



**To:** Members of the House Committee on Energy and Commerce

**From:** Andrew Lautz, Director of Federal Policy; Thomas Aiello, Director of Federal Affairs; Will Yepez, Policy and Government Affairs Associate; National Taxpayers Union

**Date:** September 10, 2021

**Subject:** Taxpayer Considerations on Committee's Reconciliation Spending

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## **I. Introduction and Key Taxpayer Considerations**

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, we write to express concerns about the Committee's reconciliation title.

This \$486.5 billion title would significantly increase federal spending over the next decade, enact harmful new taxes on specific U.S. industries, and potentially worsen America's short- and long-term fiscal health. Among the most troubling provisions in this legislation are slush funds that could artificially manipulate the cost of certain forms of energy relative to others, a mandate that Medicare negotiate prescription drug prices in a top-down manner, a punitive and steep excise tax on pharmaceutical manufacturers that refuse to submit to a government-set price for their products, and a \$10 billion fund for federal management of manufacturing supply chains that inherently involves heavy government interference in private markets. Throughout this legislation, the Committee stands up new programs and initiatives with few instructions to federal agencies for how to implement said programs. The Committee also devotes miniscule portions of their title's spending to oversight of these new programs at agency offices of inspectors general.

Absent *significant* changes to the Committee's reconciliation title, NTU would urge all Committee Members to **OPPOSE** the legislation.<sup>1</sup>

## **II. Amendments That Could Improve the Committee's Reconciliation Title**

The following amendments would improve the Committee's reconciliation title from the taxpayers' perspective:

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<sup>1</sup> As a reminder and to avoid any confusion, NTU does *not* include Committee markup votes in our annual rating of Congress. That said, we weigh in at the markup level to improve legislation from the perspective of the taxpayer before it reaches the House and/or Senate floor.

### *Subtitle A*

- **Strike Sec. 30101, concerning zero-emissions heavy-duty vehicles:** Sec. 30101 would appropriate \$5 billion to the Environmental Protection Agency (EPA) to grant states, municipalities, Tribes, nonprofit schools, and contractors money to replace heavy-duty vehicles with zero-emissions vehicles. This is an extraordinary sum of money and comes with few instructions to the EPA in terms of prioritizing such grant dollars. Without further prioritization, NTU remains deeply concerned that these grants will be distributed in a way that mirrors the inequity of electric vehicle (EV) tax credits, which [overwhelmingly benefit the wealthy](#).
- **Strike Sec. 30114, concerning an EPA methane fee:** Sec. 30114 would establish a \$60 per metric ton fee on methane emissions from the petroleum and natural gas sectors. NTU is particularly concerned that the EPA would retain access to 75 percent of methane fee revenues for a wide range of potential uses, which could in effect create a slush fund at EPA that is relatively unaccountable to taxpayers and lawmakers. Reduced spending or additional revenue generated by the reconciliation bill should, at minimum, be directed to debt and deficit reduction, not to new slush funds for federal agencies.

### *Subtitle D*

- **Strike Part 1 - Clean Electric Performance Program:** This section would authorize the Department of Energy to establish a Clean Electric Performance Program. This misguided slush fund would provide grants and payments to electricity suppliers from 2023 through 2030 based on how much clean electricity each supplier provides to customers. In order to be eligible for these payments, electricity suppliers would have to boost the amount of clean electricity they supply to customers by four percent compared to the previous year. The supplier would receive \$150 for each MWh of clean electricity provided that exceeds the amount supplied the previous year by 1.5 percent. Electricity suppliers must use the grants exclusively to benefit customers, including for direct bill assistance, investments in qualified clean electricity and energy efficiency, and worker retention. This is effectively a backdoor way of enacting the Green New Deal. It forces taxpayers to subsidize the high costs for “clean” energy by artificially lowering the cost of renewable energy to make it more competitive compared to other forms of energy. The government should not put its thumb on the scale in America’s energy markets.
- **Strike Part 4 - Zero Emissions Vehicle Infrastructure Buildout:** This section authorizes billions of taxpayer dollars to build out electric vehicle charging stations nationwide. Specifically, \$7.5 billion is allocated to build charging stations along roadways, incentivize their construction at “publicly accessible places,” and for the plug-in electric vehicle program. The free market should dictate which cars automakers produce and how private companies deploy charging technology, not the heavy hand of the government. Given the precarious budget situation of the federal government, and what is likely to be a significant decline in both general revenues and gas tax revenues, this is not the time for the federal government to spend billions on Green New Deal-type pet projects.

