

# Center for American Progress



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**Written Statement Before the House Ways and Means Subcommittee on Tax Policy  
Hearing on Post Tax Reform Evaluation of Recently Expired Tax Provisions  
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Chairman Buchanan, Ranking Member Doggett, Members of the Committee, thank you for the chance to testify on the important subject of “tax extenders.” My testimony will discuss the provisions that were recently extended retroactively through 2017 in the context of our overall fiscal challenges and the recently enacted tax overhaul.

***1. Continuing to renew tax extenders without offsetting them would drain needed revenue, making it harder to meet our fiscal and economic challenges***

The United States needs to raise more revenue, not less, to meet our national challenges. An aging population and the retirement of the Baby Boom generation are putting increasing pressure on the federal budget. Existing levels of revenue will not be enough to fully meet commitments to Social Security and Medicare over the long term. At the same time, the United States has substantially underinvested in critical national priorities, including infrastructure, education, and child care,<sup>1</sup> even as we face new and growing challenges like the opioid crisis. Among advanced economies, the United States is a very low-tax country, ranking 31st out of 35 countries in the Organization for Economic Co-operation and Development (OECD).<sup>2</sup>

In December, the Congressional majority and President Trump enacted major tax legislation (the Tax Cuts and Jobs Act, or TCJA<sup>3</sup>) that will add \$1.5 trillion to deficits over the next ten years according to the official estimate, significantly worsening our fiscal situation. The Administration now projects federal revenue to be just 16.3 percent of gross domestic product (GDP) in fiscal year 2019 – well below historical averages.<sup>4</sup> In fact, the only times when revenue has dipped as low as 16.3 percent of GDP or lower have been in the wake of the last two recessions.<sup>5</sup> It is alarming that revenues are projected to be so low at a time when the Administration forecasts a very strong economy. Corporate tax receipts will average only 1.2 percent of GDP in the coming years, according to the Administration’s projections – 50 percent less than the average over the past three decades.<sup>6</sup>

The remaining tax extenders should be considered in this context. The one-year extension through 2017 of provisions that had expired after 2016, which was included in the Bipartisan Budget Act of 2018, will add approximately \$13 billion to deficits.<sup>7</sup> The cost of extending these expiring provisions over the next decade is much more - \$92.5 billion, according to the Joint Committee on Taxation (JCT).<sup>8</sup> Having passed an extremely costly and irresponsible tax bill that

will result in even more pressure on vital programs and make it harder to address unmet priorities, Congress needs to stop digging. That means that the tax extenders should be addressed at least on a revenue-neutral basis, by offsetting the cost of extending any provisions or keeping them expired.

***2. Stability and permanence are important goals in tax policy. But the tax code is more unstable, with more temporary provisions, than before “tax reform.”***

The fact that we are even here today is a further illustration of why the tax law enacted in December failed basic tests for “tax reform.” The unfortunate fact is that the tax code is significantly more unstable and uncertain, with many more expiring or delayed provisions, than was the case beforehand. Prior to passage of TCJA, there were just 11 income tax provisions that were due to expire in the future, by JCT’s count; now, there are 35.<sup>9</sup> With few exceptions, all of the individual tax changes made by TCJA are temporary. Several significant business tax cuts are also temporary, creating new “extenders.”<sup>10</sup> Many of the business revenue-raisers are also delayed. If there is one basic expectation for tax reform, it would have been to end the year-to-year uncertainty caused by Congress’s extenders habit and increase the permanence of the tax code. But here we are.

It should also be noted that expiring and delayed provisions are only one source of tax code instability. The hasty, untransparent consideration of the tax bill and the decision to create new tax preferences, including in particular the new section 199A deduction for certain passthrough business income, has produced troublesome glitches as well as vast new tax avoidance opportunities. The complexities of the new law, especially given the lack of deliberation, public hearings, and sufficient time for scrutiny by experts, will result in unanticipated consequences and costs for years to come.<sup>11</sup> Treasury and the Internal Revenue Service (IRS) now face the immediate challenge of interpreting and enforcing the new law, but many of the problems will likely only be fixed with future legislation – which Congress is already being asked to consider in some areas.<sup>12</sup> The net result is a tax code that is significantly more unstable than before Congress passed what was billed as a once-in-a-generation tax reform.

