

*“The American Jobs and Closing Tax  
Loopholes Act of 2010”  
H.R. 4213*

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# **I. PROMOTING AMERICAN JOBS**

## **a. SMALL BUSINESS LENDING**

**Small Business Administration.** The bill would extend the *American Recovery and Reinvestment Act* small business lending program that eliminates the fees normally charged for loans through the SBA 7(a) and 504 loan programs and increases the government guarantees on 7(a) loans from 75% to 90%. Since its creation, the program has supported over \$26 billion in small business lending, which has helped to create or retain over 650,000 jobs. *This provision is estimated to cost \$505 million over 10 years.*

## **b. INFRASTRUCTURE INVESTMENTS**

**Build America Bonds (“BABs”).** To date, the Build America Bonds program has been used by State and local governments to make \$97 billion of infrastructure investments nationwide. The bill would extend this program for two years (through 2012). For direct-pay Build America Bonds issued in 2011, the amount of the direct payment would be reduced from 35% to 32% of the coupon interest. For such bonds issued in 2012, the amount of the direct payment would be reduced to 30% of the coupon interest. The bill would also allow issuers to issue Build America Bonds to effect a current refunding of outstanding Build America Bonds; as a result, issuers and the Federal government could save money if interest rates fall in the future. *This provision is estimated to cost \$4.042 billion over 10 years.*

**Recovery Zone Bonds (“RZBs”).** The *American Recovery and Reinvestment Act* authorized \$10 billion in Recovery Zone economic development bonds and \$15 billion in Recovery Zone facility bonds. These bonds could be issued during 2009 and 2010. Each state received a share of the national allocation based on that state’s job losses in 2008 as a percentage of national job losses in 2008, with each state receiving a minimum allocation of these bonds. These allocations were then sub-allocated to local municipalities. Municipalities receiving an allocation of these bonds would be permitted to use these bonds to invest in infrastructure, job training, education, and economic development in areas within the boundaries of the State, city or county (as the case may be) that has significant poverty, unemployment or home foreclosures. Because the formula that was used in the *American Recovery and Reinvestment Act* looked to net job losses instead of unemployment, some areas of the country with significant numbers of unemployed individuals did not receive any allocation of Recovery Zone bonds. The bill would make an additional allocation of Recovery Zone bonds to ensure that each local municipality receives a minimum allocation equal to at least its share of national unemployment in December 2009. The bill would also extend the authorization for issuing Recovery Zone bonds through 2011. *This provision is estimated to cost \$2.385 billion over 10 years.*

**Water and sewer exempt-facility bonds excluded from state volume caps.** Under current law, State agencies are generally subject to a cap with respect to the volume of private activity bonds they may issue. Certain bonds are not subject to these state volume caps. For example, bonds to finance airports, docks and wharves are excluded from state volume caps. Furthermore, qualified veterans’ mortgage bonds and qualified 501(c)(3) bonds are also excluded from state

volume caps. The bill would exclude bonds financing facilities that furnish water and sewage facilities from state volume caps. The bill would also exclude bonds financing facilities that furnish water and sewage facilities from certain limitations on tribal government issuances. *This provision is estimated to cost \$372 million over 10 years.*

**Eliminate costs imposed on State and local governments by the alternative minimum tax.**

The alternative minimum tax (AMT) can increase the cost to State and local governments of issuing tax-exempt private activity bonds. In general, interest on tax-exempt private activity bonds is generally subject to the AMT. This limits the marketability of these bonds and, therefore, forces State and local governments to issue these bonds at higher interest rates. The *American Recovery and Reinvestment Act* excluded private activity bonds from the AMT if the bond was issued in 2009 or 2010, and allowed AMT relief for current refunding of private activity bonds issued after 2003 and refunded during 2009 and 2010. The bill would extend both of these *American Recovery and Reinvestment Act* provisions for one year (i.e., exempt from AMT tax-exempt private activity bonds issued in 2011 and current refunding of private activity bonds issued after 2003 and refunded during 2011). *This provision is estimated to cost \$224 million over 10 years.*

**Direct payment in-lieu-of low-income housing credit for 2010.** The bill would extend for one year (through 2010) the program that was enacted as part of the *American Recovery and Reinvestment Act* that allows state housing agencies to elect to receive a payment in lieu of a portion of the State's allocation of low-income housing tax credits. *This proposal is estimated to cost \$11 million over 10 years.*

**Extension of tax-exempt eligibility for loans guaranteed by Federal Home Loan Banks.**

State and local governments currently face significant costs when issuing tax-exempt municipal bonds to finance state and local projects. The *Housing and Economic Recovery Act of 2008* helped these municipalities by temporarily allowing bonds that are guaranteed by Federal home loan banks to be eligible for treatment as tax-exempt bonds regardless of whether the bonds are used to finance housing programs. Allowing these bonds to be guaranteed by Federal home loan banks has helped State and local governments obtain financing for necessary projects (e.g., constructing roads, repairing bridges, building and renovating schools and hospitals, funding college loans, etc) at a lower cost. The bill would extend this benefit for bonds issued through 2011. *This proposal is estimated to cost \$148 million over 10 years.*

**Extension of temporary small issuer rules for allocation of tax-exempt interest expense.**

Under current law, financial institutions are not allowed to take a deduction for the portion of their interest expense that is allocable to such institution's investments in tax-exempt municipal bonds. For purposes of this interest disallowance rule, bonds that are issued by a "qualified small issuers" are not taken into account as investments in tax-exempt municipal bonds. Under current law, a "qualified small issuer" is defined as any issuer that reasonably anticipates that the amount of its tax-exempt obligations (other than certain private activity bonds) will not exceed \$10,000,000. The *American Recovery and Reinvestment Act* increased this dollar threshold to \$30,000,000 when determining whether a tax-exempt obligation issued in 2009 and 2010 qualifies for this small issuer exception. The small issuer exception would also apply to an issue if all of the ultimate borrowers in such issue would separately qualify for the exception. For

these purposes, the issuer of a qualified 501(c)(3) bond shall be deemed to be the ultimate borrower on whose behalf a bond was issued. The bill would extend this benefit for bonds issued through 2011. *This proposal is estimated to cost \$254 million over 10 years.*

**Extension of expensing of “brownfields” environmental remediation costs.** The bill would extend for one year (through 2010) the provision that allows for the expensing of costs associated with cleaning up hazardous “brownfield” sites. *This proposal is estimated to cost \$158 million over 10 years.*

**Extension of exclusion of gain on the sale or exchange of certain “brownfield” sites from unrelated business taxable income.** The bill would extend for one year (through 2010) the provision that excludes any gain or loss from the qualified sale, exchange, or other disposition of any qualified brownfield property from unrelated business taxable income. *This proposal is estimated to cost \$54 million over 10 years.*

**Modifications to the *Surface Transportation Extension Act of 2010*.** The bill would make two changes to Title IV, the “Surface Transportation Extension Act of 2010,” of the *Hiring Incentives to Restore Employment (HIRE) Act*. First, the bill would distribute the Projects of National and Regional Significance (PNRS) and National Corridor Infrastructure Improvement (National Corridor) program funding so that each State receives a share equal to the greater of either (1) the amount of PNRS and National Corridor program funding that the State received under the HIRE Act or (2) the amount of PNRS and National Corridor funding that the State receives under this Act. The provision authorizes such sums as may be necessary from the Highway Trust Fund to provide these amounts. Second, the bill would distribute “additional” highway formula funds (which the bill makes available in lieu of additional Congressionally-designated projects) among all of the highway formula programs rather than among just six formula programs.

