



MEMORANDUM

October 9, 2009

To: Hon. Christopher H. Smith
Attention: Autumn Fredericks Christensen

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Subject: Questions Related to H.R. 3200, the America's Affordable Health Choices Act of 2009

This memorandum responds to your request concerning H.R. 3200, the America's Affordable Health Choices Act of 2009. H.R. 3200 was introduced on July 14, 2009 and has been considered by the House Committees on Education and Labor, Ways and Means, and Energy and Commerce. The Committees on Education and Labor and Ways and Means reported their versions of H.R. 3200 on July 17, 2009. The Committee on Energy and Commerce reported its version of the bill on July 31, 2009. In general, H.R. 3200 would mandate health insurance coverage for individuals and require employers to either provide insurance or pay a payroll assessment.¹ H.R. 3200 also contemplates the establishment of a public health insurance option that would ensure "choice, competition, and stability of affordable, high quality coverage throughout the United States . . ."² You asked several questions related to the public health insurance option and funding.³ These questions are addressed below.⁴

1. Will the funds used to reimburse health care providers for medical services provided to persons insured by the public option ultimately be drawn from the account established in section 222(b)(1)?

Section 222(b)(1) would establish an account for "the receipts and disbursements attributable to the operation of the public health insurance option . . ." To the extent that providers are to be reimbursed for services provided to participants who are enrolled in the public health insurance option, section 222(b)(1) would seem to indicate that reimbursement funds will be disbursed from such account.

¹ For additional information on H.R. 3200, see CRS Report R40724, *Private Health Insurance Provisions of H.R. 3200*, by Hinda Chaikind et al.

² H.R. 3200, 111th Cong. § 221 (2009).

³ E-Mail from Autumn Fredericks Christensen, Senior Policy Advisor, Office of the Hon. Christopher H. Smith, to Jon O. Shimabukuro, Legislative Attorney, Congressional Research Service (Oct. 1, 2009) (on file with author).

⁴ This memorandum uses the text of H.R. 3200, as reported by the House Committee on Energy and Commerce, to respond to the questions presented.

2. Will funds in the Treasury account described in section 222(b)(1) be generally classified as one or all of the following: government funds, federal funds or public funds?

Funds in the Treasury account described in section 222(b)(1) for receipts and disbursements attributable to the operation of the public health insurance plan will be derived from start-up funds and from premiums at geographically-adjusted rates set by the Secretary of Health and Human Services that are received from plan participants. Section 222(b)(2) states that the start-up funds will have two components: an appropriation of \$2 billion to be transferred to this account from funds in the Treasury not otherwise appropriated and an appropriation of “such amounts as necessary to cover 90 days worth of claims reserves based on projected enrollment.” The Secretary of Health and Human Services is required to provide for repaying start-up funding in an amortized manner over the 10-year period beginning with Year 1, the first year that this plan will be offered.

The *Analytical Perspectives* volume of the *Budget for 2010* prepared by the Office of Management and Budget provides background information on categories of budget accounts that helps to determine how funds, *i.e.*, money, in this Treasury account should be classified. OMB observes that:

When money is received by the federal government, it is credited to a budget account, All budget accounts belong to one of two groups of funds: federal funds and trust funds. . . . The federal funds group includes the “general fund,” which is the largest fund in the government and used for the general purposes of government, rather than being restricted by law to a specific program. . . .

The federal funds group also includes special funds and revolving funds, both of which receive dedicated collections for spending on specific purposes. Where the law requires that federal fund collections be dedicated to a particular program, the collections and associated disbursements are recorded in special fund receipt and expenditure accounts. . . . Money in special fund receipt accounts must be appropriated before it can be obligated and spent. The majority of special fund collections are derived from the government’s power to impose taxes or fines, or otherwise compel payment,

Revolving funds are used to conduct continuing cycles of business-like activity. Revolving funds receive proceeds from the sale of products or services, and these proceeds finance ongoing activities that continue to provide products or services. Instead of being deposited in receipt accounts, the proceeds are recorded in revolving funds, which are expenditure accounts. The proceeds collected in this way are generally available without further legislative action for obligation and expenditures. Outlays for programs with revolving funds are reported net of these proceeds. Because the proceeds of these programs offset outlays rather than being recorded [in original] as governmental receipts, they are known as “offsetting collections.” There are two classes of revolving funds in the federal funds group. Public enterprise funds, such as the Postal Service Fund, conduct business-like operations mainly with the public. Intragovernmental funds, such as the Federal Buildings Fund, conduct business-like operations mainly within and between government agencies.

The trust funds group consists of funds that are designated by law as trust funds. Like special funds and revolving funds [in the federal funds group], trust funds receive dedicated collections for spending on specific purposes.⁵

For the purpose of this analysis, it appears significant that:

⁵ Office of Management and Budget, *Budget of the U.S. Government: Analytical Perspectives 2010*, 341 (2009).

There is no substantive difference between special funds in the federal funds group and trust funds or, as noted below, between revolving funds in the federal funds group and trust revolving funds. Whether a particular fund is designated in law as a trust fund is, in many cases, arbitrary. . . .⁶

Special funds or revolving funds in the federal funds group do not differ substantively from federal trust funds and trust revolving funds in the trust fund group because of the way that the federal government uses the term “trust.”

