

**MEMBER QUESTIONS SUBMITTED FOR THE RECORD
HOUSE WAYS AND MEANS COMMITTEE
PRESIDENT'S FY 2013 BUDGET
SECRETARY GEITHNER
FEBRUARY 15, 2012**

Rep. Shelley Berkley

- 1. Some state and local governments have raised concerns that the Administration's proposal to cap the amount of bond interest top income earners can deduct from their taxes may make it more difficult to fund capital projects. Is the administration open to working with states and municipalities to balance the need for income equality with the importance of investing in our infrastructure?**

The Administration is open to working with states and municipalities to improve investment in infrastructure. In fact, the Treasury Department, along with the President's Council of Economic Advisers recently issued a report titled, "A New Economic Analysis of Infrastructure Investment" focused on this very point, a copy of which is available on the Treasury website: <http://www.treasury.gov/resource-center/economic-policy/Documents/20120323InfrastructureReport.pdf>.

One way to address the issue that you raise would be to enact the Administration's FY 2013 Budget proposal to reinstate the Build America Bonds (BABs) program. The Administration's FY 2013 Budget proposal would make the BABs program permanent, with a borrowing subsidy rate of 30 percent through 2013 and 28 percent thereafter.

The BABs program was quite successful in expanding the market for state and local governmental debt. In 2009 and 2010, more than \$181 billion in BABs were issued in over 2,275 separate transactions in all 50 states, plus the District of Columbia, Puerto Rico, and the Virgin Islands. BABs program benefits include: (1) a bigger and broader market for investors without regard to tax liability; (2) an efficient borrowing subsidy delivered through direct subsidy payments to state and local governmental issuers; (3) a potential streamlined compliance framework; and (4) relief for supply pressures on traditional tax-exempt bonds and assistance in reducing interest rates on tax-exempt bonds. BABs save taxpayers money. Support is also widespread for reinstating BABs, particularly among state and local governments who were able to save their residents billions through lower borrowing costs as a result of using BABs. The National Association of State Treasurers, the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the Council of State Governments, and the National Association of State Auditors, Comptrollers, and Treasurers have all endorsed bringing back BABs.

Rep. Diane Black

Line of questioning regarding Argentina's bonds that the government defaulted on in 2001. The Treasury Department has been helpful, and I am requesting an update from the Secretary on their current efforts.

1. Evading Court Judgments

Mr. Secretary, as you know, the Republic of Argentina defaulted on over \$81 billion in international bonds in 2001, much of which were issued under U.S. law. In subsequent litigation, over 100 judgments have been entered against Argentina, none of which Argentina has paid. Obviously, respect for the rule of law and the judgment of courts is essential for a healthy financial system. Please tell us what steps the Treasury Department is taking to urge Argentina to meet its obligations.

Mr. Secretary, I'd like you to address Argentina's financial misbehavior and its implications for the international system. As you know, in 2001 Argentina defaulted on billions of dollars in sovereign bonds that it had issued under New York law. Despite having freely agreed to be bound by New York law, it has repeatedly ignored over 100 US court judgments against it, totaling more than \$7 billion. Do you agree that by evading its legal obligations, Argentina is undermining the integrity of international bond contracts and the US legal system? What action is your Department taking to compel Argentina to meet its commitments?

On the margins of the Cannes G-20 Summit in November, President Obama discussed with President Fernandez de Kirchner the need for Argentina to normalize its relationship with the international financial and investment community and urged Argentina to take concrete actions with respect to repayment of outstanding arrears and complying with final and binding arbitral awards. Administration officials have followed up with Argentine officials to reinforce the President's message. On March 26 of this year, President Obama announced the suspension of Argentina's eligibility under the Generalized System of Preferences because of Argentina's failure to pay two longstanding International Center for Settlement of Investment Disputes (ICSID) awards in favor of U.S. companies.

Also, as you know, the Treasury Department continues to oppose multilateral development bank (MDB) lending to Argentina due to the government's failure to honor its international commitments. Our policy allows for a narrow exception when programs effectively target very poor and vulnerable populations.

