**To**: Members of the House Committee on Ways and Means
**From**: Andrew Lautz, Director of Federal Policy; Will Yepez, Policy and Government Affairs Associate; National Taxpayers Union
**Date**: September 13, 2021
**Subject**: Committee Needs to Remove Harmful Drug Pricing Measures, Pare Back Social Spending in Subtitles F, G, H and J of the Reconciliation Bill

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## I. Introduction and Key Taxpayer Considerations

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I write to Committee Members and staff as you consider certain provisions in the Committee's reconciliation title focused on infrastructure financing, green energy, social safety net programs, and prescription drug pricing. NTU is deeply troubled by several provisions in this proposal, including but not limited to the following concerns:

- Subtitle F devotes nearly $129 billion over the next decade to infrastructure financing, even as lawmakers in the Senate just passed a more than $1 trillion infrastructure bill that, though NTU warned is significantly flawed, seems to be on its way to passage through Congress in the coming months. Lawmakers should not 'double dip' with tens of billions of dollars in additional infrastructure spending through Subtitle F.
- Subtitle G extends numerous tax credits that distort economic activity by artificially reducing the cost of producing certain types of energy. Extension of these credits is tremendously expensive, with a budget impact north of $100 billion over the next decade alone. Subtitle G also doubles down on electric vehicle (EV) credits that have historically benefited wealthy taxpayers, a wasteful subsidy for consumers who do not need taxpayer support.
- The Committee's proposed extension of the American Rescue Plan Act's Child Tax Credit (CTC) expansion is even more expensive than President Biden's proposal for expanded CTC extension, and would have a budget impact of $556 billion over the next 10 years; tens of billions of dollars would likely flow to six-figure households who likely don't need the taxpayer-funded support required by CTC.
- The expansion of Affordable Care Act premium tax credits (PTCs) could benefit numerous wealthy households, especially since the Committee proposes permanently allowing households earning more than 400 percent of the federal poverty level to access taxpayer-funded PTCs. The Congressional Budget Office (CBO) estimated in 2020 that a similar proposal would have a budget impact of $212 billion over a decade. And, as NTU has noted before, 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.

- The requirement for Medicare to nationally negotiate prescription drug prices (which would apply to both Part D plans and private health insurance plans), paired with a punitive and onerous excise tax on manufacturers that refuse to comply with a government-set price, is a draconian plan that would effectively control prices of prescription drugs, threaten patient access to new products in the short and long run, and may ultimately harm taxpayers as reduced innovation in the pharmaceutical sector leads to higher spending in other health settings.

Absent ***significant*** changes to the Committee's reconciliation title, NTU would urge all Committee Members to **OPPOSE** the legislation.[1]

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

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

*Subtitle F*

Part 1

- **Repeal Davis-Bacon provisions of Secs. 135101 and 135108**: Davis-Bacon prevailing wage requirements raise costs for taxpayers and distort economic activity. While the nonpartisan Joint Committee on Taxation (JCT) estimates that Part 1 of Subtitle F will have a $42 billion budget impact alone, and that is concerning to NTU in a time of high spending and high deficits, lawmakers could at least improve this part by eliminating Davis-Bacon requirements for tax-exempt bond financing.

Part 5

- **Strike Sec. 135501, increasing state allocations under the low-income housing tax credit (LIHTC)**: As the nonpartisan Congressional Research Service (CRS) has noted, "many economists would argue that housing vouchers, or direct-income supplements to low-income individuals, are more direct and fairer methods of providing assistance to lower-income individuals." The current LIHTC comes with "significant overhead and administrative costs." Instead of providing a lengthy and expensive ($11 billion) boost to state LIHTC allocations, lawmakers should allow the temporary boost to state allocations -- first enacted in 2018 -- to expire while exploring more efficient means of supplying more affordable housing.