***3. Renewing extenders without paying for them would further undermine the agreement Congress made in 2015 to address the extenders***

Before TCJA, Congress had made progress in addressing the extenders. The list of extenders was much larger in 2015, when Congress reached an agreement to make some of them permanent while allowing others to expire at the end of 2016. That agreement, called the Protecting Americans from Tax Hikes Act (PATH Act), was intended to end the ritual of extending provisions for one or two years at a time while adding their cost to the deficit. For example, Speaker Ryan said that “we are ending Washington’s days of extending tax policies one year at a time.”<sup>13</sup> Chairman Brady said that the 2015 extenders deal would “identif[y] what truly are permanent parts of the code.”<sup>14</sup> Senate Finance Chairman Hatch asserted that the PATH Act would put “an end to the repeated tax extenders exercise that has plagued Congress for decades.”<sup>15</sup> He said it would “adjust the tax and revenue baseline to make conditions vastly more favorable for comprehensive

tax reform in the future” – implying that Congress would adhere to the revenue baseline set by the PATH Act.

The clear intent was that the provisions expiring in 2016 would either be allowed to expire or be addressed in comprehensive tax reform. As its proponents argued, the PATH Act created stability and certainty – and it stanching the fiscal damage from extenders by allowing many provisions to expire and putting others on a glide path to expiration.

Congress has now unfortunately backslid into old habits, renewing the tax breaks that had expired after 2016, including special-interest tax breaks like the shorter depreciation schedules for racehorses, motorsports racetracks, and film and television productions. To be sure, some of these provisions serve important national interests like promoting energy efficiency. But extending them on a temporary basis, and even worse on a retroactive basis, makes them less effective than they should be. Meanwhile, our tax code still includes permanent subsidies for fossil fuels that have existed for decades. TCJA was a missed opportunity to modernize our tax code to end inefficient fossil fuel subsidies and strengthen incentives for clean and renewable energy. One way that temporary incentives for clean and renewable energy can be extended and/or made permanent in a fiscally neutral way is by rolling back fossil fuel subsidies.

#### ***4. Extending tax breaks retroactively is the worst of all worlds***

The provisions we are discussing today all expired at the end of 2016 and were extended retroactively for 2017 more than a month into 2018. It is not possible to incent behavior in the past. When Congress subsidizes activities or business decisions that have already happened, it is simply conferring a windfall on certain taxpayers, with no hope of boosting economic activity or jobs or influencing decision-making in a positive way.

Retroactive tax changes also disrupt the tax filing process. The IRS had already opened the 2017 tax filing season, and people had already filed tax returns, when Congress renewed the extenders for 2017. The IRS was not ready to process certain tax breaks, and recommended to taxpayers that they either wait longer to file their taxes or file, and then submit amended returns.<sup>16</sup> This pointless confusion adds to the burdens on filers, who deal with enough complexity to begin with, and on the already-stretched IRS.

#### ***5. Tax extenders create the opportunity for budget gimmickry that obscures the deficit impacts of tax cuts***

Sometimes there are very legitimate reasons for making a tax provision temporary – to provide tax cuts to counteract a recession, for example. But Congress has also used “sunsets” to obscure the real long-term costs of new tax cuts. And last year, Congress used temporary tax cuts whose long-term cost was never built into budgets to justify *new* tax cuts. One of the main ways that the Administration and congressional proponents of TCJA argued that the bill would cost less than the official estimate of about \$1.5 trillion was to measure their bill against a so-called “current policy” baseline that assumed Congress would extend expiring tax breaks.<sup>17</sup> In other words, proponents argued that the cost of the new tax overhaul should be measured not against current

law revenue levels, but against the lower revenue levels under an alternative scenario in which Congress extended all the expiring tax breaks forever. They assumed that any tax overhaul would appear \$400 billion or \$500 billion less costly if compared against “current policy” rather than current law.

