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March 11, 2009

The Honorable John M. Spratt, Jr.
Chairman
Committee on the Budget
U.S. House of Representatives
207 Cannon House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to transmit, pursuant to clause 4(f)(1) of House rule X, the views and estimates of the Committee on Rules, together with Minority Views, regarding the President's fiscal year 2010 budget. This submission was adopted on March 11, 2009 by the Committee on Rules by a non-record vote in an open meeting with a quorum being present.

Although the Committee on Rules does not have legislative jurisdiction over spending or revenues measures required for inclusion in a budget resolution, pursuant to clause 3(j) of rule X and section 301(a) of the Congressional Budget Act of 1974, the Committee does wish to comment on the President's budget reform proposals contained in the portion of the fiscal year 2010 budget entitled "Changing the Way Washington Does Business."

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Restoring Fiscal Discipline and Planning for the Future

Return to Honest Budgeting The President's budget request, for the first time in recent years, provides for a unified Federal budget that includes costs for the wars in Iraq and Afghanistan. The previous administration failed to include this information in any of the recent budget requests. We are pleased that the new President is returning to a more honest budget blueprint that contains the projected cost to the Federal government for the wars in Iraq and Afghanistan. Regardless of anyone's views on these conflicts, we believe it serves no purpose to hide these costs from the American people and the Congress. Failure to disclose these significant costs would seem to render useless any

otherwise reliable budget document or estimate. Spending on the wars consumes a significant portion of our Federal budget and the cost must be disclosed up front for implementation of any realistic budget plan.

Account for Future Emergencies The President's budget includes another important item that has been absent in recent budget requests. That is an estimate of the cost to the Federal government of any natural disasters that might occur in the coming fiscal year. Failure to budget for emergencies is irresponsible. Unfortunately national disasters do happen in this nation and they do present a significant cost to the Federal government. Budget projections that do not factor in these costs simply are not fiscally reliable.

Return to Pay-As-You-Go Budgeting We fully support the President's commitment to return to the practice of pay-as-you-go budgeting. The House of Representatives has already demonstrated its commitment to this goal through the implementation of clause 10 of rule XXI, adopted on the opening day of the 110th Congress, which precludes any direct spending or revenues from increasing the deficit (or reducing the surplus). PAYGO was the fiscal centerpiece of the reforms propounded by the 110th Congress. The Leadership and the Rules Committee have been committed to full compliance with the new PAYGO rule and have required standing committees to include offsets for any new spending. Committees in turn have also complied with the new rule and have worked to ensure that legislation moving through their committees does not increase direct spending. In short, the rule has worked. It has been waived for measures of an emergency nature but has otherwise been successful by imposing fiscal discipline on mandatory spending and revenues.

Creating a More Ethical and Transparent Government and Improving Oversight We are pleased to see that the Administration plans to implement stringent restrictions on executive branch lobbyists and lobbying activities and to increase accountability, transparency, and public access in this area.

Congress, in the last two years in particular, has made a number of similar changes to help ensure a more ethical and transparent government. In addition to the comprehensive and groundbreaking ethical reforms that were adopted in the early days of the 110th Congress for both the legislative and executive branch, the House continues to implement policy changes for increased government accountability. In January of this year, without a single dissenting vote, the House adopted House Resolution 40 which contained new House rules in clause 2 of rule XI and clause 1(d)(3) of rule XI requiring that all committees with executive branch oversight conduct specific and regular oversight activities on those agencies. The new rule will require that each House standing committee conduct at least one hearing during each 120-day period on the topic of waste, fraud, abuse, and mismanagement in the agencies under the committee's jurisdiction. These hearings must include a focus on the most egregious instances of waste, fraud, abuse, and mismanagement as documented by any report the committee has received from a Federal Office of the Inspector General or the Comptroller General of the United States. The rule also requires at least one additional hearing if an agency's

auditors issue disclaimers in that agency's financial report; and finally it requires at least one additional hearing if a program under its jurisdiction is listed as "high risk" for waste, fraud, abuse, and mismanagement by the U.S. Comptroller General.

Increasing Transparency in Earmarks The Committee is pleased that the President recognizes and appreciates the significant reforms that have already taken place since 2006 with regard to earmark reform. We look forward to working with him to further strengthen and improve this process.

Since the beginning of the 110th Congress, the House of Representatives has already implemented the most comprehensive, transparent earmark process in history, with unprecedented reforms to ensure the public that taxpayer dollars are spent for worthwhile programs and activities. On the first day of the 110th Congress, rules were adopted that required Members of Congress requesting an earmark to disclose in writing the name and address of the intended recipient, the purpose of the earmark, and to certify the Member (as well as his or her spouse) had no financial interest in the request. It prohibited trading earmarks for votes. It also required that each bill be accompanied by a list identifying each earmark included and which Member requested it. The list is to be available either in the accompanying committee report or printed in the *Congressional Record* and therefore available online prior to final passage of the underlying vehicle. The rule also provides that this rule cannot be waived virtually guaranteeing that noncompliance with the rule allows any Member to raise a point of order and demand a vote to try and block Floor consideration. A subsequent order in the 110th Congress provided additional protections and votes for earmark disclosure of so-called "airdropped" earmarks in appropriations conference reports. The 111th Congress opening day rules package codified this requirement in clause 9 of rule XXI.