[1] 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 G*

Throughout Subtitle G

- **Remove prevailing wage and domestic content requirements that make taxpayers eligible for bonus credits**: As noted above, Davis-Bacon prevailing wage requirements raise costs for taxpayers and distort economic activity. Domestic content requirements also raise costs for taxpayers, by compelling producers to purchase goods and inputs from within the U.S. when purchasing such goods and inputs from global supply chains may be more affordable or efficient. Though most of the prevailing wage and domestic content requirements in this subtitle only apply to "bonus" credit amounts, lawmakers should strike these provisions. Removing prevailing wage and domestic content requirements will reduce the economic distortions of this subtitle and reduce the budget impact of these provisions on taxpayers.

Part 1

- **Strike extensions of the production tax credit (PTC) and investment tax credit (ITC) in Secs. 136101 and 136102**: Though renewable energy facilities should not actively be disadvantaged by the tax code, and while companies owning renewable facilities should have access to full and immediate expensing for various costs of doing business (i.e., full and immediate cost recovery), the PTC and the ITC add complexity to the code and bias certain forms of energy over others. Or, as NTU put it earlier this year, these provisions "put the federal government in the middle of both America's energy markets and investment markets." Further, JCT estimates that the combined impact of these provisions is a staggering $106.7 billion over the next decade. Lawmakers should strike these sections and instead allow the begin-construction dates on PTCs and ITCs to end on January 1, 2022.

Part 2

- **Strike Sec. 136201, which extends excise tax credits for biodiesel, biodiesel mixtures, alternative fuels, alternative fuel mixtures, and more**: To the extent that these tax credits allow for favorable tax treatment for certain fuel and fuel mixtures over other energy sources, the credits create distortions in the tax code that lawmakers should allow to expire instead of extending for 10 years. Further, JCT estimates that the combined impact of these provisions is $32.8 billion over the next decade.

Part 4

- **Remove union and domestic content preferences from the expanded EV credit in Sec. 136401**: If the U.S. ***does*** subsidize EV purchases, which NTU believes is a wasteful and regressive subsidy, then at minimum lawmakers should provide neutral tax code treatment as to how and where EVs are made. Lawmakers should strike the provisions allowing for an expanded EV credit for union-made or U.S.-made EVs.

- **Significantly lower the income phaseout threshold for EV credits in Sec. 136401**: CRS has noted that the overwhelming majority of EV credits (around 78 percent) are claimed by taxpayers making more than $100,000 per year. While lawmakers would be best off striking Sec. 136401 in its entirety, Congress could at least improve the proposal from the taxpayer's perspective by lowering phaseout thresholds. Under the current proposal, the EV credit ***begins*** phasing out at $400,000 for individuals and $800,000 for married couples filing jointly. Alternatively, lawmakers could begin phasing out the EV credit at $50,000 for individuals and $100,000 for married couples filing jointly, which would significantly reduce the proportion of EV credits going to households that do not need taxpayer support.

Part 7

- **Strike Sec. 136701**: This section would reinstate Superfund taxes on oil and petroleum products at 16.4 cents per gallon, and would reinstate Superfund taxes on chemical products at double previous rates. A coalition of taxpayer advocacy organizations recently warned lawmakers that Superfund taxes were "direct tax[es] on American job creators … in the midst of a recovery from a downturn." The letter added, of Superfund taxes on dozens of inputs for critical goods across the U.S. economy, that "[g]iven the real-life concerns of the public and economists of rapidly rising inflation, government policies that would artificially raise prices are the wrong approach at the worst possible time." Lawmakers should strike Sec. 136701, which would raise taxes by $38.4 billion over the next decade.

