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Commentary: Stronger Estate Tax Should Be Part of Debt Ceiling Deal

Anti-tax ideologue Grover Norquist of Americans for Tax Reform (ATR) and his allies in Congress are calling for repeal of the estate tax. However, as lawmakers look to address our nation's long-term fiscal dilemma, they should consider the estate tax a key piece of the puzzle and should include a stronger version of the tax in any deal to raise the debt limit.

When President Obama reached a compromise with congressional Republicans in December 2010 over extension of the Bush tax cuts and long-term unemployment insurance, the agreement included a little-known deal on extension of the estate tax. Though there was no estate tax in 2010 due to the Bush tax cuts of 2001 and 2003, the tax would have returned in 2011 at pre-2001 levels without congressional action.

The tax policy compromise required only those individuals with multimillion-dollar estates to pay a 35 percent tax on assets worth over $5 million ($10 million for a couple) passed on to heirs. In 2009, the exemption level was already a generous $3.5 million with a 45 percent rate. In 2001, the estate tax had a future requirement that heirs pay a 55 percent tax on any assets above a $1 million exemption level. Other actions taken by Congress on rules for certain retirement account exemptions and generation-skipping transfer taxes will allow even more tax-free estate transfers.

In a May policy paper, the Center on Budget and Policy Priorities (CBPP) argued that the 2009 estate tax levels were already quite munificent and advocated for the current levels to expire at the end of 2012, which coincides with the expiration date of the Bush tax cut compromise. Using estimates from the Urban-Brookings Tax Policy Center, CBPP showed that had Congress reinstated the 2009 estate tax levels for 2011, "only 6,460 estates nationwide – one-quarter of 1 percent of estates – would have owed any estate tax" in 2011. "Thus, 99.75 percent of estates will not benefit from the more generous exemption level and lower rate instated under the tax-cut compromise."

With discussions underway between the White House and Congress over instituting some form of a long-term deficit reduction plan through agreement to raise the nation's borrowing limit, lawmakers have the opportunity to correct this unjust giveaway to the rich and demand a stronger estate tax. Most rumors about the contents of negotiations to raise the debt limit center around roughly $1 trillion in spending cuts over the next ten years while raising approximately $200 billion to $300 billion in additional revenue.

Those spending cuts will hurt programs like Medicaid that helps provide healthcare to the poor, the Securities and Exchange Commission (SEC) that oversees Wall Street, and Women, Infants, and Children (WIC) that provides nutrition to needy mothers, newborns, and children up to age five. If the deal included going back to 2001 estate tax levels, lawmakers could bring in an additional $68 billion over the next ten years, according to the Joint Committee on Taxation, and lessen the need to cut important federal programs.

Sen. Bernie Sanders (I-VT) made a similar argument recently in a letter to the White House, urging President Obama "not to yield to Republican demands to shield the wealthiest Americans and the most profitable corporations from responsibility for lowering deficits and reducing the national debt." Even the administration seems to be moving in this direction, as one staff member remarked to the *Washington Post* that their efforts are "focused on millionaires and billionaires." The estate tax fits that description perfectly.

As economic inequality rises and concentrations of wealth in this nation become more unbalanced, requiring multimillionaires to sacrifice alongside middle- and lower-income families is not only the fair approach to long-term deficit reduction, it is one of the only reasonable options left. Moreover, the public has shown that, if given a choice, they prefer to require high-income earners to help us out of our economic straits. Neither the president nor the vast majority of the Democratic Party were willing to argue for allowing a strong estate tax to come back to pre-Bush tax cut levels late in 2010, but they have the opportunity to do so now. They should do just that.

Administration to Revamp Federal Web Strategy

The Obama administration announced on June 13 a plan to retool its approach to federal websites, with an emphasis on consolidating or eliminating sites. Although the plan has the potential to increase transparency, open government advocates are concerned that important information could end up on the chopping block.

In a memo from the Office of Management and Budget (OMB), Chief Performance Officer Jeffrey Zients details the administration's plan to improve online services. The memo responds to President Obama's April 27 executive order (E.O.) on customer service, including "improving the design and management of agency websites providing services or information to the public." The administration also couched the plan as part of its Campaign to Cut Waste.