## **c. BUSINESS TAX RELIEF**

### GENERAL BUSINESS RELIEF

**R&D credit.** The bill would reinstate for one year (through 2010) the research credit. *This proposal is estimated to cost \$6.650 billion over 10 years.*

**Refundable AMT credits for corporations making domestic investments.** Under current law, corporations are allowed to take a credit against their regular tax liability for previously paid alternative minimum taxes (AMT). However, in order to claim these tax credits, the corporation must be subject to the regular tax instead of the AMT. Many corporations are subject to the AMT for substantial periods of time. As a result, these corporations accumulate substantial AMT credits. The bill would allow corporations to receive a refund of a portion of their AMT credits if they invest during 2010 in capital equipment for use in the United States. *This proposal is estimated to cost \$2.337 billion over 10 years.*

**Tax benefits for certain real estate developments.** The bill would extend for one year (through 2010) the special 15-year cost recovery period for certain leasehold improvements,

restaurant buildings and improvements, and retail improvements. *This proposal is estimated to cost \$4.851 billion over 10 years.*

**Active financing exception.** The bill would extend for one year (through 2010) the active financing exception from Subpart F of the tax code. *This proposal is estimated to cost \$3.923 billion over 10 years.*

**Look-through treatment of payments between related controlled foreign corporations.** The bill would extend for one year (through 2010) the current law look-through treatment of payments between related controlled foreign corporations. *This proposal is estimated to cost \$574 million over 10 years.*

**Employer wage credit for activated military reservists.** The bill would extend for one year (through 2010) the provision that provides eligible small business employers with a credit against the taxpayer's income tax liability for a taxable year in an amount equal to twenty percent (20%) of the sum of differential wage payments to activated military reservists. *This proposal is estimated to cost \$4 million over 10 years.*

**Five-year depreciation for farming business machinery and equipment.** The bill would extend for one year (through 2010) the provision that provides a five-year recovery period for certain machinery and equipment which is used in a farming business. *This proposal is revenue neutral over 10 years.*

#### TAX RELIEF FOR BUSINESSES IN ECONOMICALLY-DEPRESSED AREAS

**New Markets Tax Credit.** Through the New Markets Tax Credit (NMTC) program, the federal government is able to leverage federal tax credits to encourage significant private investment in businesses in low-income communities. For each dollar of qualified private investment, the NMTC program provides investors with either 5 cents or 6 cents of federal tax credits (depending on the amount of time that has passed since the original investment was made). The value of these tax credits depends on a taxpayer's ability to use these credits to offset tax liability. The NMTC program will not encourage investors to make investments in low-income communities if these investors are unable to use these credits to offset tax liability. Taxpayers that are subject to the alternative minimum tax (AMT) are unable to use NMTC to offset their AMT tax liability. The bill would extend for one year (through 2010) the new markets tax credit, permitting a maximum annual amount of qualified equity investments of \$5 billion. In order to ensure that the NMTC encourages AMT taxpayers to make qualifying investments, the bill would also allow NMTC to be claimed against the AMT with respect to qualified investments made between March 15, 2010 and January 1, 2012. *This provision is estimated to cost \$1.792 billion over 10 years.*

**Empowerment Zones.** The bill would extend for one year (through 2010) the designation of certain economically depressed census tracts as Empowerment Zones. Businesses and individual residents within Empowerment Zones are eligible for special tax incentives. *This proposal is estimated to cost \$304 million over 10 years.*

**Renewal Communities.** The bill would extend for one year (through 2010) the designation of certain economically depressed census tracts as Renewal Communities. Businesses and individual residents within Renewal Communities are eligible for special tax incentives. *This proposal is estimated to cost \$621 million over 10 years.*

**District of Columbia Enterprise Zone.** The bill would extend for one year (through 2010) the designation of certain economically depressed census tracts within the District of Columbia as the District of Columbia Enterprise Zone. Businesses and individual residents within this enterprise zone are eligible for special tax incentives. The bill would also extend for one year (through 2010) the \$5,000 first-time homebuyer credit for the District of Columbia. *This proposal is estimated to cost \$85 million over 10 years.*

#### TAX RELIEF FOR TRIBAL BUSINESSES

**Indian employment credit.** The bill would extend for one year (through 2010) the business tax credit for employers of qualified employees that work and live on or near an Indian reservation. The amount of the credit is 20 percent of the excess of wages and health insurance costs paid to qualified employees (up to \$20,000 per employee) in the current year over the amount paid in 1993. *This proposal is estimated to cost \$49 million over 10 years.*

**Accelerated depreciation for business property on an Indian reservation.** The bill would extend for one year (through 2010) the placed-in-service date for the special depreciation recovery period for qualified Indian reservation property. In general, qualified Indian reservation property is property used predominantly in the active conduct of a trade or business within an Indian reservation, which is not used outside the reservation on a regular basis and was not acquired from a related person. *This proposal is estimated to cost \$123 million over 10 years.*

#### TAX RELIEF FOR BUSINESSES IN TERRITORIES AND POSSESSIONS

**Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.** The bill would extend for one year (through 2010) the provision extending the section 199 domestic production activities deduction to activities in Puerto Rico. *This proposal is estimated to cost \$185 million over 10 years.*

**American Samoa economic development support.** Existing possessions credit corporations with active business operations in American Samoa were allowed an economic development tax credit to offset their U.S. tax liability on income earned in American Samoa from active business operations. This credit was based on the corporation's employment and capital investment in American Samoa. As a result of the economic downturn, those domestic corporations have been unable to utilize the economic development credit. The bill would provide a payment to the American Samoa Government for stimulating economic development in American Samoa in an amount equal to the cost of the economic development credit. *This proposal is estimated to cost \$18 million over 10 years.*

## **d. PENSION PROVISIONS**

### **TEMPORARY SINGLE EMPLOYER PLAN FUNDING RELIEF**

**Extended period for single employer defined benefit plans to amortize certain shortfall amortization bases.** Present law provides for a 7-year amortization period in the case of a funding shortfall. The provision would permit single employer defined benefit plan sponsors to elect an extended 9-year amortization period with interest only being paid in the first 2 years. Alternatively, the plan sponsor may elect a 15-year amortization period. Under the provision, the plan's funding obligation for a plan year is increased if the sponsoring employer makes excessive employee or shareholder payments. The provision generally allows plan sponsors to elect relief for up to two plan years during the four-plan-year period from 2008 to 2011.

**Application of extended amortization period to plans subject to prior law funding rules.** The provision provides for funding relief for plans that are subject to the prior law funding rules (i.e., plans not yet subject to the requirements of the Pension Protection Act of 2006 (PPA)). Under the provision, a plan sponsor may elect to calculate its minimum required contribution without regard to the deficit reduction contribution rules for up to 2 plan years. The provision provides for an alternative election under which a plan may instead amortize funding liability under a 15-year payment schedule for one plan year. The provision generally allows plan sponsors to elect relief for plan years beginning during the three-plan-year period from 2009 to 2011. The provision also amends the PPA by allowing certain charity plans to elect to be temporarily covered by prior law funding rules.

**Suspension of certain funding level limitations.** Present law provides that benefit accruals under a pension plan must cease, and certain prohibited payments may not be made, if the plan's funded percentage falls below 60 percent. The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), permitted a plan to use its pre-financial crisis funded percentage in applying the accrual restriction rule for the first plan year beginning after September 30, 2008. The provision extends the WRERA relief for plan years beginning through 2011, allowing single employer defined benefit plans to use their funded percentage for the last plan year ending before September 30, 2009. The provision also permits the payment of benefits in the form of a social security leveling payment, which would otherwise be a prohibited payment for an underfunded plan, for 2010 and 2011. In the case of plant shutdown benefits, present law also requires employers to waive any credit balances that arise from pre-funding in order to avoid funding based restrictions on the payment of the shutdown benefits. The provision temporarily permits employers to make a contribution to the plan in the amount of the shutdown benefits in lieu of waiving credit balances.

**Temporary allowance of election to apply balances against minimum required contribution.** Under present law, an employer may maintain a credit balance of contributions that it makes in excess of required minimum contributions, and such credits generally may be used in lieu of later year required minimum contributions unless the plan is less than 80 percent funded. The provision allows an employer to use its credit balances for the period of 2009 to 2011 if the plan was at least 80 percent funded prior to the financial crisis.



**Information reporting.** Under present law, sponsors of pension plans are required to report additional information relating to the sponsor and the plan's finances to the Pension Benefit Guaranty Corporation (PBGC) if the plan's funded percentage is below 80 percent. The provision modifies the reporting requirement by requiring additional reporting if aggregate unfunded vested benefits of plans maintained by the sponsor exceed \$75 million.

**Rollover of amounts received in airline carrier bankruptcy.** The provision permits qualified airline employees to rollover bankruptcy settlement amounts to a traditional IRA (present law permits rollover of such settlements to a Roth IRA), and to recharacterize a prior contribution of a settlement amount to a Roth IRA as a contribution to a traditional IRA.

### **TEMPORARY MULTIEMPLOYER PLAN FUNDING RELIEF**

**Optional use of 30-year amortization periods.** Under present law, multiemployer pension plans must amortize net experience losses over a 15-year period. The provision would permit plans to elect a 30-year amortization period for certain losses incurred in either or both of the first 2 plan years ending on or after June 30, 2008. The 30-year amortization extension is not available unless the plan is projected not to have a decrease in its funded percentage in 15 years. If a plan elects the extended amortization periods, benefit increases are restricted for a two-year period, unless the plan actuary certifies that increases are fully paid for by additional contributions by the plan sponsor and certain funding levels are projected to be met. The provision also extends the maximum smoothing period for determining plan asset values from 5 years to 10 years for the either or both of the first 2 plan years ending on or after June 30, 2008.