- **Enact changes to electric vehicle provisions, such as changes to the EV tax credit or the establishment of a Vehicle-Miles Traveled fee on EVs.** The Electric Vehicle (EV) tax credit is a regressive tax provision that [overwhelmingly benefits wealthy households](#). Lawmakers should not double down on the EV credit without significant means testing, nor should lawmakers subsidize a significant expansion of the EV market without addressing important questions about how EV owners can contribute to the degradation of roads, bridges, and highways. NTU has previously [written favorably](#) on a vehicle miles traveled (VMT) regime as a potential replacement for the gas tax.
- **Amend Part 7 - Environmental Reviews:** While NTU appreciates that the majority recognizes the need to address the severe inefficiencies caused by the National Environmental Policy Act (NEPA), the text, as written, is flawed. In its current form, Part 7 allocates \$300 million to hire more bureaucrats and purchase more equipment in order to “provide for more efficient and more effective environmental reviews under the National Environmental Policy Act of 1969.” While some additional funding may be needed in order to cover workforce expenses to implement reforms to NEPA, it does not make sense to spend \$300 million in taxpayer money in order to cut red tape. Worse, this provision fails to include any tangible reforms to NEPA, which could actually result in zero changes to NEPA applications. In fact, earlier this year, [NTU unveiled numerous NEPA reforms](#) that Congress and the Biden administration could implement that would make a meaningful difference in the cost and timeline for bringing projects on line. The current text, absent NEPA reforms, is unacceptable. Fewer bureaucrats, not more, is the key to building more projects faster.
- **Strike Sec. 30481 in Part 8 - Other Energy Matters:** This section appropriates \$17.5 billion to DOE for the purpose of funding agencies’ efforts to procure clean electricity, low carbon materials, and automotive supply equipment, and for undertaking other measures on federal buildings that are energy efficient and cost effective. The primary metric that agencies should use to procure materials is cost, including the cost of the materials over their lifetime. Taxpayers benefit from robust competition and innovation when businesses bid for government contracts. It is not in the best interest of taxpayers or the public to hamstring the bidding process for one specific type of material. The result is taxpayers being forced to pay artificially inflated prices for goods.
- **Strike Sec. 30483 in Part 8 - Other Energy Matters:** This section appropriates \$2.5 billion to DOE for grants, rebates, and low-interest loans for the planning and installation of solar and community solar facilities that reserve capacity for low-income households, or that are located at low-income households, or multi-family affordable housing complexes. The government should not be in the business of choosing one specific energy type over another.
- **Amend Sec. 30484 in Part 8 - Other Energy Matters:** This section appropriates \$50 million to the DOE Inspector General (IG) for oversight of activities for which funding is appropriated in this subtitle. Given the billions of dollars that should be shoveled out the door in such a short period of time, it may make sense to increase funding to OIG. OIG plays a critical role overseeing these energy programs and guarding against waste, fraud, abuse, or misuse of taxpayer dollars. Lawmakers should consider increasing appropriations to OIG, while making corresponding reductions to other sections or subtitles of the legislation to offset additional appropriations to OIG.

