



# Fact Sheet

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## ***S.A. 3336, the American Workers, State, and Business Relief Act Amendment to H.R. 4213***

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## Summary

While the economy is starting to grow and recover from the worst financial and economic crisis since the Great Depression, a real economic recovery is not possible without long-lasting, meaningful job creation. That's why Senate Democrats are committed to putting America back to work and strengthening our economy. As a part of our year-long, multi-bill jobs agenda, Senate Democrats passed the bipartisan *HIRE Act* (**H.R. 2847**, as amended) and the *Travel Promotion Act* (**H.R. 1299**, as amended) last week. These two bills have the potential to create and save well over a million jobs, strengthen American businesses, and boost our economy.

On March 1, 2010, Senate Finance Committee Chairman **Baucus** and Senate Majority Leader **Reid** introduced a proposal that would extend unemployment insurance benefits and eligibility for unemployment health care benefits through the end of 2010, including extending benefits retroactively so families will receive the benefits that were suspended when these programs expired on February 28. The legislation would also extend loan programs for small businesses and tax cuts that provide the tax certainty families and businesses need to create jobs, along with other important safety-net programs that families and communities depend on in this tough economic climate.

Specifically, **S.A. 3336**, the *American Workers, State, and Business Relief Act* (the "American Workers Act" or AWSBRA"), a substitute amendment to **H.R. 4213** would:

- [Extend tax provisions](#) that expired at the end of 2009, providing much-needed tax relief for individuals and businesses in a time of economic uncertainty;
- [Provide pension funding relief](#) for certain plans that suffered significant losses in asset value due to the steep market slide in 2008;
- [Extend economic safety net provisions](#) – including unemployment insurance, health care assistance, and federal assistance to states – to support those who have been hardest hit by the recession; and
- [Extend other programs](#), including expired or expiring health care measures, the national flood insurance program and certain SBA loan programs.

Measures included in this bill would be [offset](#) by three tax measures and a reduction in the Medicare Improvement Fund.

The Senate is scheduled to consider the *American Workers Act* the week of March 1, 2009.

# Major Provisions

The following summaries are based on an [analysis](#) provided by the Majority Leader's office and the Senate Committee on Finance

## *Extension of Expiring Tax Provisions*

The *American Workers Act* would extend several tax provisions that expired at the end of 2009, providing much needed tax relief for individuals and businesses.

### Energy Provisions

The *American Workers Act* would extend for one year, through 2010:

- **Heavy hybrid credit**, an alternative motor vehicle credit for so-called heavy hybrids (i.e., hybrid motor vehicles that are not passenger automobiles or light trucks);
- **Tax incentives for biodiesel and renewable diesel**, including the \$1.00 per gallon tax credit for biodiesel and the small agri-biodiesel producer credit of 10 cents per gallon. The *American Workers Act* would also extend through 2010 the \$1.00 per gallon tax credit for diesel fuel created from biomass;
- **Biomass Facilities credit period** for electricity produced at open-loop biomass facilities placed in service before October 22, 2004;
- **Refined coal** placed-in-service deadline for qualifying refined coal facilities;
- **Steel industry fuel** placed-in-service deadline for qualifying steel industry fuel facilities;
- **Small business refiners** to assist small businesses in complying with EPA sulfur regulations. One provision would provide for a deduction of up to 75 percent of the costs related to compliance with EPA's Highway Diesel Fuel Sulfur Control requirement. A second provision would provide for a credit of five cents for each gallon of low sulfur diesel fuel produced during the taxable year;
- **Credit for producing fuel from coke or coke gas** placed-in-service date for qualified facilities producing coke or coke gas, byproducts of the coal refining process that are used to make fuel;
- **Extension of credit for energy-efficiency improvements to new homes:** the credit for the construction of energy-efficient new homes that achieve a 30 percent or 50 percent reduction in heating and cooling energy consumption relative to a comparable dwelling constructed per the standards of the 2003 International Energy Conservation Code (including supplements);
- **Extension and modification of alternative fuels credit** for all fuels except hydrogen (which maintains its current-law expiration date of September 30, 2014).

