MEMORANDUM

August 5, 2010

To: Reporters and Editors
From: Scott Mulhauser and Erin Shields for Senate Finance Committee Chairman Max Baucus (D-Mont.)
Re: Information regarding the Democratic alternative to the Johanns amendment to the Small Business Jobs Bill

After Senate Majority Leader Harry Reid announced the series of amendments the Senate will consider to the Small Business Jobs Act, Senate Finance Committee Chairman Max Baucus (D-Mont.) released the text of the Democratic alternative to the Johanns amendment. The Democratic alternative responds to concerns raised by small businesses by making targeted changes to information reporting requirements that would significantly reduce paperwork burdens.

The Johanns amendment is paid for by eliminating the $15 billion Prevention Trust Fund. The Prevention Trust Fund increases Americans' access to preventive services, including cancer screenings, particularly among Americans who have lost their health insurance. This year, the Trust Fund was used to help people quit smoking, to fight obesity and to help state and local governments prepare to respond to infectious diseases like the H1N1 flu. The Trust Fund is critical to helping keep health care costs down across the system by preventing illnesses and chronic conditions before they become serious and costly.

The Johanns amendment would result in increased premiums for people with health insurance, because insurance risk would be spread over fewer Americans. Additionally, those Americans without health insurance would continue to be able to access care in hospitals and those providers would then pass on the cost to insured Americans as they do today. The cost of uncompensated care is currently estimated to add more than $1,000 to health insurance premiums annually. The Johanns amendment would also reduce the number of Americans with health insurance by changing the personal responsibility requirement for people to have health insurance in 2014, including those who would be eligible for a tax credit to help make coverage affordable.

Instead, the Democratic alternative is paid for by repealing tax cuts for the five largest oil companies. Specifically, it would repeal Section 199 of the tax code, which currently allows these corporations to deduct six percent of their income from oil and gas production from their tax liability, effective December 31, 2010. This repeal would only apply to the five largest corporations with more than $1 billion of before-tax income.

The five major integrated oil companies, which include BP, had a combined profit of $25 billion in the first quarter of 2010. And, in the five years since enactment of the Section 199 deduction, these major integrated oil companies have posted $521 billion in profits. The profitability of these companies has been so robust that in the first quarter of 2009, when the U.S. GDP shrank by 6.4 percent and corporate profits decreased by 5.25 percent, these companies still earned more than $13 billion in profits. Furthermore, it is not clear the goal of this deduction, which is to improve America's energy security by promoting domestic production, has been reached. When the Section 199 deduction took effect in 2005, domestic oil production averaged about 5.5 million barrels per day. Now, five years after the deduction took effect, domestic oil production has actually fallen slightly, to 5.48 million barrels per day.

A major integrated oil company, as defined in section 167(h)(5)(B) of the tax code, is an integrated oil company which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year, had gross receipts in excess of $1 billion for its last taxable year ending during the calendar year 2005, and generally has an ownership interest in a crude oil refiner of 15 percent or more.

The Democratic alternative effectively responds to concerns regarding business information reporting raised by small businesses. Information reporting is designed to ensure businesses pay their fair share of taxes without raising taxes for those who currently do pay their fair share. However, small businesses have raised some concerns with recently-enacted information reporting rules. The Democratic alternative is designed to address these concerns. First, it exempts businesses with fewer than 25 employees at any time during the year from the requirement to file information returns on payments for goods and property. For businesses with more than 25 employees, the alternative also raises the threshold for reporting purchases of goods and property from $600 to $5,000. Many small businesses will not have cumulative purchases of more than $5,000 from any one vendor. The proposal also exempts all purchases made with a credit card from information reporting.

The Democratic alternative gives the Treasury Department the authority to exempt payments with minimal compliance risk from the reporting requirements. Examples of such payments might include payments for office supplies, airline tickets and restaurant meals. It also requires the Treasury Department to ask for and consider comments from the public on ways to implement the new rules that will minimize the burdens on small businesses and avoid duplicative reporting, and to issue timely guidance so small businesses will have plenty of time to understand the new rules and prepare to comply with them. The amendment also requires the Treasury Department to issue quarterly reports to Congress on steps taken to implement the new rules so Congress will be able to identify and address any compliance burdens before the new rules go into effect. The Treasury Department is also directed to issue a report to Congress no later than six months before the new rules take effect comparing the compliance burdens under the new rules to the compliance burdens under the old rules.

The Democratic alternative was introduced as an important first step to demonstrate that Senate Democrats understand the concerns of small businesses and intend to address those concerns. If these changes are not enough, further changes to this reporting policy will be made.

The legislative text of the amendment is attached.