2. Paris Club

There are reports that the Treasury Department is considering allowing Argentina to restructure its official debt through the Paris Club. I note that the portion of this debt owed to the US government (approximately \$300 million) is relatively small compared to the over \$3.5 billion Argentina owes private US creditors. Indeed, studies have shown that if Argentina were to pay what it owes private Americans, the US Treasury would receive far more revenue from the taxes on those payments than it

would from settling the government-to-government debt. Given these facts, could you assure the Committee that the Treasury Department will withhold approval of a Paris Club deal for Argentina until Argentina has satisfied all awards under the US-Argentine bilateral investment treaty and the outstanding US court judgments against it?

Argentina's arrears to U.S. government agencies total about \$550 million, and U.S. government efforts, including through the Paris Club, are appropriately focused on recovering full payment on these loans extended on behalf of American taxpayers. Imposing additional conditions that are unrelated to the government's claims could undermine the government's recoveries, which would not be in the taxpayers' interest.

We are not aware of any studies that show that more than the \$550 million Argentina owes the U.S. government would be collected in taxes were Argentina to pay other creditors. In any case, Administration efforts to recover on loans extended on behalf of our taxpayers in no way diminishes our urging of Argentina to resolve the claims of private American investors.

3. IMF

Mr. Secretary, considering that the IMF may be asked to play a significant role in resolving the Eurozone crisis, it is critical that the US do all it can to maintain global respect for the IMF as an institution. In this regard, I note with dismay that Argentina is one of four countries that continues to reject a consultation under Article IV of the IMF Charter (the others being Somalia, Venezuela and Ecuador). In order to maintain confidence in the IMF, will the US continue to insist that Argentina submit to an Article IV consultation? Do you foresee any dilution of this requirement?

The United States will continue to insist that Argentina submit to an Article IV consultation.

The obligation to undergo IMF surveillance is enshrined in the IMF's Articles of Agreement, and we do not foresee any dilution of this requirement.

Rep. Joseph Crowley

- 1. Mr. Secretary, as you know, the Republic of Argentina defaulted on over \$81 billion in international bonds in 2001, much of which were issued under U.S. law. In subsequent litigation, over 100 judgments have been entered against Argentina, none of which Argentina has paid. Respect for the rule of law and the judgment of courts is essential for a healthy financial system. Please tell what if any steps the Treasury Department is taking to urge Argentina to meet its obligations.**

Mr. Secretary, I'd like you to address Argentina's financial situation and its implications for the international system. As you know, in 2001 Argentina defaulted on billions of dollars in sovereign bonds that it had issued under New York law. Despite

having freely agreed to be bound by New York law, it has not addressed over 100 US court judgments against it, totaling more than \$7 billion. By avoiding its legal obligations, could one argue that Argentina is undermining the integrity of international bond contracts and the US legal system? What action is your Department taking to ensure Argentina meets its commitments?

On the margins of the Cannes G-20 Summit in November, President Obama discussed with President Fernandez de Kirchner the need for Argentina to normalize its relationship with the international financial and investment community and urged Argentina to take concrete actions with respect to repayment of outstanding arrears and complying with final and binding arbitral awards. Administration officials have followed up with Argentine officials to reinforce the President's message.

Also, as you know, the Treasury Department continues to oppose multilateral development bank (MDB) lending to Argentina due to the government's failure to honor its international commitments. Our policy allows for a narrow exception when programs effectively target very poor and vulnerable populations. On March 26 of this year, President Obama announced the suspension of Argentina's eligibility under the Generalized System of Preferences because of Argentina's failure to pay two longstanding International Center for Settlement of Investment Disputes (ICSID) awards in favor of U.S. companies.