"While many Federal websites provide timely and accurate information and services, many others have redundant, outdated, hard to use, or poorly maintained content," Zients wrote. "This duplication not only can cause confusion, but also wastes taxpayer dollars."

Zients continued, "To simplify access to Federal services, the Government needs a comprehensive and consistent strategy for managing its web resources efficiently and assuring that valuable content is available online and is readily accessible."

The memo tasks Chief Information Officer Vivek Kundra with establishing, within 30 days, a task force to update policy for federal websites, including guidelines and best practices.

The administration will instruct agencies on how to improve some sites and eliminate others; by October, agencies will publish their plans for doing so. In the meantime, agencies are not allowed to establish new .gov domains without a waiver from Kundra.

The administration will also post publicly a list of all federal .gov domain names and update the list regularly. The administration is considering how to solicit public feedback on the domains.

The White House has primarily framed the move as a matter of cutting costs. "Most of these cuts we're going to make are small," Vice President Joe Biden said in an e-mail. "However, no amount of waste is acceptable, and these cuts will add up over time."

The White House admits it is difficult even to nail down the precise costs involved. The Energy Department, however, claimed that its web reform efforts had already saved $1 million in the past six months and will ultimately save $10 million per year. Whether comparable savings will be found in other agencies remains unknown.

Despite the focus on cost-cutting, the administration has also claimed that the reforms will result in better service to the public. "The federal government will do more with less, improving how it delivers information and services to the public by reducing the number of websites it maintains," wrote Macon Phillips, White House Director of New Media.

"The Energy Department will need to make new investments in" online communication, wrote Cammie Croft, the Senior Advisor and Director of New Media and Citizen Engagement at the Department of Energy. "The process we are undertaking now will put those efforts on a much better footing ... ensuring the American public gets the information they need, while eliminating wasteful spending none of us can afford."

However, open government advocates remain skeptical. "If the administration is going to reduce the number of websites, will they find a home for the information housed by these sites?" asked the Sunlight Foundation's Daniel Schuman.

Micah L. Sifry of the Personal Democracy Forum called the effort "cheap, dumb and cynical" and remarked, "Remember when the White House thought the internet was cool?"

The administration has not addressed the preservation of these sites. "If old sites are to be taken offline have they been archived properly and are URLs going to be redirected to where the material is being archived?" wondered Gary Price on INFOdocket.

Price's concerns could be reinforced by the fact that FiddlinForesters.gov, a website highlighted by President Obama as an example of "pointless waste and stupid spending that doesn't benefit anybody," had been taken down and returned a "not found" response. According to *NextGov*, the site profiled a group of Forest Service rangers "who sing about ecology, fire safety and the natural beauty of U.S. forests" and was estimated to cost around $125 per year to maintain.

Besides concerns about the loss of existing information, the administration's approach risks deterring efforts to make information newly available online. In comments on the customer service E.O., OMB Watch wrote that agencies should review their existing information services to identify gaps and regularly update websites to add information.

Proposed Congressional Changes to the Regulatory Process Unnecessary

On June 23, several senators outlined proposals for revamping the regulatory system, a system they blame for the nation's economic problems despite evidence to the contrary. Cass Sunstein, administrator of the White House Office of Information and Regulatory Affairs (OIRA), told the senators that the proposals were largely unnecessary and could have harmful unintended consequences.

The exchange between Sunstein and the senators took place at a hearing of the Senate Committee on Homeland Security and Governmental Affairs entitled "Federal Regulation: A Review of Legislative Proposals."

Sen. Joseph Lieberman (I-CT), chair of the committee, called the hearing to allow fellow senators to discuss their proposals for how to change the regulatory system. One of the few acknowledgements that regulations have benefits to society came from Lieberman in his opening comments when he said, "A nation without regulations would be a nation at risk." Smart regulations, he noted, help businesses by providing predictability and accountability.