## *Subtitle E*

- **Strike Secs. 30501, 30502, and 30503, which mirror H.R. 3 proposals for mandatory prescription drug negotiation in Medicare:** NTU is deeply concerned with the Committee’s proposals to require Medicare to nationally negotiate prescription drug prices, and to levy a punitive and steep excise tax on drug manufacturers that either do not submit to negotiations or do not agree to the government’s negotiation terms (Secs. 30501, 30502, and 30503). We wrote to the Committee with our concerns about H.R. 3 [at length in May](#), but to summarize them here: 1) the ‘negotiation’ process is rigged from the start, with a maximum price set at no more than 120 percent of the average price for a drug in a basket of other countries; 2) the government has all the power in the so-called ‘negotiation,’ benefiting from the aforementioned maximum price and from the threat of a severe excise tax if the manufacturer does not submit to the government’s terms; and 3) the excise tax would be levied on 95 percent of gross sales after nine months (and up to 1,900 percent of gross sales, as [explained here by Tax Foundation](#)). Whether by spending reductions or tax hikes, Secs. 30501, 30502, and 30503 would have a severe impact on research and development (R&D) of new and innovative drugs, negatively affecting patients in the short run and, potentially, [patients, consumers, and taxpayers in the long run](#), as a dried-up pipeline of new prescription drugs leads to higher health spending elsewhere.
- **Strike Secs. 30511 and 30512, concerning Parts B and D inflation caps:** NTU is also troubled by the proposed inflation rebates (which are also, in effect, taxes on pharmaceutical manufacturers) in Secs. 30511 and 30512. These inflation caps function as price controls. As we [wrote](#) in July 2019, “the larger the difference between this government-imposed cap (on a program with 45 million enrollees) and the market price for a drug, the more plan sponsors and drugmakers will seek to recoup those costs elsewhere.” Inflation caps would push the cost bubble for prescription drugs onto other parts of the health care system; then again, the inflation caps paired with H.R. 3’s faux negotiations and punitive taxes would lead to either severe reductions in pharmaceutical R&D, U.S. market exit from manufacturers, or both.
- **Strike Sec. 30521, concerning Medicare Part D redesign:** While NTU supports Medicare Part D redesign and an out-of-pocket cap, we [strongly prefer](#) the options previously offered in the bipartisan Senate proposal of 2019. The nonpartisan Congressional Budget Office (CBO) projected that proposal would save taxpayers \$35 billion over 10 years, while protecting seniors with the first ever out-of-pocket cap in Part D. Lawmakers should scrap Sec. 30521 and go back to the bipartisan drawing board, with the same goals of redesigning Part D and protecting seniors with a spending cap.
- **Strike Sec. 30531, concerning repeal of the Trump administration’s drug rebate rule:** As for Sec. 30531, repeal of the Trump administration’s drug rebate rule, NTU has previously [noted](#) that delay or repeal of this rule is a budget ‘gimmick’ that should not count towards lawmakers’ efforts to fully pay for new spending. Lawmakers should instead explore real spending reductions to offset ambitious new spending programs and priorities.

### *Subtitle F*

- **Strike the provision in Sec. 30602 allowing individuals earning more than 400 percent of the federal poverty level (FPL) to benefit from premium tax credits (PTCs) in 2023 and 2024 (26 USC 36B(h)(1), as amended by Sec. 30602):** NTU has [previously written](#) about how expanding Affordable Care Act (ACA) PTCs beyond 400 percent of the FPL is an incredibly inefficient and expensive way to expand health coverage. Lawmakers should not be using inherently limited tax dollars to subsidize the purchase of private health coverage for individuals making beyond \$50,000 per year, or families of four making six figures per year and beyond. Additionally, PTCs are not designed to bend the cost curve for private health coverage, and will only increase in cost as premium hikes outpace wage increases. Lawmakers should amend this provision to ensure individuals and families making beyond 400 percent of the FPL cannot benefit from PTC support beyond plan year 2022 (as amended by the American Rescue Plan Act).
- **Strike the provision in Sec. 30603 requiring CMS to stand up reinsurance programs in 2023 and 2024 for states that refuse to do so (Sec. 1353(b) of Part 6 of the Subtitle D of title I of the Affordable Care Act, as added by Sec. 30603):** If states choose not to stand up reinsurance programs under this section of the legislation, the federal government's default should not be committing those taxpayer dollars to a federally-managed program anyway. If states refuse to set up reinsurance programs in 2023 and 2024, lawmakers should require HHS to return those uncommitted and undisbursed funds to the Treasury Department.