Rep. Richard Neal

- 1. Secretary Geithner, I'd like to congratulate you and your staff for issuing proposed regulations that would help achieve the goals of the Foreign Account Tax Compliance Act (FATCA), which target Americans using foreign accounts to cheat on their taxes. One of my priorities on the Ways & Means committee has been tackling the issue of tax cheats (whether they be individuals or corporations) who attempt to hide their income overseas to avoid paying taxes in the U.S. So I applaud your efforts in this area - I think it's an important step. When do you expect that we'll see final regulations?**

I also was pleased that the United States issued a joint statement with France, Germany, Italy, Spain and Britain stating that all of the countries will intensify their cooperation in combating international tax evasion - and the six countries intend to implement a government to government approach to FATCA implementation. Can financial institutions rely on this statement or will additional steps, including the passage of local laws, need to occur first? Are conversations occurring with other countries to implement a similar approach? Canada? Switzerland? China?

The comment period on the proposed regulations, which were issued on February 8, 2012, ended on April 30, 2012, and a public hearing occurred May 15, 2012. In order to provide guidance as timely as possible to financial institutions and other affected parties, Treasury and the IRS intend to finalize the regulations by the end of this summer.

The joint statement issued by the Treasury Department and the five European Union countries was not a legal agreement and instead announced a framework for agreements that

would permit the implementation of FATCA on a government-to-government basis. Accordingly, discussions between these countries and the Treasury Department and the IRS are continuing with a goal of developing agreements consistent with the framework announced in the joint statement as expeditiously as possible. Treasury and the IRS are also engaged in discussions with a number of other foreign governments, and are open to exploring such an approach with other governments, where appropriate.

- 2. In 2007, I introduced a bill to address the tax treatment of exchange trade notes (ETNs). Although these ETNs are issued by banks in the form of a debt instrument, they are not treated as debt for tax purposes. Instead, investors are told these ETNs will defer tax on investment income earned along the way, for as long as 30 years, and then turn all that income into long-term capital gain. This tax treatment is not the result of any legislation by Congress but instead results from a gap in the tax law. My bill was intended to fill that gap.**

I continue to be very concerned about this issue. As I consider next steps with respect to my legislation, could you comment on whether Treasury will be issuing guidance on the tax treatment of ETNs?

ETNs are part of a larger class of financial instruments commonly referred to as prepaid forward contracts. The Priority Guidance Plan, which describes the projects that are the highest priority for guidance from the Treasury Department and the IRS each year, includes guidance on prepaid forward contracts. It is anticipated that guidance will be issued on prepaid forward contracts by June 30, 2012.

- 3. Secretary Geithner, the National Defense Authorization Act includes language clarifying Custom and Border Protection's authority to disclose information to rightsholders whose trademarks appear on suspect dangerous counterfeit imports. Even so, I have been told that counterfeit chips have made their way into sensitive defense department systems and in critical civilian products like defibrators, automobile air bags and antilock breaking systems.**

Congress' clear intent was for CBP to immediately return to its prior practice of sharing complete photographs of potentially dangerous counterfeit imports with the rightsholders and it was thought that this could be done with no further administrative action other than an email to the CBP Port Officers.

About a month and a half have now passed since the enactment of the NDAA. Can you please explain Treasury's position on the NDAA law? When will Treasury implement this law?

I share your interest in expanding Customs and Border Protection's ability to share information about and samples of imported goods suspected of being counterfeit with rights holders of the trademarks on those goods suspected of being counterfeited for purposes of

determining whether the imports are counterfeit. To that end the Treasury and the Department of Homeland Security published an interim rule on April 24, 2012 that will enable information sharing. This matter is important both to our national security and to the strength of our nation's economy.

Rep. Devin Nunes

- 1. Mr. Secretary, on the issue of money market funds, there were some very constructive reforms that the SEC spearheaded in 2010 that improved the credit quality, maturity, liquidity, and transparency of money market funds. These reforms appear to be working very well. Now I'm reading about further proposals the SEC is developing that involve extreme measures, such as requiring these funds to float their net asset value or to impose capital burdens and impose "redemption restrictions" that would deny investors full use of their cash. I'm concerned that these latest proposals would drive assets out of money market funds to the point of decimating the product, reduce liquidity in short term credit markets, and impose added costs on investors. Are you committed to safeguarding against such negative impacts?**

We cannot comment on the specifics of any potential proposed rules that the SEC may be considering, but Treasury is supportive of the SEC's efforts to move forward with additional reforms. Money market funds contributed to instability during the financial crisis in 2008 and at the time, the previous Administration and the Federal Reserve were forced to intervene to prevent a widespread run on money market funds. It is critical that taxpayers will never again be on the hook for Wall Street's failures.