*Subtitle H*

Part 1

- **Significantly lower the income thresholds for which the expanded and extended CTC applies**: As NTU wrote in July 2021, "it makes little sense to frame the CTC as an anti-poverty measure when a single parent making $75,000 (more than 4 times the FPL for a two-person household) or a married couple making $150,000 (more than 5 times the FPL for a four-person household) can receive the full CTC benefit." We proposed a reformed CTC that would begin phasing out at $50,000 in household income (for joint filers) and would typically fully phase out for most families at around $150,000 in household income (for joint filers). We also proposed retaining refundability and regular advance payments of the CTC, to focus the credit as a true anti-poverty measure. Committee members should consider a significantly stricter means test for the CTC benefit. CRS estimated that in 2020 (before the ARPA expansion) nearly 40 percent of CTC dollars (or around $45 billion) went to households making more than $100,000 per year.
- **Remove the inflation adjustments from CTC extension**: The proposed expansion of the CTC -- four years of either a $3,000 per child or $3,600 per child benefit per year, when the benefit four years ago was just $1,000 per child -- is already an extraordinary policy change in a time of soaring debt and deficits. The CTC benefit will clearly be more expensive for America's taxpayers to fund when indexed to inflation year after year, and given the benefit is already 200 to 260 percent higher than it was in 2017, well outpacing inflation, lawmakers should, at a minimum, keep the benefit flat at $3,000 per child or $3,600 per child for any length of the extension.

Part 2

- **Strike Sec. 137201, which makes permanent ARPA's expansion of the Child and Dependent Care Tax Credit (CDCTC)**: JCT estimates that permanent expansion of CDCTC will have a budget impact of $95 billion over just the next decade alone. NTU pointed out in April that nearly three-quarters (73 percent) of pre-ARPA CDCTC benefits flowed to six-figure households. While refundability of CDCTC will somewhat increase the progressivity of benefits, raising the initial phaseout threshold from $15,000 in household income to $125,000 is a deeply troubling change that will allow many six-figure households to benefit from the CDCTC. In a time of persistent trillion-dollar deficits and limited federal budget space, lawmakers should not be wasting tax benefits or so-called 'safety-net' programs on upper-middle class and wealthy households. Lawmakers should strike Sec. 137201, or at the very minimum return to pre-ARPA CDCTC phaseout thresholds (with a lower full phaseout threshold than $500,000 in adjusted gross income).

Part 5

- **Strike Sec. 137501, or at minimum reinstate the pre-ARPA prohibition on households earning more than 400 percent of the FPL from accessing PTCs**: It is a mistake for the Committee to allow individuals and families earning 500 percent or 600 percent of the FPL (or even more) to access PTCs. This proposal would amount to taxpayers subsidizing the health insurance premiums of upper middle-class individuals and families, at a cost of billions of dollars per year. Since PTCs are not designed to bend the cost curve in health care coverage (as we noted above), lawmakers would be best off striking this provision. Absent striking Sec. 137501, though, lawmakers should consider at least striking the provision(s) allowing households earning more than 400 percent of the FPL to access PTCs on a permanent basis.
- **Strike the provision in Sec. 137506 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. 137506)**: 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.
- **Strike Sec. 137508, making the Health Coverage Tax Credit (HCTC) permanent**: While the HCTC has a minimal impact on the federal budget, it overlaps with other federal programs providing private premium support, especially the premium tax credits (PTCs) offered to eligible families under the Affordable Care Act (ACA). The PTC model is sorely in need of reforms, especially after the recent American Rescue Plan Act expansion of PTCs, but this model of means-testing premium support based on income is preferable to the HCTC model of providing premium support based on participation in other federal programs. Additionally, this small credit adds unnecessary complexity to the code when lawmakers should be aiming to simplify the code and eliminate duplicative deductions and credits. What's worse, lawmakers propose expanding the generosity of the HCTC in Sec. 137508. Instead, lawmakers should strike Sec. 137508.

- **Strike Secs. 139001, 139002, and 139003, 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. 139001, 139002, and 139003 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. 139101 and 139102, 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. 139101 and 139102. 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. 139201, 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. 139201 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. 139301, concerning repeal of the Trump administration's drug rebate rule**: As for Sec. 139301, 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.

## 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 and Will Yepez at wyepez@ntu.org.