The hearing's first panel featured Ranking Member Susan Collins (R-ME) and Sens. Olympia Snowe (R-ME), Rob Portman (R-OH), Pat Roberts (R-KS), David Vitter (R-LA), Rand Paul (R-KY), and Mark Warner (D-VA). They presented various ideas that would create more obstacles in the regulatory process and make it harder for agencies to fulfill their mission to protect the American people. Most of these proposals are part of the anti-regulatory agenda of Big Business associations like the U.S. Chamber of Commerce.

The proposals would erect more procedural hurdles in a rulemaking process that is already staggeringly complex. The bills would, among other things, duplicate analyses federal agencies are already legally required to perform and expand the list of analyses to potential impacts from indirect costs and to guidance documents. Other proposals call for allowing judicial review of individual parts of the regulatory process, imposing regulatory "budgets" on agencies, and expanding the reviews of rules OIRA undertakes to include rules promulgated by independent agencies like the Securities and Exchange Commission, the Federal Trade Commission, and the Federal Communications Commission – agencies designed by Congress to function independently from presidential control.

Sunstein was the lone witness on the second panel. He argued that rules have both costs and benefits and that under both Republican and Democratic administrations, the benefits of rules (economic, health, and safety) have outweighed the costs.

He stated that the Obama administration has taken steps to make the regulatory process more cognizant of harsh economic times and emphasized the need for better, evidence-based analyses of potential and existing rules through Obama's Jan. 18 regulatory executive order. That order, combined with laws already in existence, gives the administration the tools it needs to effectively control the flow of regulations and have a sound process, he said.

Executive Order 13563 directed federal agencies to develop and submit preliminary plans to OIRA by May 18. The plans meet the requirement in section 6(b) of the order for each agency to identify how it "will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

Under questioning from Lieberman and Portman, Sunstein said he expected the final retrospective review plans to identify changes in rules that will lead to significant cost savings and reductions in paperwork burdens. A June 14 memorandum from Sunstein directs agencies to quantify these changes and to propose specific timelines for implementing the changes. Final plans are due to OIRA by Aug. 6.

Although he did not directly criticize the legislative proposals in detail, Sunstein noted that one idea that several senators proposed, judicial review of cost-benefit analysis, would likely have unintended consequences and that the courts do not have the "skill set" to deal with the technical complexities of economic tools. Dealing with these issues in the courts would tie up regulatory and deregulatory actions in litigation and delay action.

Sunstein also called "deeply flawed" a report that many have been using to criticize the costs of the regulatory system. The report in question was commissioned by the Small Business Administration's Office of Advocacy and was written by economists Nicole and Mark Crain. It pegs the annual cost of regulations at $1.75 trillion, a figure which many on Capitol Hill and many senators in the hearing have repeated as they argue that federal agencies should halt or delay rules that protect our health, workplaces, communities, and environment. Sunstein noted the figure had become an "urban legend."

The study has been widely discredited by the Congressional Research Service, the Economic Policy Institute, and the Center for Progressive Reform. Even the Crains themselves have said that the number was "not meant to be a decision-making tool for lawmakers or federal regulatory agencies." Austan Goolsbee, the Chairman of the Council of Economic Advisers, wrote in a White House blog post on June 23 that the report's figure was "utterly erroneous."

Noticeably absent from the hearing were perspectives from the small business and non-governmental public interest communities; representatives from those communities were not invited to testify. To help fill the void, the Coalition for Sensible Safeguards, of which OMB Watch is a co-chair, held a press call the day before the hearing that featured powerful stories from a small business leader, a victim of foodborne illness, and a nurse.

All of the call's participants made clear that regulations are necessary and valuable; that protecting the American people and preventing harm are key parts of an agency's mission; and that rulemaking delays and the absence of strong standards and effective enforcement take a great toll on everyday people, often resulting in serious injuries, illnesses, and death.

Lieberman's committee is expected to work to combine some of the ideas outlined in the hearing into new legislative proposals. Several senators indicated a desire to add their own ideas to the mix, although they have not yet formulated drafts of bills.

OMB Watch • 1742 Connecticut Avenue, N.W. • Washington, D.C. 20009
202-234-8494 (phone) | 202-234-8584 (fax)

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