As you acknowledge, the SEC has already taken actions to reduce risks in the industry by strengthening the portfolio credit and liquidity requirements under Rule 2a-7 in February 2010. We agree that money market funds are more resilient today than they were in the lead-up to the financial crisis, but further reform is needed to improve the stability of the industry. Both the President's Working Group Report in 2010 and the Financial Stability Oversight Council's 2011 Annual Report reiterated the need for additional structural reforms to reduce money market funds' susceptibility to runs.

We look forward to your input on the proposed reform options when the SEC publishes a proposed rule.

Rep. Adrian Smith.

- 1. As a result of a bipartisan agreement, the estate tax is imposed at a top rate of 35 percent, with a \$5 million exemption for 2011 and 2012. Effective for 2013, President Obama proposes to make permanent the estate tax parameters which were in effect for 2009 – a top rate of 45 percent and a \$3.5 million exemption, which would not be indexed for inflation. By not including an automatic inflation adjustment, is it the Administration's intention to eventually impose this tax on more and more Americans**

each year, including the middle class? Does the President think he is offering a permanent solution?

The Budget's proposal on the estate tax contains an exemption amount that is substantially larger than the \$1 million exemption scheduled to go into place in 2013 should the law not be changed. With a \$3.5 million exemption amount, less than 0.5 percent of estates would be subject to any tax. That said, we are willing to work with Congress to develop an estate tax system that is fair and fiscally responsible.

Rep. Mike Thompson

- 1. [Tax Policy] Secretary Geithner, many people who support the repeal of Last-In, First-Out (LIFO) argue that such repeal is inevitable because of the potential adoption by the Securities and Exchange Commission (SEC) of International Financial Reporting Standards (IFRS) on registered U.S. companies. As you know, IFRS does not allow the use of LIFO, so some proponents of LIFO repeal argue that Congress should repeal LIFO now and garner the purported budgetary savings before the SEC enacts IFRS and the chance to score LIFO repeal is diminished or eliminated.**

My understanding, however, is that the SEC has not yet made any decisions on the adoption of IFRS and there is some discussion that the SEC is not likely to impose IFRS in its entirety on SEC registered companies. I have been told that the trend internationally has been for countries that adopt IFRS to do so with "carve-outs" for difficult issues, and that the LIFO method could be preserved for U.S. registered companies under that approach, even if IFRS is otherwise required for those companies. Does the Administration support the "inevitability argument" described above in regard to LIFO repeal and, if so, how would the Administration deal with the counter argument that it is premature to assume that the SEC will come out in favor of LIFO repeal?

The Securities and Exchange Commission (SEC), the International Accounting Standards Board (IASB), and the Financial Accounting Standards Board (FASB) are working together to address areas of IFRS/U.S. GAAP (Generally Accepted Accounting Principles) divergence to achieve the overall goal of developing a single set of high-quality financial accounting standards that produce internationally comparable financial information. It has been the policy of this Administration and prior Administrations to support financial accounting standards convergence. Until the IASB and FASB complete their work converging accounting standards, however, it is unclear whether all current IFRS standards will be adopted for SEC registrants.

Whether or not the SEC decides to adopt all current IFRS standards, the President's FY 2013 Budget proposes to repeal the Last-In, First-Out (LIFO) method of accounting for tax purposes. The repeal of LIFO would eliminate a tax deferral opportunity for taxpayers that hold inventories, the costs of which increase over time. In addition, LIFO repeal would

simplify the Code by removing a complex and burdensome accounting method that has been the source of controversy between taxpayers and the IRS.