In addition, the Committee on Appropriations has implemented a new committee practice to increase transparency even further. Members will be required to post, at the time of their request, detailed information on all their appropriations earmark requests on their official House websites. Additionally, the Committee will make public earmark disclosure tables even earlier, on the same day the subcommittee reports the bill. The Committee believes these reforms will help ensure that no earmarks can slip through the legislative process unnoticed or unscrutinized.

The Rules Committee remains committed to working closely with the new Administration and the Budget Committee to ensure that the budget process in the upcoming year results in a Federal budget that is fair, fiscally responsible, enforceable, and still meets the needs of the American people. Should you have any questions or concerns regarding this submission, please feel free to contact me or my staff at x5-9091.

Sincerely,

Louise M. Slaughter

Louise M. Slaughter
Chair

cc: Hon. Paul Ryan
Hon. David Dreier

MINORITY VIEWS

The Committee on Rules has no legislative jurisdiction over spending or revenue measures required for inclusion in a budget resolution pursuant to section 301(a) of the Congressional Budget Act of 1974, and therefore it is not necessary for the Committee to transmit its views and estimates pursuant to clause 4(f)(1) of rule X. However, the Majority has chosen to engage in this exercise, and we will as well.

The Majority chose to focus primarily on the portion of the President's budget request for fiscal year 2010 entitled "Changing the Way Washington Does Business." It is important to note that the President's budget document contained no specific budget process proposals, only broad overarching statements of principle that, unfortunately, don't align with the actual budgetary effects of the President's proposal.

"Honest" Budgeting

The President makes the assertion that the fiscal year 2010 budget request is a "Return to Honest Budgeting." The Administration claims credit for submitting a budget that includes the costs of the continued Global War on Terror. In and of itself, we can't find fault with this decision. However, it is interesting that the President's budget assumes that the war in Iraq will remain at fiscal year 2008 surge levels through 2019. Underlying this assumption are the costs associated with maintaining and equipping 160,000 troops or more during 2010-2019 period. Given that this assumption obviously runs counter to the recently announced polices of the current administration, we must ask why.

Upon further examination, the answer becomes obvious. By projecting out assumed spending then winding the war down early in 2010, the budget then assumes "savings" from "assumed" out-year spending levels. It's one thing to take credit for including the cost of war in a budget proposal; it's another to use the cost of the war as a budget gimmick in order to claim false savings.

We similarly applaud the President for planning for the expenses related to natural disasters. However, the Majority's views imply that this is a novel approach, never before attempted. However, a review of recent history shows that a similar proposal — referred to as an "Account for Future Emergencies" — was included in the fiscal year 2007 budget, enacted in the 109th Congress, the last Congress in which Republicans were the majority party. Be it mud slides, wild fires and earthquakes occurring in the far west, to tornados and floods challenging the heartland, or the annual hurricane season which threatens our gulf coast and eastern seaboard, the unfortunate reality is that natural disasters are a common occurrence in United States that we should responsibly account for when compiling the Nation's budget.

Pay-as-You-Go Budgeting

While we recognize the importance of ensuring that spending cannot continue unchecked, we believe that the current formulation of the Majority's so-called "PAYGO" rule, is skewed to increasing the tax burden on the American tax payer, rather than providing for a meaningful mechanism to reduce spending. Just this Congress the Majority passed a stimulus bill that included $508 billion in direct spending without offsets. And while the stimulus bill also included some revenue reductions, it escaped the ambit of the PAYGO rule. Since the stimulus bill was deemed a "general appropriations" measure the PAYGO rules never applied to the direct spending.

On the other hand, those same rules did apply to the revenue reductions and required an "emergency" designation to avoid the need to find corresponding tax increases to balance the bill. This "emergency" designation was a new development in this congress and amounts to a "non-waiver PAYGO waiver." Simply put, if something is designated as an "emergency" then "pay-go" no longer applies, and the Majority does not face the political difficulty associated with trying to pass a rule waiving the PAYGO rule.

There has been a great deal of discussion in the press about the President's support of a statutory approach to PAYGO enforcement. We can only hope that a statutory rule is applied more fairly than the Majority's current regime.

We would also like to take this opportunity to encourage the Majority to review the methodology used by the Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) in scoring proposed legislation — something that has taken on new importance in light of the Majority's PAYGO rules. Just as the PAYGO rule itself is biased against tax cuts, we believe that there is a similar bias in scoring methodology.

For instance, the JCT forecast that the 2003 capital gains tax cut would "cost" the Federal Treasury $5.6 billion through fiscal year 2006. In reality, the Federal treasury received an "unexpected" $133 billion of capital gains tax collections through 2006 – a net error of $138.6 billion. We fear that there will be an error of similar magnitude in estimating the revenue effect of the President's proposed increase in the capital gains tax and will exacerbate an already dire budgetary situation. We believe that the method known as "dynamic scoring" better reflects the true economic consequences of tax relief, and encourage the Majority to direct the CBO to score future legislation accordingly so that the actual revenue forecast of future legislation can be more accurately assessed.