Beginning January 1, 2010, the *American Workers Act* would modify the definition of alternative fuel to exclude any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp. Thus, such fuel would no longer qualify for the alternative fuel credit, alternative fuel mixture credit, and related payment provisions; and

- **Temporary rule for sales or dispositions to implement FERC or state electric restructuring policy for qualified electric utilities.** 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, the *American Workers Act* would allow gain on such sales to be recognized ratably over an eight-year period.

### Individual Provisions

The *American Workers Act* would extend for one year, through 2010, the:

- **Teacher expense deduction** that provides teachers an above-the-line deduction for up to \$250 for educational expenses. The proposal is effective for taxable years beginning after December 31, 2009;
- **Additional standard deduction for real property taxes**, which is capped at the lesser of the amount of state and local and foreign real property taxes paid, or \$500 (\$1,000 in the case of a joint return). This provision would be effective on the date of enactment;
- **Deduction of state and local general sales taxes.** The *American Jobs Creation Act (P.L. 108-357)* provided that a taxpayer may elect to take an itemized deduction for state and local general sales taxes in lieu of the itemized deduction for state and local income taxes. The proposal would extend the provision to the end of 2010. The proposal is effective for tax years beginning after December 31, 2009;
- **Extension of provision encouraging contributions of capital gain real property for conservation purposes.** The *American Workers Act* would extend the increased contribution limits and carry-forward period for contributions of appreciated real property (including partial interests in real property) for conservation purposes;
- **Qualified tuition deduction.** The *Economic Growth and Tax Relief Reconciliation Act (EGTRRA) (P.L. 107-16)* created an above-the-line tax deduction for qualified higher education expenses. The maximum deduction was \$4,000 for taxpayers with AGI of \$65,000 or less (\$130,000 for joint returns) or \$2,000 for taxpayers with AGI of \$80,000 or less (\$160,000 for joint returns);
- **Tax-free distributions from individual retirement plans for charitable purposes.** This provision would permit tax-free distributions to a charity from an Individual Retirement Account (IRA) of up to \$100,000 per taxpayer, per taxable year;

- **Estate tax look-through for certain regulated investment company (RIC) stock held by nonresidents.** Although stock issued by a domestic corporation is generally treated as property within the United States, stock of a RIC that was owned by a nonresident non-citizen is not deemed property within the United States in the proportion that, at the end of the quarter of the RIC's taxable year immediately before a decedent's date of death, the assets held by the RIC are debt obligations, deposits, or other property that would be treated as situated outside the United States if held directly by the estate (the "estate tax look-through rule for RIC stock"). This estate tax look-through rule for RIC stock does not apply to estates of decedents dying after December 31, 2009. The *American Workers Act* would permit the estate tax look-through rule for RIC stock to apply to estates of decedents dying before January 1, 2011. The proposal is effective for decedents dying after December 31, 2009; and
- **Election for refundable low-income housing credit for 2010.** This program, which was enacted as part of the *American Recovery and Reinvestment Act of 2009* (P.L. 111-5), 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.

### Business Provisions

The *American Workers Act* would extend for one year, through 2010, the:

- **Research and development credit** equal to 20 percent of the amount by which a taxpayer's qualified research expenses for a taxable year exceed its base amount for that year and provides an alternative simplified credit of 14 percent. The proposal is effective for amounts paid or incurred after December 31, 2009;
- **Indian employment credit**, which allows a business tax credit for employers of qualified employees that work and live on or near an Indian reservation. The credit is for wages and health insurance costs paid to qualified employees (up to \$20,000) in the current year over the amount paid in 1993. Wages for which the Work Opportunity Tax Credit is available are not qualified wages for purposes of the Indian employment tax credit;
- **New markets tax credit.** Under current law, new markets tax credits are available on a competitive basis to qualified community development entities investing in low-income census tracts. In 2009, \$5 billion was available under the program. This proposal would extend the program for one year, providing \$5 billion in new markets tax credit authority. The proposal is effective for calendar years after the date of enactment;
- **Expenditures for maintaining railroad tracks**, a credit that provides Class II and Class III railroads (generally, short-line and regional railroads) with a tax credit equal to 50 percent of gross expenditures for maintaining railroad tracks that they own or lease. This credit is allowable against the AMT. This provision is effective for expenses paid or incurred in taxable years beginning after December 31, 2009;
- **Mine rescue team training credit** of up to \$10,000 for the training of mine rescue team members. This provision would be effective for taxable years beginning after December 31, 2009;

