

**Summary of Further Modifications and Additions to the Baucus Substitute Amendment**  
*The American Jobs and Closing Tax Loopholes Act, H.R. 4213*  
June 23, 2010

*\*NOTE: This document reflects modifications and additions made to the previous substitute amendment introduced June 16, 2010. Provisions not listed below remain unchanged. All scores in this document are preliminary and subject to change.*

**Modification to Changes to the Taxation of Carried Interest** – The bill would prevent investment fund managers from paying taxes entirely 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 gains tax rates. This modification provides two technical corrections clarifying: (1) the application of the reduced recharacterization percentage on the disposition of an asset or investment services partnership interest held for at least 5 years, including the treatment of the section 197 intangibles related to entities providing investment services, and (2) the application of the exemption from recharacterization under Internal Revenue Code section 751. In addition, this modification confirms that a partner will not have a carried interest subject to recharacterization if all distributions and all allocations of the partnership, and of any other partnership in which the partnership directly or indirectly holds an interest, are made pro rata on the basis of capital contributions of each partner. Finally, this modification provides that an interest in a partnership acquired with a loan or other advance made or guaranteed, directly or indirectly, by other partners or the partnership may be treated as a qualified capital interest to the extent the loan or advance was repaid before the date of enactment. *This provision, as modified, is estimated to raise \$13.594 billion over ten years.*

**Modification to Extension of Temporary Increase in Federal Medicaid Matching Rate (FMAP)** – Under current law, the federal Medicaid matching rate is increased by 6.2 percentage points for all States, and by additional percentage points for states with high unemployment. These temporary increases were enacted in the Recovery Act in February 2009 in response to the increased Medicaid caseloads and decreasing state revenues resulting from the recession. The increase is scheduled to expire on December 31, 2010. The previous substitute amendment would have extended these increases for six months, through June 30, 2011. The modification will continue the additional federal assistance for six months, but would phase the level of assistance down. For January – March, 2011, the federal Medicaid matching rate would be increased by 3.2 percentage points for all States, and for April – June, 2011, the federal Medicaid matching rate would be increased by 1.2 percentage points for all States. For the same six-month period, states with high unemployment would continue to receive the additional percentage points, as they do under current law. This will ensure that states continue to receive increases throughout state fiscal year 2011. *This modification reduces the cost of the bill by \$8 billion over ten years.*

**Addition of Provision Eliminating of Advanced EITC** – Currently, low- and moderate-income individuals may qualify for a refundable earned income tax credit (EITC). Individuals have the option of requesting advanced payments of the EITC throughout the year by having their payments of withheld income reduced by their employer. The advanced EITC payment option, however, is not widely used and has a significant error rate by workers and employers. The elimination of the advanceability feature will affect few individuals who are eligible for the benefit. *This provision is estimated to raise \$1.2 billion over ten years.*

**Addition of Treatment of Certain Drugs for Computation of Medicaid AMP** – Under current law, the calculation of Medicaid average manufacturer price (AMP) excludes certain payments and rebates if received from or provided to entities other than retail community pharmacies. The bill would provide an exception to that exclusion for inhalation, infusion, or injectable drugs that are not dispensed through retail community pharmacies. This will ensure accurate calculation of AMP for inhalation, infusion, and injectable drugs. *This provision is estimated to save \$2.1 billion over ten years.*

**Addition of a Provision to Reallocate Future Spending** – The modification reallocates \$11.29 billion in future spending. These reallocations consist of \$600 million in unobligated Recovery Act funds intended for improving broadband deployment across the U.S. and \$260 million in Recovery Act savings from the lower cost of construction and repair on Defense Department contracts. Also included is \$900 million from non-Recovery Act Defense Department unobligated balances which will expire on September 30, 2010, and are excess to current requirements. In addition, effective June 1, 2014, food stamp benefits will return to the levels that individuals would have received in 2014 under pre-Recovery Act law. *This modification reduces the cost of the bill by \$11.29 billion over ten years.*

**Technical Correction to Creation of the Office of the Homeowner Advocate** – The Senate accepted amendment number 4311 to create an Office of the Homeowner Advocate to assist homeowners, housing counselors, and housing lawyers in resolving problems with the Home Affordable Modification Program (HAMP), a temporary program to help homeowners who are struggling to keep up with payments on their mortgages. The modification clarifies that the section limiting participation by borrowers who strategically default does not apply to the FHA Program Adjustments to Support Refinancing for Underwater Borrowers. *This modification has no revenue effect.*

**Technical Correction to 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 five 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. The modification makes a technical correction to clarify that states may continue to receive Conservation Reserve Program payments for the purposes of school funding. *This modification has no revenue effect.*

**Technical Correction to 340B Inpatient 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. The modification clarifies that the new 340B inpatient drug discount program will not affect the operation of or eligibility for the existing 340B outpatient drug discount program. *This modification has no revenue effect.*

**Technical Correction to the Special Rule for Certain Redemptions by Foreign Subsidiaries** – The provision would prevent a foreign subsidiary’s earnings from being reduced as a result of certain redemptions such that the earnings remain subject to U.S. tax when repatriated as a dividend. The modification would clarify that the provision applies if more than 50 percent of the dividend arising from the redemption would neither be subject to tax nor includible in the earnings of a controlled foreign corporation. *This modification has no revenue effect.*

**Technical Correction to the Provision that would Terminate the Special Rules for Interest and Dividends Received from “80/20 Companies”** – The provision would eliminate the withholding and foreign tax credit benefit for domestic corporations that generate 80 percent or more of their active business income from foreign sources (“80/20 companies”) prospectively, subject to a grandfather rule that would continue to provide favorable withholding tax treatment to payments made by existing legitimate 80/20 companies. The modification would clarify that for purposes of applying the grandfather provision for periods prior to 2011, the 80/20 rules then in effect shall apply. *This modification has no revenue effect.*

**Technical Correction to the Source Rules for Income on Guarantees** – The provision would reverse a recent Tax Court decision to provide that guarantee payments made to foreign persons are treated like interest, rather than services, and therefore subject to U.S. withholding tax when paid by a U.S. person to a foreign person. The modification would clarify that the foreign source rule for guarantees parallels the United States source rules for guarantees. *This modification has no revenue effect.*