**Optional longer recovery periods for multiemployer plans in endangered or critical status.** Under present law, certain underfunded multiemployer pension plans must improve their funding levels over a 10-year funding improvement period (15 years in the case of a seriously endangered plan) or a 10-year rehabilitation period. WREERA permitted a 3-year extension of these periods. The provision extends the WREERA relief so as to permit up to a 5-year extension of these periods (up to an additional 2 years for plans that elected WREERA relief).

**Modification of certain amortization extensions under prior law.** Prior to the PPA, amortization waivers were granted by the Internal Revenue Service to multiemployer pension plans, subject to the condition that the plans demonstrate funding improvement over a specified period. Under the provision, for purposes of determining whether these funding-based conditions have been met, plans with such extensions may treat the return on plan assets for plan years that contain any of the period from June 30, 2008 to October 31, 2008 as the interest rate used for charges and credits to the plan's funding standard account.

**Alternative default schedule for plans in endangered or critical status.** Under the PPA, a default contribution schedule applies in the case of certain underfunded plans if the collective bargaining parties fail to reach agreement on a contribution schedule. Under the provision, the plan trustees may elect to use as the default schedule the contribution schedule that has been approved by the bargaining parties and that covers at least 75 percent of the employees actively participating in the plan. The provision is effective for designations of default schedules on or

after the date of enactment. Pursuant to section 221 of the PPA, the provision does not apply to plan years beginning after December 31, 2014.

**Transition rule for certifications of plan status.** This provision provides transition rules with respect to certifications of a plan's funded status for plans whose certifications are due after the date of enactment and for certain plans whose most recent certification does not take into account an election to take funding relief with respect to a plan year that begins on or after October 1, 2009.

*The provisions listed under "Single Employer Plan Funding Relief" and "Multiemployer Plan Funding Relief" are estimated to raise \$1.987 billion over 10 years*

**Defined Contribution Plan Fee Disclosure.** This provision amends the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 (ERISA) to provide disclosure rules relating to fees incurred in connection with defined contribution plans (such as 401(k) plans) to plan administrators and plan participants. *The Joint Committee on Taxation estimates that these provisions will have a negligible revenue effect.*

- **Disclosures to Plan Administrators.** Service providers are required, before entering into a contract or arrangement with a plan administrator (and for each year subsequent to the initial contract year), to provide a written statement to the plan administrator describing the services to be provided and the total annual revenue to be collected by the service provider in connection with the plan (disclosed in dollar amounts or as a formula). Additional required information includes the allocation of revenue among three categories, (1) administration and recordkeeping services, (2) investment management, and (3) other services; the Secretary of Labor is directed to develop safe harbors and other guidance on the allocation of revenue among the categories. Service providers with contracts less than \$5,000 in the aggregate are exempt from the disclosure provisions described above.
- **Disclosures to Plan Participants.** Prior to an employee's eligibility to participate in a plan, the plan administrator must provide an employee with a notice describing the plan and key characteristics of each investment option in the plan. The notice to the employee must also include a plan fee comparison chart. A plan administrator must also provide employees with a quarterly benefit statement that includes information on each investment option in which the employee is invested. Small plans may provide the benefits statement on an annual rather than quarterly basis.

## **e. SUMMER JOBS**

**Summer jobs.** The bill would support over 350,000 jobs for youth ages 14 to 24 through summer employment programs. This age group has some of the highest unemployment levels – 25% unemployment for those aged 16 to 19. This funding will allow local Workforce Investment Boards to expand successful summer jobs programs that were funded in the *American Recovery and Reinvestment Act*. *This provision is estimated to cost \$1 billion over 10 years.*

## **f. TRADE PROVISIONS**

**Trade Adjustment Assistance for Communities – Community College and Career Training Grant Program.** Under current law, this Trade Adjustment Assistance (TAA) program provides grants to educational institutions to develop, offer and improve education and career training programs for workers eligible for TAA. In the 2010 Reconciliation, the program received \$500 million a year in mandatory funding for FY2011, FY2012, FY2013 and FY2014. The provisions included in the bill would expand the program by authorizing such grants to also benefit individuals who are eligible for unemployment insurance, who are likely to be eligible for unemployment insurance or who have exhausted their unemployment insurance. Additionally, the provisions would: (1) clarify that only public and non-profit educational institutions are eligible for grants; (2) authorize the Department of Labor to spend up to five percent of program funds to administer, evaluate and establish reporting systems for the program; and (3) give the Department of Labor more flexibility by allowing it to obligate grant funds in the year that they are appropriated as well as the subsequent fiscal year. *These changes do not score.*

**Wool Trust Fund.** In 2000, Congress enacted a grant and tariff relief program for the U.S. wool industry. The legislation created a “wool trust fund,” which provides payments to U.S. suit makers to compensate for the competitive damage to the U.S. suit industry caused by an inverted tariff. (Inverted tariffs occur when the duty on a finished product (e.g., a suit) is lower than the duty on the inputs (e.g., fabric) used to make the finished product.) The wool trust fund also makes payments to U.S. wool fabric and yarn producers, as well as sheep growers, to encourage more U.S. production of wool fabrics. The trust fund is funded through the revenue collected from tariffs on wool textile imports (primarily yarns and fabrics). The wool trust fund and tariff relief package was reauthorized in 2008. In 2008 and 2009, the revenue generated through wool fabric/yarn tariffs shrank considerably, resulting in much lower payments to U.S. wool suit producers and other recipients under the program. To address the immediate shortfall, the provision in the bill would use revenue generated from tariffs on other apparel products to fund the wool trust fund at the level authorized in 2004. *This provision, which does not score, would ensure that thousands of textile and apparel workers remain employed.*

**Cotton Trust Fund.** In 2006, as part of the last miscellaneous tariff bill, Congress enacted a program for U.S. cotton shirt manufacturers to respond to a commercial disadvantage caused by an inverted tariff. The legislation created a “cotton trust fund,” which provides payments to U.S. shirt makers and U.S. cotton fabric and yarn producers, and created a pima cotton promotion program. The trust fund is funded through the revenue collected from tariffs on cotton textiles imports (primarily yarns and fabrics). The legislation also includes duty suspensions and reductions on high-end cotton fabrics and yarns, subject to quantitative limitations. The authority to transfer tariff revenue to the trust fund expired on October 1, 2008, and the duty suspensions expired on December 31, 2009. The provision included in the bill would reauthorize the program until December 31, 2013. *The provision is estimated to cost \$53 million over three years and would ensure that more than 800 textile and apparel workers remain employed.*

## **II. RELIEF FOR WORKING FAMILIES**

### **a. INDIVIDUAL TAX CUTS**

**Deduction of State and local general sales taxes.** The bill would extend for one year (through 2010) the election to take an itemized deduction for State and local general sales taxes in lieu of the itemized deduction permitted for State and local income taxes. *This proposal is estimated to cost \$1.800 billion over 10 years.*

**Additional standard deduction for real property taxes.** The bill would extend for one year (through 2010) the additional standard deduction for State and local real property taxes. *This proposal is estimated to cost \$1.551 billion over 10 years.*

**Above-the-line deduction for qualified tuition and related expenses.** The bill would extend for one year (through 2010) the above-the-line tax deduction for qualified education expenses. *This proposal is estimated to cost \$693 million over 10 years.*

**Above-the-line deduction for certain expenses of elementary and secondary school teachers.** The bill would extend for one year (through 2010) the \$250 above-the-line tax deduction for teachers and other school professionals for expenses paid or incurred for books, supplies (other than non-athletic supplies for courses of instruction in health or physical education), computer equipment (including related software and service), other equipment, and supplementary materials used by the educator in the classroom. *This proposal is estimated to cost \$215 million over 10 years.*

### **b. UNEMPLOYMENT INSURANCE**

**Extension of Emergency Unemployment Compensation (EUC) program.** The Emergency Unemployment Compensation (EUC) program is scheduled to phase-out at the end of May 2010. This program provides (depending on a State's unemployment rate) up to fifty-three (53) weeks of extended benefits. The bill would extend the EUC program through November 2010.

**Extension of Extended Benefits (EB) program.** 100% Federal funding for the Extended Benefits (EB) program is scheduled to phase-out at the end of May 2010. This program provides up to an additional 13 to 20 weeks of benefits in certain States (i.e., 13 weeks for States at or above 6.5% unemployment and another 7 weeks for States at or above 8% unemployment). The bill would extend full funding for the EB program through November 2010.