The meaning of the term “trust” in the federal government differs significantly from the private sector’s usage. The beneficiary of a private trust owns the trust’s income and may own the trust’s assets. . . . In contrast, the federal government owns and manages the assets and the earnings of most federal trust funds and can unilaterally raise or lower future trust fund collections and payments or change the purpose for which the collections are used by changing existing law.⁷

These passages from *Analytical Perspectives* state that there is no substantive difference between special funds or revolving funds and federal trust funds and trust revolving funds. Whether a fund is classified as a special or revolving fund or a trust fund or trust revolving fund is arbitrary; the classification depends on the designation that the statute establishing the fund gives it. Significantly, a federal trust fund or trust revolving fund does not differ from a federal special fund or a revolving fund because for both groups of funds—the trust fund group and the federal funds group which encompasses special funds and revolving funds—the federal government appears to own and does manage the assets in them.

Section 222(b)(1), which establishes the “account for the receipt and disbursements attributable to the operation of the public health insurance option,” does not designate this account as a trust fund. Consequently, it appears that this account should be classified either as a special fund or a revolving fund within the federal funds group. Because a special fund or revolving fund in the federal funds group appears to be owned and is managed by the federal government, it appears that the funds, *i.e.*, money, in the public health insurance account generally may be classified as federal funds or government funds.

Moreover, a Congressional Budget Office analysis of budgetary concepts involving proposals to reform the nation’s health care system addresses factors to be considered in classifying expenditures from and receipts to the public health insurance account such as the one established in section 222(b)(1) of H.R. 3200. CBO indicates that:

In CBO’s view, the budgetary treatment of a public plan would depend critically on who bore the financial risk. If the government stood behind the plan financially, then its expenditures should be considered federal outlays and the payments collected for premiums should be considered either as federal revenues or as offsets to outlays. . . . That approach would be consistent with expenditures for Medicare, which is one potential model for a public plan. Even if such a plan was administered by a third party, the budgetary treatment would be the same as long as the government was backing it financially—because the third party would be acting as an agent of the federal government.⁸

⁶ *Id.*

⁷ *Id.*

⁸ Congressional Budget Office, Economic and Budget Issue Brief, *The Budgetary Treatment of Proposals to Change the Nation’s Health Insurance System 2* (May 27, 2009), available at [www.cbo.gov]. This analysis was released before committees of jurisdiction reported H.R. 3200, but it indicates that many of the proposals that were under consideration when it was released had many of the features that are included in the reported version of that bill. Notably, features that CBO analyzed included a mandate on all or most individuals to have health insurance coverage and the establishment of a public plan to be offered through exchanges alongside private plans. See the brief at 1-2.

According to this passage, the budgetary treatment of a public plan depends on who bears the financial risk. H.R. 3200 by implication appears to require the federal government to bear the financial risk of the public health insurance plan. Section 221(c) authorizes the Secretary of Health and Human Services to enter into contracts for the purpose of performing administrative functions of the public plan, but provides that, “Contracts under this subsection shall not involve the transfer of insurance risk to such entity.”

CBO also states that:

Money collected from the public by the federal government and recorded in the budget can be classified as either governmental receipts (typically called revenues or receipts) or as offsets to spending (that is, amounts deducted from outlays to yield net outlays). For the most part, revenues are collections from the public that result from the exercise of the government’s sovereign power to tax or otherwise compel payment. Offsets to outlays, by contrast, are typically business-like transactions with the public (that is, payments from the public in exchange for goods or services); depending on whether the collections are credited to specific accounts, they may be labeled either “offsetting receipts” or “offsetting collections.” For example, premiums for Parts B and D of Medicare that are paid through withholding from Social Security benefits; income from the sale of timber, minerals, power, and postage stamps; and customs and passport fees are all currently classified as offsetting receipts or collections.

In CBO’s view, a requirement that individuals purchase health insurance combined with tight federal constraints on the market for such insurance or a dominant role for a public plan would constitute a fundamentally governmental system, reflecting the exercise of the government’s sovereign power. In those situations, premiums appearing in the budget—for a public plan or for insurance purchased through exchanges or in the private market—should be recorded as federal revenues. . . .

In contrast, if there was no mandate or if a mandate was imposed in conjunction with an active, loosely restricted private market for health insurance, premiums appearing in the budget—for a public plan or for insurance purchased through exchanges operated by the government—would be associated with businesslike transactions and should be recorded as offsets to outlays.⁹

In this passage, CBO classifies receipts from premiums paid to the public health insurance account either as governmental receipts or as offsetting collections or offsetting receipts on the basis of the degree of control that the federal government will exercise on the private market for health insurance or the degree of dominance of a public plan. While this distinction may have a bearing on how receipts from premiums should be accounted for in the federal budget, it may not be significant for our purpose, *i.e.*, determining how funds, *i.e.*, money, in the account should be classified.

CBO’s classification of expenditures or outlays from a public health insurance account as federal outlays, in contrast, appears highly significant for the purpose of this analysis. It suggests that funds in the account from which these federal outlays will be paid generally may be classified as federal funds or government funds. CBO’s classification does not appear to address whether funds in this account should be classified as public funds.

3. In general, are funds expensed from a Treasury account and spent under the authority of the Secretary of Health and Human Services properly referred to as private funds?

⁹ *Id.* at 6-7.

The response to question 2 suggests that funds expensed from a Treasury account and spent under the authority of the Secretary of Health and Human Services generally would not appear to be referred to as private funds.