### *Subtitle G*

- **Strike the permanent seven-percent FMAP increase to states' Medicaid programs in Sec. 30713:** Due to nominally temporary but practically lengthy FMAP boost requirements under COVID-19 relief legislation, the federal government is [currently covering](#) a minimum of 56.2 percent of states' Medicaid costs. In many large states, the federal share is well north of 56.2 percent, including Florida (67.23 percent), Texas (67.00 percent), Ohio (70.30 percent), and Georgia (73.05 percent). The FMAP boost, and the higher share of federal spending on Medicaid in dozens of states, turns Medicaid less into a shared federal-state program and more into a federally-funded program with a partial state match. Sec. 30713 would underscore this troubling FMAP trend, raising the federal minimum to 57 percent, permanently, in states that improve their home and community-based services (HCBS), and potentially raising the federal share in some states to as high as 85 percent. This extraordinary federal share is in addition to widespread [state-based "provider tax" scams](#) that allow states to avoid paying their fair share of Medicaid expenses. Lawmakers should remove the permanent seven-percent FMAP boost in Sec. 30713.

### *Subtitle I*

- **Strike Subtitle I:** Medicare trustees still [project](#) that the Hospital Insurance (HI) Trust Fund will be insolvent in 2026. While the benefits funded by the HI Trust Fund, under Medicare Part A, are separate from the benefits funded under Medicare Part B (including Part B's expansion to vision, hearing, and dental benefits under Subtitle E, Part 4), it is irresponsible for lawmakers to

consider significantly expanding benefits while the future of Medicare is in significant doubt. Any spending reductions or revenue raisers generated in the reconciliation process would be better put toward shoring up the HI Trust Fund's finances in the long run.

- **Absent fully striking Subtitle I, extend the implementation timeline for vision and hearing benefits in Medicare Part B:** Give the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) more time to implement vision and hearing benefits under Medicare Part B; at minimum, lawmakers should provide HHS and CMS with an additional two years for each benefit. According to recent [reporting](#) from *The Washington Post*, “federal health officials estimate it could take three to five years to formally stand up a new dental benefit which Democrats are seeking to include in the \$3.5 trillion bill.”

#### *Subtitle J*

- **Significantly reduce appropriations in Subtitle J:** By our count, Subtitle J appropriates an extraordinary \$61.4 billion to grants and federal spending on dozens of public health initiatives. Several of the initiatives outlined in Subtitle J may be meritorious, and we believe policymakers across the ideological spectrum would likely agree to some level of spending on many of the programs and initiatives outlined in Subtitle J. However, the \$61.4 billion proposed here must be framed in the context of existing taxpayer commitments to similar programs and initiatives under COVID-19 relief legislation. By our count, and using resources from the nonpartisan [Committee for a Responsible Federal Budget \(CRFB\)](#), lawmakers have already appropriated around \$225 billion to similar initiatives as the ones proposed here.<sup>2</sup> Tens of billions of dollars within those appropriations may have yet to be disbursed, according to CRFB. Congress should pause, assess existing appropriations and disbursements, and the effectiveness of existing disbursements, and carefully consider any potential future pandemic preparedness and public health needs after COVID relief dollars have been spent.

#### *Subtitle K*

- **Prevent 9-1-1 fee diversion:** Subtitle K provides for \$10 billion in funding to be made available for implementing and maintaining Next Generation 9-1-1 operations. As a condition of the funding, an eligible entity is prohibited from diverting 9-1-1 fees or charges for unrelated purposes. However, for [some](#) states, the diverted fees outweighs the grant. A Federal Communications Commission [report](#) found that eight states and one territory diverted nearly \$220.3 million from 9-1-1 functions. Similarly, one state official [stated](#) that if 9-1-1 fees were not being diverted for non-9-1-1 purposes, funding would have been sufficient to transition to Next Generation 9-1-1. Guardrails on grant money are important, but it may not be enough. NTU has supported [legislation](#) to prevent the harmful practice of 9-1-1 fee diversion at the state level.

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<sup>2</sup> Under Legislative “Health Spending” in CRFB’s COVID Money Tracker, we counted “Preparedness & Response,” “Vaccine & Treatment Development,” “Testing, Monitoring, and R&D,” certain “Supplemental Health Agency Funding,” and “Health Care Workforce” spending.