**Extension of Federal Additional Compensation (FAC).** Federal Additional Compensation, which increases unemployment benefits by \$25 a week, is scheduled to phase-out at the end of May 2010. The bill would extend FAC through November 2010.

**Eliminating the penalty for part-time employment in the Emergency Unemployment Compensation (EUC) program.** The legislation coordinates EUC Benefits with regular Benefits by providing States with a number of options to allow EUC claimants to remain eligible

for the EUC program when they become newly entitled to State unemployment compensation if switching to State benefits would reduce their weekly UI check by at least \$100 or 25 percent.

*The four provisions immediately above are estimated to cost \$39.8 billion over 10 years.*

### **c. TANF JOBS AND EMERGENCY FUND**

**Extension of TANF jobs and emergency fund.** The *American Recovery and Reinvestment Act* created an Emergency Contingency Fund (ECF) within the Temporary Assistance for Needy Families (TANF) program to help States with increasing expenditures on: basic assistance for families in the TANF program; short-term, one-time aid for needy families; and subsidized employment programs (such programs temporarily pay for all or part of the wages of a worker in a public or private job). This emergency fund is now scheduled to expire on September 30, 2010, which will lead some States to shut down ECF-funded subsidized employment programs even earlier. (These programs are scheduled to fund 185,000 jobs by the end of September.) The bill would provide \$2.5 billion to extend this fund through FY 2011, as well as clarify certain program rules, such as eligibility for workers exhausting unemployment benefits. *This provision is estimated to cost \$2.48 billion over 10 years.*

### **d. VETERANS CONCURRENT RECEIPT**

**Veterans concurrent receipt.** The bill would allow for two years concurrent receipt of both DOD military retirement pay and VA military disability pay. No other federal employees are required to offset their federal retirement benefits if they also receive VA disability compensation. Disability is to compensate for the impact on quality of life, an issue that military retired pay does not address. *This provision is estimated to cost \$686 million over 10 years.*

### **e. NATIONAL HOUSING TRUST FUND**

**National Housing Trust Fund.** The bill would provide a one-time capitalization of the National Housing Trust Fund (NHTF), which will provide communities with funds to build, preserve, and rehabilitate rental homes that are affordable for very low income households. These homes will help address the serious shortage of affordable housing for lowest income families, including people who are unemployed or employed in the low wage work force, veterans, and elderly and disabled people on fixed incomes. It is estimated that an infusion of \$1 billion in capital funds into the NHTF and \$65 million for project-based vouchers to couple with NHTF capital grants will support the immediate production of 10,000 rental homes, creating 15,000 new construction jobs and 4,000 new jobs in ongoing operations. *This provision is estimated to cost \$1.065 billion over 10 years.*

### **f. HOLD HARMLESS PROVISIONS FOR LOW-INCOME FAMILIES**

**Extension of poverty line hold harmless.** Every year, HHS updates the federal poverty line according to changes in the Consumer Price Index (CPI). The negative CPI for 2009 would have therefore had the effect of slightly lowering the official poverty guidelines in 2010. This in turn

could reduce access for programs such as Medicaid and food stamps that use a percentage of the poverty line to determine eligibility. The legislation would continue the current short-term hold harmless provision through 2010 (which ensures the current poverty line can be no lower than the poverty line in 2009). *This provision is estimated to cost \$317 million over 10 years.*

**Uniform tax disregard for federally-funded programs.** The legislation would exclude federal tax refunds from income in the month received and from resources for FY2010 for the purpose of determining eligibility for federal or federally-assisted programs. This single standard would replace the various disregards that now apply to certain tax credits. *This provision is estimated to cost \$2 million over 10 years.*

### **III. DISASTER RESPONSE**

#### **a. OIL SPILL RESPONSE**

**Increase Oil Spill Liability Trust Fund liability cap.** Analysts estimate that the cost of the oil spill in the Gulf of Mexico could exceed \$14 billion. The companies that caused this oil spill are responsible for all of the costs of cleanup and up to \$75 million of additional damages. These companies are responsible for all additional damages if they are found to be grossly negligent, to have engaged in willful misconduct, or to have violated an applicable Federal safety, construction or operating regulation. To the extent that costs are not borne by the parties responsible for the spill, up to \$1 billion of additional damage costs (including up to \$500 million of natural resource damage assessments) associated with an oil spill can be offset by funds in the Oil Spill Liability Trust Fund. The Oil Spill Liability Trust Fund is an insurance fund that is financed by a per-barrel tax imposed on the oil industry. In order to ensure that individuals, businesses and communities that suffer damages as a result of oil spills are not left uncompensated, the bill would increase the \$1 billion liability cap on the Oil Spill Liability Trust fund to \$5 billion (including up to \$2.5 billion of natural resource damage assessments). *The cost of this proposal is included in the estimate below.*

**Increase Oil Spill Liability Trust Fund solvency.** The Oil Spill Liability Trust fund is financed by an 8-cent-per-barrel tax on the oil industry. There is approximately \$1.5 billion available in this trust fund. The nonpartisan Congressional Research Service has stated, “a major spill, particularly one in a sensitive environment, could threaten the viability of the fund.” To ensure the continued solvency of the Oil Spill Liability Trust Fund, the bill would increase the per-barrel amount that oil companies are required to pay into the fund to 34 cents. *This proposal and the proposal immediately above are estimated to raise \$10.785 billion over 10 years.*

#### **b. NATIONAL FLOOD INSURANCE**

**Extension of National Flood Insurance.** Since its creation in the National Flood Insurance Act of 1968, the National Flood Insurance Program (NFIP) has been the primary source of reliable flood insurance coverage for millions of American homes and businesses. The NFIP is authorized to write and renew flood insurance coverage through May 31, 2010. The bill would extend the NFIP's authority to write and renew flood insurance coverage through December 31,

2010 and help provide needed stability in the nation's housing markets. *This provision is estimated to have no cost.*

### **c. MINE SAFETY**

**Mine rescue team training credit.** The bill would extend for one year (through 2010) the credit for training mine rescue team members and would allow this credit to be claimed against the AMT. *This proposal is estimated to cost \$7 million over 10 years.*

**Election to expense advanced mine safety equipment.** The bill would extend for one year (through 2010) the provision that provides businesses with fifty percent (50%) bonus depreciation for certain qualified underground mine safety equipment. *This proposal is estimated to be revenue neutral over 10 years.*

### **d. FEDERALLY-DECLARED DISASTER AREAS**

**Expanded and enhanced casualty loss deductions relating to federal disasters.** The bill would extend for one year (through 2010) the provision that allows taxpayers who have suffered loss as a result of a Federally-declared disaster to claim a deduction for casualty losses (i.e., both itemizers and non-itemizers) and would allow these taxpayers to calculate their casualty loss deduction without regard to their adjusted gross income. The bill would also extend for one year (through 2010) the current law \$500 per loss threshold. *This proposal is estimated to cost \$728 million over 10 years.*

**Expensing of qualified disaster expenses.** The bill would extend for one year (through 2010) the provision that allows businesses that have been affected by a Federally-declared disaster to currently deduct demolition, repair, clean-up, and environmental remediation expenses (“Qualified Disaster Expenses”). *This proposal is estimated to cost \$31 million over 10 years.*

**Five-year carry-back period for certain losses relating to federal disasters.** The bill would extend for one year (through 2010) the provision that allows businesses to carry back to the previous five years the following losses: (1) casualty losses that are attributable to a Federally-declared disaster; and (2) Qualified Disaster Expenses. *This proposal is estimated to cost \$120 million over 10 years.*

**Relaxed mortgage revenue bond limitations for federal disasters.** The bill would extend for one year (through 2010) the provision that allows states to waive certain rules that limit their ability to use tax-exempt housing bonds to provide loans to taxpayers that wish to acquire residences in Federally-declared disaster areas. The bill would also extend for one year (through 2010) the provision that allows states to use their tax-exempt housing bonds to provide loans to repair or reconstruct homes and rental housing units that have been rendered unsafe for use as a residence by reason of a Federally-declared disaster or have been demolished or relocated by reason of government order on account of a Federally-declared disaster. Such loans are limited to the lower of (1) the actual cost of the repair or reconstruction or (2) \$150,000. *This proposal is estimated to cost \$21 million over 10 years.*

**Bonus depreciation for qualified disaster property.** The bill would extend for one year (through 2010) the provision that permits businesses that suffered damage as a result of a Federally-declared disaster to claim an additional first-year depreciation deduction equal to 50 percent of the cost of new real and personal property investments made in the Presidentially-declared disaster area. *This proposal and the proposal immediately below are estimated to cost \$1.457 billion over 10 years.*