This approach was problematic for a number of reasons. Congress had never budgeted for the permanent extension of the extenders – each of them were scored as temporary when originally enacted or when renewed – so measuring new major legislation against a current policy baseline hid the fact that making these provisions permanent entailed substantial fiscal costs. And after the PATH Act, it was inappropriate to measure policies against a “current policy” baseline given Congress’s clear intent to allow the 2016 extenders to expire.

Congress did not officially use a current policy baseline for TCJA, but it was one of the major excuses that the Administration and Members of Congress used for dismissing TCJA’s \$1.5 trillion deficit impact. Just two months later, however, Congress renewed many of the provisions that it had just implicitly taken credit for ending – and did so only for one year, thus obscuring their long-term cost. Through this process, Congress is bootstrapping costly tax cuts on top of each other without budgeting honestly for the long-term deficits that will result.

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In conclusion, Congress should have ended the gimmicky routine on tax extenders long ago, and certainly should have done so in legislation that was billed as a once-in-a-generation tax reform. But better late than never. That means that Congress should address the 2017 extenders responsibly by fully offsetting the cost of making provisions permanent or actually letting them expire. And it should do the same for the many other temporary or delayed provisions Congress will confront in the coming years. Revenue under current law is insufficient to meet our national needs and Congress should not make the problem worse with more unpaid-for tax cuts.

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<sup>1</sup> See, e.g., Katie Hamm and Julie Kashen, “A Blueprint for Child Care Reform” (Washington: Center for American Progress, 2017), available at <https://www.americanprogress.org/issues/early-childhood/reports/2017/09/07/438428/blueprint-child-care-reform/>; Simon Workman and Jessica Troe, “Early Learning in the United States: 2017” (Washington: Center for American Progress, 2017), available at <https://www.americanprogress.org/issues/early-childhood/reports/2017/07/20/436169/early-learning-united-states-2017/>; Kevin DeGood and others, “An Infrastructure Plan for America” (Washington: Center for American Progress, 2016), available at <https://www.americanprogress.org/issues/economy/reports/2016/07/14/141157/an-infrastructure-plan-for-america/>.

<sup>2</sup> Organisation for Economic Co-operation and Development, “Revenue Statistics 2017 – the United States” (2017), available at <https://www.oecd.org/tax/revenue-statistics-united-states.pdf>.

<sup>3</sup> The official name is “an act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018” (P.L. 115-97).

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<sup>4</sup> Office of Management and Budget, “Historical Tables, Table 1.2: Summary of Receipts, Outlays and Surpluses or Deficits 9-) as Percentages of GDP: 1930-2023,” available at <https://www.whitehouse.gov/omb/historical-tables/>.

<sup>5</sup> Dylan Matthews, “Obama’s chief economist: Trump’s economic projections are ‘the most absurd I’ve ever seen,’” *Vox*, February 19, 2018, available at <https://www.vox.com/policy-and-politics/2018/2/19/17012288/trump-budget-proposal-obama-chief-economist-jason-furman-interview>.

<sup>6</sup> Office of Management and Budget, “Historical Tables, Table 2.3: Receipts by Source as Percentages of GDP: 1934-2023,” available at <https://www.whitehouse.gov/omb/historical-tables/>.

<sup>7</sup> Note that JCT estimated that the total cost of extending expiring provisions included in the Bipartisan Budget Act of 2018 would be \$15.1 billion. However, this includes the cost of the bill’s modification of nuclear power credits (\$637 million) and two energy provisions that were extended through 2021 (\$1.4 billion). Joint Committee on Taxation, “Estimated Budget Effects Of The Revenue Provisions Contained In The ‘Bipartisan Budget Act Of 2018,’” JCX-4-18, available at <https://www.jct.gov/publications.html?func=startdown&id=5061>.

