy money from the stimulus bill will create more than 300,000 jobs and a portion of federal agency research and development budgets will be set aside for small businesses. The President noted these efforts will provide national innovators the resources to, "finally make clean energy the profitable kind of energy in America."

## HIGHER EDUCATION

On Wednesday, the House and Senate Budget Committees released draft budget resolutions for fiscal year 2010. Similar to President Obama's budget proposal, the Senate budget resolution increases the maximum Pell Grant award available to eligible college students to \$5,550. The Senate resolution also establishes a deficit neutral reserve fund which allows the President to increase Pell Grant levels as necessary to meet the education targets in his proposed budget. In addition to significantly increasing Pell grant funding, President Obama's budget proposes to make the Pell Grant program mandatory, simplify the student aid application process, and eliminate federal subsidies to student loan providers all together. The House budget resolution also establishes a deficit neutral reserve fund for education programs and "accommodates the President's proposals for new initiatives in early childhood education, effective approaches to making sure all children learn and achieve in school, and continuing to raise the maximum Pell grant award".

On Thursday, the Senate passed landmark national service legislation introduced by Senate Committee on Health, Education, Labor, and Pensions Chairman Edward Kennedy (D-MA) by an overwhelming majority (79-19). The Generations Invigorating Volunteerism and Education (GIVE) Act, renamed the Edward M. Kennedy Serve America Act in honor of the Senator Kennedy's life-long commitment to public service and volunteerism, reauthorizes several community

service programs under the National Community Service Act of 1990 and the Domestic Volunteer Service Act of 1973, and establishes new volunteer programs. Newly created education programs include the Campuses of Service and the Innovative Service-Learning Programs and Research which provide funding to colleges and universities, and K-12, college, and graduate students across the nation to promote community service learning opportunities. Additionally, college students who choose to participate in national service programs will receive a \$615 increase in student aid for maximum Pell Grant award of \$5,350 for the 2010-2011 school year. The Serve America Act “is a major expansion of existing national and community programs. Its goal is to tap much more deeply into Americans’ enthusiasm to serve, and direct it to areas and issues where it can make the biggest difference” said Chairman Kennedy.

### TECHNOLOGY

During a brief mark-up of the Patent Reform Act (S. 515) on Thursday, the Senate Judiciary Committee approved a manager’s amendment (containing bipartisan technical corrections) and vowed to keep negotiating before the mark-up continues on Tuesday. Hurdles remain in the form of setting parameters courts must follow when determining damage awards in the case of patent infringements and “inequitable conduct” language which would punish patent-seekers that withhold or falsify information to the Patent and Trademark Office. Before Thursday’s meeting of the Judiciary Committee, a number of members formally asked to delay consideration while negotiations continue.

### TRANSPORTATION

On Wednesday, the Senate Committee on Commerce, Science, and Transportation held a hearing on the re-authorization of the Federal Aviation Administration focused on the need to modernize the technology and infrastructure, and the employment of Next Generation Air Transportation System (NextGen). The FAA plans to spend \$5.3 billion on NextGen research, development, and engineering between fiscal years 2009 and 2013, and to have NextGen in place by 2025. One of the most critical components of NextGen is the updating of the current radar-based air traffic control system to one that is satellite-based, allowing constant, real-time position data. A more accurate pinpointing of planes’ location would mean they could safely fly much closer than they do under the current system, allowing more flights in less airspace. Henry Krakowski, Chief Operating Officer of the FAA’s Air Traffic Organization, testified to the Senate Transportation Subcommittee on Aviation that a satellite-based system coupled with improved runways that would allow planes to land and takeoff in bad weather are the most important improvements to increase the potential volume of daily flights.

Several committee members expressed frustration over the slow pace of implementing planned improvements in light of abundant flight delays and

cancellations. Committee Chair John Rockefeller chastised representatives from the FAA, National Air Traffic Controllers, and the airlines for the stalled progress and inability to resolve labor disputes. Joe Kolshack, Senior Vice President of United Airlines told the committee that the long implementation timeline on NextGen developments makes it difficult to secure funding and shareholder support. However, real benefits can be felt in the next 3-5 years, he said, and concurred with the committee members who stressed the urgent need to address infrastructure failings and begin to implement NextGen strategies as soon as possible.

## TRADE

Three weeks before President Obama travels to Mexico, a provision included in the Fiscal Year 2009 omnibus appropriations bill and the subsequent Mexican response has put the trade relations with Mexico under greater scrutiny. Congress included a provision in the omnibus bill ending a pilot program allowing Mexican cargo truck companies to operate outside a limited parameter in the U.S along the border. In response, last week Mexico instituted tariffs from 10% to 40% on about 90 American-made products (totaling approximately \$2.4 billion) in response to what it views as a violation of the North American Free Trade Act. Opponents of the trucking program cite a lack of safety controls and training for Mexican trucking companies as well as environmental concerns. The President is expected to address the trucking program during his trip in April. Secretary of State Hillary Clinton travels to Mexico next week.

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