**Increased small business expensing for expenditures relating to federal disasters.** The bill would extend for one year (through 2010) the provision that increases by \$100,000 (or the cost of qualified property, if less) the amount of expensing available for qualifying expenditures made in a Federally-declared disaster area. The bill would also extend for one year (through 2010) the provision that increases by \$600,000 (or the cost of qualified property, if less) the level of investment at which the small business expensing benefits phase-out. *The cost of this proposal is included in the description of the proposal immediately above.*

## **e. AGRICULTURE DISASTER RELIEF**

**Agriculture Disaster Relief.** The bill would provide assistance for 2009 agricultural losses for crops, including specialty crops, livestock, sugar, aquaculture, cottonseed, and poultry. In addition to approximately \$1 billion in supplemental direct payments to producers with a minimum 5-percent loss in production, the bill would provide \$42 million in cottonseed assistance, \$25 million in aquaculture assistance, \$21 million to a Hawaiian sugar cane cooperative, \$75 million to poultry producers, \$50 million for livestock producers, and \$300 million for specialty crop producers. The program is designed for payments to be issued quickly through USDA and State block grants. *This provision is estimated to cost \$1.479 billion over ten years.*

## **f. OTHER EXPIRING DISASTER RELIEF PROVISIONS**

**Extension of tax incentives for the New York Liberty Zone.** The bill would extend for one year (through 2010) the special depreciation allowance for certain real property within the New York Liberty Zone and the time for issuing New York Liberty Zone bonds. *This proposal is estimated to cost \$152 million over 10 years.*

**Extend Work Opportunity Tax Credit (WOTC) for Hurricane Katrina Employees.** The bill would extend for one year (through August 28, 2010) the work opportunity tax credit for certain employers hiring in the Hurricane Katrina core disaster area. *This proposal is estimated to cost \$7 million over 10 years.*

**Extension of increased rehabilitation credit for historic structures in the Gulf Opportunity Zone.** The bill would extend for one year (through 2010) the increased rehabilitation credit for qualified expenditures in the Gulf Opportunity Zone. The Gulf Opportunity Zone Act of 2005 increased the rehabilitation credit from 10 percent to 13 percent of qualified expenditures for any qualified rehabilitated building other than a certified historic structure, and from 20 percent to 26 percent of qualified expenditures for any certified historic structure. *This proposal is estimated to cost \$43 million over 10 years.*



**Two-year extension of Gulf Opportunity Zone low-income housing placed-in-service date.** The Gulf Opportunity Zone Act of 2005 provided an additional allocation of low-income housing tax credits to the Gulf Opportunity Zone in an amount equal to the product of \$18.00 multiplied by the portion of the State population which is in the Gulf Opportunity Zone. The additional allocations were made in calendar years 2006, 2007, and 2008, and required that the properties be placed in service before January 1, 2011. The bill would extend that placed-in-service date by two years (through 2012). *This proposal is estimated to cost \$357 million over 10 years.*

## **IV. DOMESTIC ENERGY**

**Extension of tax incentives for biodiesel and renewable diesel.** The bill would extend for one year (through 2010) the \$1.00 per gallon production tax credit for biodiesel and the small agri-biodiesel producer credit of 10 cents per gallon. The bill would also extend for one year (through 2010) the \$1.00 per gallon production tax credit for diesel fuel created from biomass. *This proposal is estimated to cost \$868 million over 10 years.*

**Credit for electricity produced at certain open-loop biomass facilities.** The bill would extend the credit period under the production tax credit for electricity produced at open-loop biomass facilities that were placed in service prior to January 1, 2005 from five years to six years. In the sixth year, the credit provided to these facilities is reduced by twenty-percent (20%). *This proposal is estimated to cost \$84 million over 10 years.*

**Extension of the alternative motor vehicle credit for heavy hybrids.** The bill would extend for one year (through 2010) the alternative motor vehicle credit for heavy hybrids (i.e., hybrid motor vehicles that are not passenger automobiles or light trucks). *This proposal is estimated to cost \$8 million over 10 years.*

**Extension of tax incentive for liquid fuels derived from biomass, biogas, natural gas and propane used as a fuel in transportation vehicles.** The bill would extend for one year (through 2010) the \$0.50 per gallon alternative fuel tax credit for liquid fuels derived from biomass, compressed or liquefied biogas, natural gas and propane. The bill would not extend this credit any liquid fuel derived from a pulp or paper manufacturing process (i.e., black liquor). *This proposal is estimated to cost \$96 million over 10 years.*

**Extension of steel industry fuel tax credit.** The bill would extend the placed-in-service date for the \$2.83 per barrel-of-oil equivalent tax credit for steel industry fuel by one year (through 2010) and would allow facilities that qualify for the tax credit to receive this benefit for the first two years from the date that the facility is placed in service. *This proposal is estimated to cost \$44 million over 10 years.*

**Extension of coke and coke gas production tax credit.** The bill would extend the placed-in-service date for the \$3.36 credit per barrel-of-oil equivalent of coke or coke gas by one year (through 2010). *This proposal is estimated to cost \$21 million over 10 years.*

**Extension of energy-efficient new homes credit.** The bill would extend the tax credit for manufacturers of energy-efficient residential homes for one year (through 2010). *This proposal is estimated to cost \$66 million over 10 years.*

**Energy-efficient windows.** In order to claim the section 25C tax credit for energy-efficient windows, taxpayers must purchase windows that meet certain specifications. Many have raised concerns that the current specifications fail to account for different climate regions in the United States. Recently, the EPA updated the Energy Star requirements to take these climate regions into account. The bill would link eligibility for the tax credit to the Energy Star requirements. *This proposal is estimated to cost \$145 million over 10 years.*

**Direct payment in lieu of energy-efficient appliance tax credit.** The bill would allow manufacturers of energy-efficient appliances to elect to receive a direct payment in lieu of the section 45M energy-efficient appliance tax credit. The direct payment would be equal to eighty-five percent (85%) of the tax credit that would otherwise have been allowed under section 45M. *This proposal is estimated to cost \$69 million over 10 years.*

**Extension of special rule for sales of electric transmission property.** The bill would extend for one year (for sales prior to January 1, 2011) the present law deferral of gain on sales of transmission property by vertically integrated electric utilities to FERC-approved independent transmission companies. Rather than recognizing the full amount of gain in the year of sale, this provision would allow gain on such sales to be recognized ratably over an eight-year period. *This proposal is revenue neutral over 10 years.*

**Extension of special rule for percentage depletion for marginal wells.** The bill would extend for one year (through 2010) the suspension on the taxable income limit for purposes of depleting a marginal oil or gas well. *This proposal is estimated to cost \$103 million over 10 years.*

## **V. EXTENSION OF OTHER EXPIRING TAX PROVISIONS**

### **a. CHARITABLE PROVISIONS**

**Extension of provision encouraging contributions of capital gain real property for conservation purposes.** The bill would extend for one year (through 2010) the increased contribution limits and carryforward period for contributions of appreciated real property (including partial interests in real property) for conservation purposes. *This proposal is estimated to cost \$190 million over 10 years.*

**Extension of enhanced charitable deduction for contributions of food inventory.** The bill would extend for one year (through 2010) the provision allowing businesses to claim an enhanced deduction for the contribution of food inventory. *This proposal is estimated to cost \$78 million over 10 years.*

**Extension of enhanced charitable deduction for contributions of book inventories to public schools.** The bill would extend for one year (through 2010) the provision allowing C

corporations to claim an enhanced deduction for contributions of book inventory to public schools (kindergarten through grade 12). *This proposal is estimated to cost \$31 million over 10 years.*

**Extension of enhanced charitable deduction for corporate contributions of computer equipment for educational purposes.** The bill would extend for one year (through 2010) the provision that encourages businesses to contribute computer equipment and software to elementary, secondary, and post-secondary schools by allowing an enhanced deduction for such contributions. *This proposal is estimated to cost \$195 million over 10 years.*

**Extension of tax-free distributions from individual retirement plans for charitable purposes.** The bill would extend for one year (through 2010) the provision that permits tax-free distributions to charity from an Individual Retirement Account (IRA) of up to \$100,000 per taxpayer, per taxable year. *This proposal is estimated to cost \$627 million over 10 years.*

**Extension of special tax treatment of certain payments to controlling exempt organizations.** The bill would extend for one year (through 2010) the special rules for interest, rents, royalties and annuities received by a tax exempt entity from a controlled entity. *This proposal is estimated to cost \$20 million over 10 years.*