<sup>8</sup> The Joint Committee on Taxation, “Federal Tax Provisions Expired in 2017,” JCX-5-18, available at <https://www.jct.gov/publications.html?func=startdown&id=5062>. JCX-4-18.

<sup>9</sup> Compare Joint Committee on Taxation, “List of Expiring Federal Tax Provisions 2016-2026” JCX-1-17, available at <https://www.jct.gov/publications.html?func=showdown&id=4966> with Joint Committee on Taxation, “List of Expiring Federal Tax Provisions 2016-2027” JCX-1-18, available at <https://www.jct.gov/publications.html?func=showdown&id=5057> ([counting bonus depreciation-related provisions as one provision in each instance](https://www.jct.gov/publications.html?func=showdown&id=5057)).

<sup>10</sup> For example, tax cuts for craft beverage producers and for certain employers that provide family and medical leave are temporary, while several revenue-raising provisions are delayed including amortization of research expenses, stricter interest deduction limits, and changes to the new international tax regimes.

<sup>11</sup> See David Kamin et al, “The Games They Will Play: An Update on the Conference Committee Tax Bill (updated Dec. 18, 2017), <https://www.ssrn.com/abstract=3089423>.

<sup>12</sup> See Brian Faler, “This Is Not Normal: Glitches Mar New Tax Law,” *Politico*, Feb. 24, 2018, <https://www.politico.com/story/2018/02/24/tax-law-glitches-gop-423434>; Jim Tankersley and Alan Rappeport, “G.O.P. Rushed to Pass Tax Overhaul. Now It May Need to Be Altered,” *N.Y. Times*, March 11, 2018, <https://www.nytimes.com/2018/03/11/us/politics/tax-cut-law-problems.html>.

<sup>13</sup> Press Release, Speaker Ryan Press Office, “Speaker Ryan: This is a Big Win for American Jobs,” Dec. 16, 2015, <https://www.speaker.gov/video/speaker-ryan-big-win-american-jobs>.

<sup>14</sup> Richard Rubin, “Q&A: House Ways and Means Chairman Kevin Brady’s Tax Plans,” *Wall St. Journal*, Nov. 6, 2015, <https://kevinbrady.house.gov/news/documentsingle.aspx?DocumentID=399400>.

<sup>15</sup> Senator Orrin Hatch, “Hatch: PATH Act Provides Critical Tax Relief and Stability of Utah Families and Job Creators,” press release, December 16, 2015, available at <https://www.hatch.senate.gov/public/index.cfm/2015/12/hatch-path-act-provides-critical-tax-relief-and-stability-for-utah-families-and-job-creators>.

<sup>16</sup> Kelly Phillips Erb, “IRS Now Accepting Returns Claiming Some (But Not All) Tax Extenders” *Forbes*, February 22, 2018, available at <https://www.forbes.com/sites/kellyphillips/2018/02/22/irs-now-accepting-returns-claiming-some-but-not-all-tax-extenders/#4315137e6769>.

<sup>17</sup> See, e.g., “A Better Way: Tax” <https://abetterway.speaker.gov/assets/pdf/ABetterWay-Tax-PolicyPaper.pdf> (June 24, 2016) (“House Republicans measure revenue neutrality by reference to a ‘current policy baseline’ i.e. achieving a level of Federal revenues that is approximately \$400 billion less over the ten-year window than the current law baseline.”); Treasury Department, “Analysis of Analysis of Growth and Revenue Estimates Based on the U.S. Senate Committee on Finance Tax Reform Plan”, Dec. 11, 2017, available at <https://www.treasury.gov/press-center/press-releases/Documents/TreasuryGrowthMemo12-11-17.pdf>; Jonathan Allen, “This One Word Is Worth \$500 Billion as Congress Debates Tax Cuts” *NBC News*, September 29 2017, available at <https://www.nbcnews.com/politics/congress/one-word-worth-500-billion-congress-debates-tax-cuts-n805741>; Bernie Becker, “Setback,” *Politico*, Dec. 1, 2017, available at <https://www.politico.com/newsletters/morning-tax/2017/12/01/setback-038103>.