Earmarks

We also appreciate the President's commitment to transparency in the earmark process, efforts which build on the reforms enacted by the Republican Majority in the 109th Congress. While the Majority's changes to the rule in the last Congress were billed as a dramatic expansion of the Republican reforms, we have described the loopholes in the House rules that were exploited on numerous occasions to hide earmarks from public view.

While the rule in the 109th Congress provided a question of consideration against the rule as a mechanism for enforcement, and the Majority's rule in the 110th Congress

appeared to preserve that option, the actual practice reveals a rule that cannot be enforced. The structure of the rule in the 109th Congress assumed that every rule would contain a waiver of *all* points of order — including the earmark point of order. That waiver would give rise to the question of consideration on the rule. The Majority's practice of not waving the earmark rule results in the perverse outcome that there is no way for a rank-and-file member to challenge the completeness or veracity of a chairman's earmark statement.

This situation was so bad that the Majority was forced to revisit the rule during the summer of 2007 by passing H.Res. 491, which gave Members the ability to get to the question of consideration. However, unlike the rule — which applied to all appropriations, authorizations, and revenue measures — H.Res. 491 only addressed conference reports accompanying the regular general appropriations measures.

This has led to a situation where Republican Members have discovered numerous instances where committee chairs have failed to accurately disclose earmarks, either willfully or by accident, and the Members have no means by which to bring this issue before the House. One of the most glaring and disturbing examples during the 110th Congress was during consideration of H.R. 6899, which included a provision providing a limited tax benefit relating to the New York Liberty Zone. The Joint Committee on Taxation had previously identified this provision as an earmark, and yet the Chairman of the Committee on Ways and Means submitted a statement for the record asserting that the bill contained no limited tax benefits in clear contradiction of the analysis of the JCT. Yet because the Majority's earmark rule allows no means by which to challenge a Chair's assertion, the House was left with no remedy to address the apparent misrepresentation.

That is by no means the only loophole. The House has discovered through practice that the rule does not apply to the legislative vehicles commonly used by the Majority. We would like to again direct the attention of the Majority to the letter dated October 2, 2007 from the House Parliamentarian, John V. Sullivan, to Chairwoman Slaughter, in response to her inquiries about the application of the Majority's new earmark rule. In the letter Mr. Sullivan states, "...clause 9(a) of rule XXI does not comprehensively apply to all legislative propositions at all stages of the legislative process." Yet the Majority states in their views that they have "...adopted the most comprehensive and far-reaching earmark reforms in the history of Congress...".

Specifically, the earmark rule does not apply to:

- Amendments self-executed by the Rules Committee (which the Majority utilizes at twice the rate of the previous majority);
- Any amendment made in order, but not offered first;
- Any amendment made in order to be offered first if not offered by a Member of a committee of jurisdiction;
- Committee reported amendments; and,
- Amendments between the Houses (utilized more often in the first Session of the 110th Congress than in any session of the previous six Congresses).

If the Majority is serious about their pledge to bring more transparency to the earmarking process in the House, they should take steps to address the flaws in the rule and work with the Minority to restore the integrity of the institution.

Legislative Line Item Veto and Other Budget Reform Proposals

While we understand the Democratic Majority's institutional concerns with previous Administrations' legislative line item veto proposals, we would hope that they would not completely rule out the possibility of a limited legislative line item veto being used to curb wasteful spending, particularly spending originating from the other body. For example, the recently passed Omnibus Appropriation bill containing 9000 earmarks that never went through regular order in the House is evidence enough that such a tool for the executive is necessary. The Ranking Member of the Committee on the Budget, Mr. Ryan of Wisconsin, sponsored a legislative line item proposal in the 109th Congress that passed the House by a vote of 247 to 172, with the support of both Republicans and Democrats. Mr. Ryan introduced a similar measure in the 110th Congress which enjoyed bipartisan support and has just recently introduced the measure again in the 111th Congress. The benefits of a legislative line item veto would be judged on the amount of taxpayer dollars saved and in that light we would simply ask the Democratic Majority to keep an open mind to the concept.

Mr. Ryan isn't the only Member with important and significant budget reform proposals. Many Members, both Republican and Democrat, have insightful budget proposals that some have been championing for years. The fact is that the budget process is broken and has been so for years. It wasn't broken by any one Party or any one President, but has been subject to the erosion of time. The framework established in 1974 desperately needs to be modernized if this or any future President is to succeed. We believe that when, in the President's request, he states, "Just as important as changing what Washington does is to change how it does it." He is speaking specifically about the budget process and the need for comprehensive budget process reform, which is a challenge best addressed on a bipartisan and bicameral basis.

We look forward to working with the Majority Members of the Rules Committee on any issues they do deem appropriate for the Committee on Rules to consider as well as those proposals espoused by the President in his Fiscal Year 2010 budget.

David Dreier

Lincoln Diaz-Balart

Pete Sessions

Virginia Foxx