

## COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

December 15, 2021

Phillip L. Swagel, Director  
Congressional Budget Office  
Ford House Office Building  
Washington, DC 20515-6925

Director Swagel:

We write to request the Congressional Budget Office (CBO) update their cost estimate of Title XIII, Subtitle J of the Build Back Better Act (H.R. 5376) to note assumptions made regarding pending litigation before the United States Supreme Court.

CBO estimated the cost of Subtitle J, to expand access to Supplemental Security Income (SSI) to residents of the Territories, would increase direct spending by \$268 million over ten years.<sup>1</sup> Yet, the agency failed to disclose a highly questionable assumption that results in as much as \$10 billion in additional costs.

**We believe this is a significant lapse in the agency's obligation to provide transparent budgetary analysis to Congress resulting in a substantial under-estimate of the real cost of this provision included in the Build Back Better legislation.**

Last year, the Social Security Administration's Chief Actuary estimated the cost of expanding SSI to the Territories at \$23 billion over ten years.<sup>2</sup> It therefore surprised us to learn that CBO estimated the same policy to be as low as \$268 million. After investigating it has come to our attention that CBO omitted a key summary note in the tables provided to the Committee.

In its estimate, CBO assumed that the First Circuit Court of Appeals ruling in *United States v. Vaello-Madero*<sup>3</sup> would be upheld by the U.S. Supreme Court. The First Circuit found it unconstitutional to exclude U.S. citizens living in Puerto Rico from receiving SSI benefits.

Despite the fact that this ruling was appealed and is currently awaiting a decision by the Supreme Court, CBO assumed the Social Security Administration would immediately adhere to the lower court ruling and begin providing SSI benefits to Puerto Rico. In reality, SSA is not providing SSI benefits to Puerto Rico and is awaiting the Supreme Court's decision.

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<sup>1</sup> "Estimated Budgetary Effects of Title XIII, Committee on Ways and Means, H.R. 5376, the Build Back Better Act," Congressional Budget Office, November 18, 2021.

<sup>2</sup> "Estimated Change in Federal SSI Program Cost for Potential Extension of SSI Eligibility to Residents of Certain U.S. Territories," Office of the Chief Actuary, Social Security Administration, June 11, 2020.

<sup>3</sup> *United States v. Vaello-Madero*, No. 19-1390 (1st Cir. 2020).

This critical assumption resulted in CBO excluding the entirety of the additional cost of expanding SSI to Puerto Rico in the Build Back Better Act, an estimated \$10 billion, while at the same time failing to disclose this assumption in the published cost estimate.

In addition, it is highly questionable that CBO would presume the outcome of a pending Supreme Court case as a matter of official agency policy in developing its cost estimates. In an exchange with Committee staff, CBO stated:

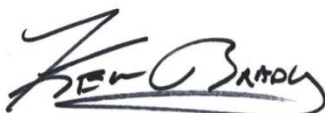
*“CBO [uses] guidelines to inform its estimates in light of uncertainty at the judicial level. The guideline that applies in this situation says if a circuit court has sole jurisdiction over the relevant type of claim and it makes a ruling, incorporate that ruling into our baseline. When the First Circuit in April 2020 ruled that people living in Puerto Rico were entitled to SSI benefit, we added people living in Puerto Rico to our SSI baseline because the First Circuit has sole jurisdiction over cases involving Puerto Rico... Furthermore, our guideline instructs us to keep the costs of SSI to people living in Puerto Rico even if the case is being appealed to the Supreme Court. If the Supreme Court rules that people living in Puerto Rico are not entitled to SSI, we will remove the costs from our baseline.”<sup>4</sup>*

In the Build Back Better Act, these guidelines pertaining to CBO’s assumption of the outcome of an actively litigated court case resulted in a drastically lower cost estimate.

We request CBO amend their cost estimate of Title XIII to include a summary note that explains this assumption to the public and the resulting difference in cost. Further, we request CBO provide to the Committee, and make publicly available, its guidelines related to pending litigation that impact estimates provided to Congress.

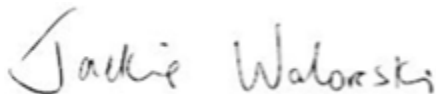
We request a response in the next two weeks.

Sincerely,



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Kevin Brady  
Ranking Member  
Committee on Ways and Means



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Jackie Walorski  
Ranking Member, Subcommittee on Worker and Family Support  
Committee on Ways and Means

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<sup>4</sup> Email from CBO to Minority Committee staff dated November 30, 2021.