**Extension of special rule for S corporations making charitable contributions of property.** The bill would extend for one year (through 2010) the provision allowing S corporation shareholders to take into account their pro rata share of charitable deductions even if such deductions would exceed such shareholder's adjusted basis in the S corporation. *This proposal is estimated to cost \$39 million over 10 years.*

## **b. MISCELLANEOUS**

**Extension of 7-year straight line cost recovery period for motorsports entertainment complexes.** The bill would extend for one year (through 2010) the special 7-year cost recovery period for property used for land improvement and support facilities at motorsports entertainment complexes. *This proposal is estimated to cost \$38 million over 10 years.*

**Extension of timber REIT provisions.** In 2007, Congress provided special rules for real estate investment trusts (REITs) that earn timber income. These provisions allowed REITs that were engaged in a timber business to meet various REIT qualification rules. These special rules were effective only for the first taxable year of the REIT that began after May 22, 2008 and before May 22, 2009. The bill would extend these special rules for any taxable year beginning on or before December 31, 2010. *This proposal is estimated to cost \$7 million over 10 years.*

**Extension of railroad track maintenance credit.** The bill would extend for one year (through 2010) the railroad track maintenance credit. *This proposal is estimated to cost \$165 million over 10 years.*

**Extension of special expensing rules for U.S. film and television productions.** The bill would extend for one year (through 2010) the provision that allows film and television producers to

expense the first \$15 million of production costs incurred in the United States (\$20 million if the costs are incurred in economically depressed areas in the United States). *This proposal is estimated to cost \$46 million over 10 years.*

**Extension of special rules for regulated investment companies.** The bill would extend for one year (through 2010) the tax treatment of interest-related dividends, short-term capital gain dividends, and other special rules applicable to foreign shareholders that invest in regulated investment companies. *These proposals are estimated to cost \$94 million over 10 years.*

**Extension of temporary increase in limit on cover over of rum excise tax revenues to Puerto Rico and the Virgin Islands.** The bill would extend for one year (through 2010) the provision providing for payment of \$13.25 per gallon to cover over a \$13.50 per proof gallon excise tax on distilled spirits produced in or imported into the United States. *This proposal is estimated to cost \$131 million over 10 years.*

**Study of extended tax expenditures.** The bill would direct the Chief of Staff of the Joint Committee on Taxation to submit a report to the Committee on Ways and Means and the Committee on Finance on each tax expenditure extended by this Act. *This proposal has no revenue effect.*

## **VI. CLOSING FOREIGN TAX LOOPHOLES**

**Summary.** The bill includes a package of provisions developed jointly by the Treasury Department, the Committee on Ways and Means and the Senate Finance Committee to curtail abuses of the U.S. foreign tax credit system and other targeted abuses. This system is intended to ensure that U.S.-based multinational companies are not subject to double taxation. However, taxpayers have taken advantage of the U.S. foreign tax credit system to reduce the U.S. tax due on completely unrelated foreign income in a manner that has nothing to do with eliminating double taxation. The bill would eliminate \$14.451 billion of foreign tax credit loopholes.

**Rules to prevent splitting foreign tax credits from income.** To prevent double taxation (i.e., full taxation by both a foreign country and by the United States on the same item of income), taxpayers are permitted to claim foreign tax credits with respect to foreign taxes paid on income earned offshore. Taxpayers have devised several techniques for splitting foreign taxes from the foreign income on which those taxes were paid. With these techniques, the foreign income remains offshore and untaxed by the United States, while the foreign taxes are currently available in the U.S. to offset U.S. tax that is due on other foreign source income. In many cases, the foreign income is permanently reinvested offshore such that it likely will never be repatriated and taxed in the U.S. This use of foreign tax credits has nothing to do with relieving double taxation. The President's FY2011 Budget proposes to adopt a matching rule to prevent the separation of creditable foreign taxes from the associated foreign income. The bill would adopt the President's Budget proposal by implementing a matching rule that would suspend the recognition of foreign tax credits until the related foreign income is taken into account for U.S. tax purposes. The bill targets abusive techniques and does not affect timing differences that result from normal tax accounting differences between foreign and U.S. tax rules. The provision

would apply to all “split” foreign taxes claimed by taxpayers after the date of introduction. *This proposal is estimated to raise \$6.325 billion over 10 years.*

**Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions.** There are certain rules that permit taxpayers to treat a stock acquisition as an asset acquisition under U.S. tax law. Taxpayers can obtain similar results by acquiring interests in entities that are treated as corporations for foreign tax purposes, but as non-corporate entities (such as partnerships) for U.S. tax purposes. These transactions (“covered asset acquisitions”) result in a step-up in the basis of the assets of the acquired entity to the fair market value that was paid for the stock (or interest in the business entity). In the foreign context, this step-up usually exists only for U.S. tax purposes, and not for foreign tax purposes. As a result, depreciation for U.S. tax purposes exceeds depreciation for foreign tax purposes, such that the U.S. taxable base is lower than foreign taxable base. Because foreign taxes – and therefore foreign tax credits – are based on the foreign taxable base, there are more foreign tax credits than are necessary to avoid double tax on the U.S. tax base. Taxpayers are using these additional foreign tax credits to reduce taxes imposed on other, completely unrelated foreign income. The bill would prevent taxpayers from claiming the foreign tax credit with respect to foreign income that is never subject to U.S. taxation because of a covered asset acquisition. The provision would generally apply to related party transactions occurring after the date of introduction and unrelated party transactions occurring after the date of enactment. *This proposal is estimated to raise \$4.025 billion over 10 years.*

**Separate application of foreign tax credit limitation to items resourced under tax treaties.** To prevent double taxation (i.e., full taxation by both a foreign country and by the United States on the same item of income), taxpayers are permitted to claim foreign tax credits with respect to foreign taxes paid on income earned offshore. To appropriately limit use of the foreign tax credit system to avoidance of double taxation, foreign tax credits are limited to the maximum amount of U.S. tax that could be imposed on the taxpayer’s foreign source income (i.e., thirty-five percent (35%) of the taxpayer’s foreign source income). Taxpayers have devised a technique to use the U.S. treaty network to enhance foreign tax credit utilization – well beyond what is needed to avoid double taxation – by artificially inflating foreign source income. With this technique, ownership of income-producing assets that would ordinarily be held by U.S.-based multinational companies in the United States (e.g., investments in U.S. securities) is shifted to foreign branches and disregarded entities. This income is often lightly taxed on a net basis by the foreign country, but the treaty prevails in categorizing the entire gross amount of the income generated by the U.S. assets as foreign source. This artificially inflates the taxpayer’s foreign source income and allows the taxpayer to use foreign tax credits to reduce taxes on foreign source income beyond the maximum amount of U.S. tax that could be imposed on such income. This unintended tax planning technique has nothing to do with relieving double taxation. The bill respects the treaty commitment to treating such income as foreign source, but segregates the income so that it is not the basis for claiming foreign tax credits that have nothing to do with double taxation. In doing so, the bill conforms the foreign tax credit treatment of taxpayers operating abroad through foreign branches and disregarded entities to the treatment already afforded to taxpayers operating through foreign corporations. The provision would apply to taxable years beginning after the date of enactment. *This proposal is estimated to raise \$253 million over 10 years.*

**Limitation on the use of section 956 for foreign tax credit planning (i.e., the “hopscotch” rule).** U.S.-based multinational companies typically have complex foreign structures designed to mitigate their worldwide tax expense. In many cases, these structures include companies located in low-tax jurisdictions (e.g., tax havens such as Bermuda and the Cayman Islands) in a multi-tier chain of subsidiaries. If a foreign subsidiary with a relative high tax expense distributes a dividend up through a chain of companies, the foreign tax credit on the dividend ultimately received by the U.S. shareholder is a blend of the tax rates of each foreign subsidiary in that chain. If there is a tax-haven company in that chain, the U.S. tax due on the dividend may be significantly higher than the tax would have been if the foreign subsidiary’s dividend could have simply “hopscotched” over the chain as a direct distribution to the U.S. shareholder. Affirmative use of section 956, which was originally enacted as an anti-abuse provision, readily accomplishes this “hopscotch” by deeming a dividend from a foreign subsidiary directly to the U.S. shareholder. By taking advantage of this “hopscotch” rule, the foreign tax credit on this “deemed dividend” can be greater than the foreign tax credit would be on an actual dividend. The bill would limit the amount of foreign tax credits that may be claimed with respect to a deemed dividend under section 956 to the amount that would have been allowed with respect to an actual dividend. The provision would apply to the affirmative use of section 956 after the date of introduction. *This proposal is estimated to raise \$1.010 billion over 10 years.*