### *Subtitle L*

- **Strike Sec. 31202:** This section provides \$10 million for the creation of a 14-member “Future of Telecommunications Council” to advise Congress on 6G technology. This funding is wasteful and unnecessary. While 6G technology is on the horizon, the deployment of 5G technology is still in its early days. Spectrum auctions are a useful tool to moving to 6G technology, but an advisory committee is unlikely to have any meaningful benefits.

### *Subtitle M*

- **Strike Subtitle M:** Subtitle M provides \$4 billion in funding for the Emergency Connectivity Fund (ECF). The ECF was authorized through the American Rescue Plan with a budget of \$7.17 billion to assist schools and libraries with remote learning activities during the coronavirus pandemic. There was an understandable need for lawmakers to move quickly to help keep children online and connected as their education largely moved online. Now, with vaccines widely available and being utilized, schools are resuming in-person learning. There has also been substantial broadband funding authorized by Congress in previous coronavirus-related legislation as well as \$65 billion in the bipartisan infrastructure package. Closing the “homework gap” is a laudable goal, and one lawmakers should continue to address. However, it must be done in a fiscally responsible manner. A report from the Government Accountability Office (GAO) on the effectiveness of the program should be completed before additional funding is authorized. As a whole, Congress should also evaluate broadband spending programs that are duplicative or wasteful so taxpayer dollars can be more targeted to those most in need.

### *Subtitle N*

- **Strike Subtitle N:** This provision would direct \$10 billion to the Department of Commerce to support manufacturing supply chains. This funding essentially comes without guardrails and is unnecessary. Earlier this year, the White House released a [report](#) on building resilient supply chains, but as NTU Foundation [notes](#), many of the problems associated with supply chains are caused by heavy-handed federal policies. Instead of needlessly spending billions of dollars, lawmakers should look to create pro-consumer trade policies and remove costly barriers. Industrial policy and knee-jerk reactions to short-term issues are not in taxpayers’ best interest.

### *Subtitle O*

- **Strike Subtitle O:** Subtitle O would provide \$1 billion for the Federal Trade Commission (FTC) to create a technology-focused bureau. For fiscal year (FY) 2022, the FTC [requested](#) roughly \$389 million, an increase of \$38 million from the previous year. This would be [about](#) a 30 percent increase in the FTC’s appropriation over the next decade. This level of funding is wasteful and unnecessary, especially considering the lack of pay-fors, the \$28 trillion national debt, and current inflation risks. Similarly, rather than giving regulators a large influx of funding to go after private companies, Congress should create reasonable data privacy protections and

standards. This would provide clearer rules for companies, protect consumers, and prevent antagonistic enforcement activity.

### *Subtitle P*

- **Increase funding for the Office of the Inspector General of the Department of Commerce:** This section provides \$10 million for the oversight of funds appropriated to the Department of Commerce (DOC). The Committee is responsible for over \$486 billion in spending, and while not all that funding is directed towards the DOC, there are still significant concerns for taxpayers on how effectively funds would be used, especially on new programs. The Committee should increase the oversight appropriations and offset this increase with reductions elsewhere in this bill.

### **III. NTU's Current Thinking on the Combined Reconciliation Package**

As the authorizing committees in Congress work on separate reconciliation bills, NTU wishes to inform Members and their staff that we have several significant concerns with the current framework of the overall, combined reconciliation effort. This proposed legislation would spend a staggering \$3.5 trillion—possibly adding trillions to the national debt and impacting America's economic recovery effort from the COVID-19 pandemic. **If the combined reconciliation bill came to the House or Senate floor today, we would advise Members to vote "NO" on the legislation. The bill would be heavily weighted in NTU's annual rating of Congress.**

### **IV. Contact Information**

Should you have any questions about the recommendations in this memo, please do not hesitate to reach out to Andrew Lautz at [alautz@ntu.org](mailto:alautz@ntu.org), Thomas Aiello at [thomas.aiello@ntu.org](mailto:thomas.aiello@ntu.org), and Will Yopez at [wyepez@ntu.org](mailto:wyepez@ntu.org).