**Special rule with respect to certain redemptions by foreign subsidiaries.** Where a foreign-based multinational company owns a U.S. company, and that U.S. company owns a foreign subsidiary, the earnings of the foreign subsidiary are generally subject to U.S. tax when they are distributed to the U.S. shareholder. When those earnings are then distributed by the U.S. company to its foreign shareholder, a thirty percent (30%) withholding tax applies, unless reduced by treaty or some other provision of the tax code. Foreign-based multinational companies have devised a technique for avoiding U.S. taxation of such foreign subsidiary earnings. This technique involves a provision of the tax code that was originally enacted as an anti-abuse rule that treats certain sales of stock between related parties as a dividend. For example, under this provision, where a foreign-based multinational corporation sells stock in the U.S. company to its foreign subsidiary, the cash received from the foreign subsidiary in this sale is treated as a dividend from that foreign subsidiary. This deemed dividend allows the foreign subsidiary’s earnings to completely – and permanently – bypass the U.S. tax system. The bill would eliminate this type of tax planning by preventing the foreign subsidiary’s earnings from being reduced and, as a result, the earnings would remain subject to U.S. tax (including withholding tax) when repatriated to the foreign parent corporation as a dividend. The provision would apply to acquisitions after the date of introduction. *This proposal is estimated to raise \$255 million over 10 years.*

**Modification of affiliation rules for purposes of rules allocating interest expense.** To prevent double taxation (i.e., full taxation by both a foreign country and by the United States on the same item of income), taxpayers are permitted to claim foreign tax credits with respect to foreign taxes paid on income earned offshore. To appropriately limit use of the foreign tax credit system to avoidance of double taxation, foreign tax credits are limited to the maximum amount of U.S. tax that could be imposed on the taxpayer’s foreign source income (i.e., thirty-five percent (35%) of the taxpayer’s foreign source income). Taxpayers have used various techniques to minimize the amount of foreign source interest expense, which has the effect of artificially boosting foreign

source income. In turn, this permits taxpayers to utilize more foreign tax credits than would otherwise be possible, and the use of such additional foreign tax credits has nothing to do with relieving double taxation. To prevent taxpayers from avoiding these rules, Treasury regulations prevent taxpayers from excluding foreign interest expense from the foreign tax credit limitation by placing it in foreign subsidiaries. The regulations achieve this result by including certain subsidiaries in the U.S. affiliated group. As a result, foreign source interest expense will be taken into account in the determination of the foreign tax credit limitation. The bill would modify the affiliation rules to strengthen these anti-abuse rules. The provision would apply to taxable years beginning after the date of enactment. *This proposal is estimated to raise \$405 million over 10 years.*

**Repeal of 80/20 rules.** Under current law, dividends and interest paid by a domestic corporation are generally considered U.S.-source income to the recipient and are generally subject to gross basis withholding if paid to a foreign person. If at least eighty percent (80%) of a corporation's gross income during a three-year period is foreign source income and is attributable to the active conduct of a foreign trade or business (a so-called "80/20 company"), dividends and interest paid by the corporation will generally not be subject to the gross basis withholding rules. Furthermore, interest received from an 80/20 company can increase the foreign source income of, and therefore the amount of foreign tax credits that may be claimed by, a U.S. multinational company. Treasury has become aware that some companies have abused the 80/20 company rules. As a result, the President's 2011 Budget proposes to repeal these rules. The bill would adopt the President's Budget proposal to repeal the 80/20 company rules. The bill would also repeal the 80/20 rules for interest paid by resident alien individuals. The bill would include relief for existing 80/20 companies that meet specific requirements and are not abusing the 80/20 company rules. Subject to the relief for these existing 80/20 companies, the provision would apply to taxable years beginning after December 31, 2010. *This provision is estimated to raise \$153 million over 10 years.*

**Source rules on guarantees.** Under current law, the treatment of guarantee fees under the source rules is unclear. If guarantee fees are sourced like services, they are sourced according to the location in which the services were performed. If the guarantee fees are sourced like interest, they are sourced by reference to the country of residence of the payor. A recent court case determined that guarantee fees should be sourced like services. Sourcing guarantee fees in a manner similar to services would permit U.S. subsidiaries of foreign corporations to engage in earning stripping transactions by making deductible payments to foreign affiliates (thereby reducing their U.S. income tax liability) without the imposition of U.S. withholding tax on the payment. The bill would provide that guarantees issued after the date of enactment will be sourced like interest and, as a result, if paid by U.S. taxpayers to foreign persons will generally be subject to withholding tax. No inference is intended with respect to the treatment of guarantees issued before the date of enactment. *This proposal is estimated to raise \$2.025 billion over 10 years.*

**Technical correction to statute of limitations provision in the HIRE Act.** The bill would make a technical correction to the foreign compliance provisions of the *Hiring Incentives to Restore Employment (HIRE) Act* that would clarify the circumstances under which the statute of limitations will be tolled for corporations that fail to provide certain information on cross-border

transactions or foreign assets. Under the technical correction, the statute of limitations period will not be tolled if the failure to provide such information is shown to be due to reasonable cause and not willful neglect. *This proposal is estimated to not have any revenue effect over 10 years.*

## **VII. CLOSING OTHER TAX LOOPHOLES**

### **a. INDIVIDUAL LOOPHOLES**

**Taxation of carried interest.** The bill would prevent investment fund managers from paying taxes at capital gains rates on investment management services income received as carried interest in an investment fund. To the extent that carried interest reflects a return on invested capital, the bill would continue to tax carried interest at capital gain tax rates. However, to the extent that carried interest does not reflect a return on invested capital, the bill would require investment fund managers to treat seventy-five percent (75%) of the remaining carried interest as ordinary income (50% for taxable years beginning before January 1, 2013). The provision will be effective for taxable years ending on or after January 1, 2011. *This proposal is estimated to raise \$17.697 billion over 10 years.*

**Ensuring collection of employment taxes earned by certain service professionals.** Social Security taxes are imposed on compensation and self-employment income up to the Social Security Wage Base (currently \$106,800) and the Medicare tax is imposed on all self-employment and compensation income. Some service professionals have been avoiding Medicare and Social Security taxes by routing their self-employment income through an S corporation. These taxpayers then pay themselves a nominal salary and take the position that the remaining earnings are exempt from employment taxes. The bill would address this abuse in situations where (1) an S corporation is engaged in a professional service business that is principally based on the reputation and skill of 3 or fewer individuals or (2) an S corporation that is a partner in a professional service business. The bill would also clarify that individuals that are engaged in professional service businesses are unable to avoid employment taxes by routing their earnings through a limited liability corporation or a limited partnership. *This proposal is estimated to raise \$11.249 billion over 10 years.*

### **b. CORPORATE LOOPHOLES**

**Clarification of gain recognized in certain spin-off transactions (e.g., “Reverse Morris Trust” transactions).** Under current law, taxes are generally imposed on parent corporations where they extract value in excess of basis from their subsidiaries prior to engaging in a tax-free spin-off transaction. Therefore, if a subsidiary corporation distributes cash or other property to its parent in excess of the parent’s basis in the subsidiary or if a subsidiary corporation assumes parent debt in excess of the parent’s basis in the subsidiary, the parent corporation will recognize gain. However, taxes are not assessed if a subsidiary corporation distributes its own debt securities to a parent corporation prior to a spin off transaction even where the value of these securities would exceed the parent corporation’s basis in its subsidiary. The bill would treat distributions of debt securities in a tax-free spin-off transaction in the same manner as



distributions of cash or other property. Subject to a transition rule, the provision would apply to exchanges after the date of enactment. *This provision is estimated to raise \$255 million over 10 years.*

**Taxation of dividends received in certain business reorganizations (e.g., the “boot-within-gain” limitation).** Under current law, if a shareholder receives property other than stock (called “boot” by tax practitioners) in connection with certain business reorganizations then the amount of the dividend that the shareholder is required to recognize as income is limited to the amount of gain realized in the exchange (commonly referred to as the “boot within gain” limitation). This is so even if the property received would otherwise be considered to be a dividend for tax purposes. The President’s FY 2011 Budget states that “there is not a significant policy reason to vary the treatment of a distribution that otherwise qualified as a dividend by reference to whether it is received in the normal course of a corporation’s operations or is instead received as part of a reorganization exchange.” In addition, the Administration has identified specific abuses of this rule in cross-border reorganizations. They state, “in cross-border reorganizations, the boot-within-gain limitation can permit U.S. shareholders to repatriate previously-untaxed earnings and profits of foreign subsidiaries with minimal U.S. tax consequences.” The bill would repeal the boot-within-gain limitation in the case of any reorganization transaction (that is, it would apply to both domestic and cross-border transactions) if the exchange has the effect of the distribution of a dividend. The bill would also ensure that an appropriate amount of earnings is taken into account in determining the amount of the dividend. Subject to a transition rule, the provision would apply to exchanges after the date of enactment. *This provision is estimated to raise \$510 million over 10 years.*

## **VIII. MAINTAINING ACCESS TO AFFORDABLE HEALTH CARE**

### **a. SGR**

**Medicare physician payment rates.** Medicare physician payment rates are scheduled to be reduced by more than twenty percent (20%) in June. This provision would provide a 2.2 percent update to physician payment rates for the rest of this year and an additional 1 percent update for 2011. After 2011 rates would return to the current law levels. *This provision is estimated to cost \$22.9 billion over ten years.* A separate vote will be held on this provision of H.R. 4213.

### **b. OTHER HEALTH PROVISIONS**

**Addition of inpatient drug discount program to 340B drug discount program.** Under current law, drug manufacturers are required to provide certain hospitals and other entities that treat low-income and uninsured patients (including certain public hospitals, critical access hospitals, children’s hospitals, and cancer hospitals) with discounts so that the cost of outpatient drugs for these entities does not exceed the Medicaid price for the same drug. The bill would extend these discounts for certain 340B-eligible entities to inpatient drugs for use by patients

who are uninsured or who do not have insurance that provides prescription drug coverage. *This provision is estimated to cost \$35 million over 10 years.*

**Continued inclusion of orphan drugs in definition of covered outpatient drugs with respect to children's hospitals under the 340B drug discount program.** This provision would clarify that eligible children's hospitals retain access to 340B drug discounts on orphan drugs. *This provision has no cost.*

**Extension of Section 508 reclassifications.** Under current law, hospital geographic reclassifications authorized under section 508 of the Medicare Modernization Act expire on September 30, 2010. The bill would extend these reclassifications through FY 2011. The bill would also clarify that for certain reclassifications extended in previous legislation, the FY 2008 wage index values only applied for FYs 2008 and 2009. The bill would also create a transparent process whereby hospitals can view proposed wage index values that reflect the extension of Section 508 reclassifications for FY 2011 and notify CMS if they choose to discontinue their reclassification status. *This provision is estimated to cost \$300 million over 10 years.*

**Repeal of delay of RUG-IV.** Under current law, implementation of Version 4 of the Resource Utilization Groups ("RUG IV") for purposes of reimbursing skilled nursing facilities under Medicare is delayed until October 1, 2011. The bill would repeal the delay and allow RUG IV to go into effect on October 1, 2010, consistent with the final SNF payment regulation for FY11. *This provision has no cost.*

**Funding for claims reprocessing.** Extensions of Medicare payment policies for calendar year 2010 were enacted into law on March 23, 2010, requiring the Centers for Medicare and Medicaid Services (CMS) to reprocess Medicare claims back to January 1, 2010. The bill would provide funding for CMS to reprocess these claims. *This provision costs \$175 million over 10 years.*

**Conforming amendment related to waiver of coinsurance for preventive services.** The bill would clarify that waivers of cost sharing and deductibles for Medicare preventive services apply when those services are furnished at Federally Qualified Health Centers and Rural Health Clinics, as applicable. *This provision has no cost.*

**Establish a CMS-IRS data match to identify fraudulent providers.** Under current law, CMS and IRS are not authorized to exchange information for the purposes of fighting Medicare fraud and screening potential new providers. This provision helps identify potentially fraudulent providers sooner by authorizing CMS to collaborate with the IRS to determine whether providers applying to enroll or re-enroll in Medicare have failed to file Federal tax returns or have delinquent tax debts. The data match would target certain high-risk provider types in high-vulnerability areas. *This provision is estimated to save \$400 million over 10 years.*

**Clarification of effective date of Part B special enrollment period for disabled TRICARE beneficiaries.** Under current law, disabled Medicare beneficiaries who are also eligible for TRICARE are eligible for a 12-month special enrollment period (SEP) for Medicare Part B in order to ensure that they properly enroll in Medicare Part B and retain their TRICARE eligibility.

This provision would clarify the effective date of this SEP to ensure that beneficiaries can use it. *This provision is estimated to cost \$3 million over 10 years.*

**Limitation on reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.** Under current law, cost-based payments for lab services at certain small hospitals are reinstated for one-year for cost reporting periods beginning after July 1, 2010. This policy previously expired on June 30, 2008 and has not been in effect for close to two years. The bill would repeal the reinstatement of this provision. *This provision has no cost.*

**Adjustment to Medicare payment localities.** Under current law, the boundaries of payment localities in the state of California are determined using data that is almost 20 years old. This provision would update the method used to determine the localities used for Medicare's physician geographic adjustment factor in California, utilizing an approach that is based on metropolitan statistical areas. *This provision is estimated to cost \$400 million over ten years.*

**Medicaid and CHIP technical corrections.** The bill would make technical corrections to Medicaid and CHIP relating to exclusion from participation, income eligibility levels for children, measurement of payment error rates, coverage of children of state employees, and payment for electronic health records. *These provisions have no cost.*

**Clarification of 3-day payment window.** Under current law, all services related to an inpatient admission are included in the bundled payment for that admission. The bill would conform the law with recent practice by preventing future unbundling of services and submission of adjustment claims seeking separate and additional Medicare payments. *This provision would prevent \$4.2 billion in excess spending by preventing providers from changing current practice.*

## **IX. OTHER PROVISIONS**

**Extension of State Court Improvement Programs.** The bill would extend for one year programs that now provide funds to help courts improve the processing of foster care and adoption cases. *This provision is estimated to cost \$20 million over 10 years.*

**Cobell and Pigford settlements.** The bill also contains \$4.6 billion to pay for settlement of both the Cobell and Pigford class action lawsuits. The Cobell settlement concerns the government's management and accounting for over 300,000 American Indians' trust accounts, and the Pigford settlement ends a decades old discrimination lawsuit brought by black farmers against USDA. *This provision is estimated to cost \$4.6 billion over 10 years.*

**Reinstate geothermal receipts formula.** The bill would reinstate provisions that, for fiscal year 2010, would deposit all funds received from sales, bonuses, royalties, and rentals under the Geothermal Steam Act of 1970 in the Treasury, of which (1) 50 percent shall be used by the Secretary of the Treasury to make payments to States within the boundaries of which the leased land and geothermal resources are located; (2) 25 percent shall be used by the Secretary of the

Treasury to make payments to the counties within the boundaries of which the leased land or geothermal resources are located; and (3) 25 percent shall be deposited in miscellaneous receipts. *This provision is estimated to cost \$8 million over 10 years.*

**Allows Secretary of the Interior to grant economy-related contract extensions to timber companies.** Currently, the U.S. Forest Service has several options for helping timber companies adjust economically unviable timber contracts, but the Bureau of Land Management (BLM) does not have the same authorities. As a result, there are many timber companies which negotiated contracts three years ago with the BLM but can no longer afford to remove the timber based on the current contract terms. The bill would allow the Secretary of the Interior to add three years to the current contract expiration date. This would give companies the opportunity to wait for a better economic climate in which to remove timber from BLM lands, rather than mutually agreeing with the BLM to cancel their current contracts. *This provision is estimated to have no cost.*

**Reporting requirements for funds from the American Recovery and Reinvestment Act.** The bill requires any agency funding a program provided for in the American Recovery and Reinvestment Act (ARRA) of 2009 at a level of \$2 billion and above make available on their website a description of the goals for the program, information on how the funding will be distributed, milestones for major phases of activities under the covered program, and performance measures being used by the agency. The bill also requires agencies to publish quarterly reports on ARRA programs, including information on progress towards goals, details on unobligated and unexpired balances, and whether the program has met milestones and performance standards. Civil penalties are authorized for recipients of recovery funds who do not report to the appropriate agency information on the use of such funds. *This proposal is estimated to have no cost.*

**Commerce Department study on job losses.** The bill requires the Commerce Department to submit a report to Congress on job losses in New England, Mid-Atlantic and Midwest states over the past 20 years. The Commerce Department would study what role the off-shoring of manufacturing has played in job losses, and would be required to submit recommendations on how to attract industries and jobs to the regions. *This proposal is estimated to have no cost.*