- **Employer wage credit for activated military reservists**, which provides eligible small business employers with a credit against income tax liability for a taxable year in an amount equal to 20 percent of the sum of differential wage payments to activated military reservists, up to \$4,000. This provision would be effective for payments made after December 31, 2009;
- **Certain farming business machinery and equipment treated as five-year property.** The *American Workers Act* would extend for one year, through 2010, the five year recovery period for any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business, the original use of which commences with the taxpayer, and is placed in service before January 1, 2011. For these purposes, the term “farming business” means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. This provision is effective for property placed in service after December 31, 2009;
- **15-year straight-line cost recovery for qualified leasehold, restaurant, and retail improvements**, which are placed in service before January 1, 2011. The extension is effective for qualified property placed in service after December 31, 2009;
- **7-year recovery period for certain motorsports racetrack property.** This provision would be effective for property placed in service after December 31, 2009;
- **Accelerated depreciation for business property on Indian Reservations.** The *American Workers Act* would extend the temporary depreciation recovery period for qualified Indian reservation property which is placed in service before January 1, 2011. 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 provision would be effective for property placed in service after December 31, 2009;
- **Enhanced charitable deduction for food inventory**, which allows businesses to claim an enhanced deduction for the contribution of food inventory;
- **Enhanced charitable deduction for contributions of book inventory to schools**, which allows C corporations an enhanced charitable deduction for donations of books to schools, public libraries and literacy programs. This provision would be effective for contributions made after December 31, 2009;
- **Enhanced charitable deduction for qualified computer contributions**, which encourages businesses to contribute computer equipment and software to elementary, secondary, and post-secondary schools by allowing an enhanced deduction for such contributions. This provision would be effective for contributions made during taxable years beginning after December 31, 2009;
- **Election to expense advanced mine safety equipment.** This provision would allow a 50 percent immediate expensing for the following advanced underground mine safety equipment: 1) communications technology enabling miners to remain in constant contact with individuals above ground; 2) electronic tracking devices that enable

individuals above ground to locate miners in the mine at all times; 3) self-rescue emergency breathing apparatuses carried by the miners and additional oxygen supplies stored in the mine; and 4) mine atmospheric monitoring equipment to measure levels of carbon monoxide, methane, and oxygen in the mine. This provision would apply to property placed in service after December 31, 2009;

- **Temporary expensing rules for certain film and television productions**, which would allow an owner to elect to expense up to \$15 million of any qualified film or television production costs. The maximum deduction is increased to \$20 million if the costs are significantly incurred in specific, economically distressed areas. No other depreciation or amortization is allowed for production costs where this deduction is taken. A qualified film or television production is one in which at least 75 percent of the total compensation spent on the production is for services performed in the United States by actors, production personnel, directors, and producers. This provision would be effective for productions commencing after December 31, 2009;
- **Expensing of environmental remediation costs**. This provision would be effective for property placed in service after December 31, 2009;
- **Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico**. This provision would allow a section 199 domestic production activities deduction for activities in Puerto Rico and would be effective for tax years beginning after December 31, 2009;
- **Modification of tax treatment of certain payments to controlling exempt organizations**. In general, interest, rent, royalties, and annuities paid to a tax-exempt organization from a controlled entity are treated as unrelated business income of the tax-exempt organization. The *Pension Protection Act* (PPA) (**P.L. 109-280**) provided that if a payment to a tax-exempt organization by a controlled entity is less than fair market value, then the payment is excludable from the tax-exempt organization's unrelated business income. This provision would be effective for payments received or accrued after December 31, 2009;
- **Extension of exclusion of gain on the sale or exchange of certain brownfield sites from unrelated business taxable income**. This provision would exclude any gain or loss from the qualified sale, exchange, or other disposition of any qualified brownfield property from unrelated business taxable income. A brownfield site refers to a category of redevelopment sites where hazardous substances, pollutants, or contaminants are or may be present;
- **Taxation of qualified timber gain and timber REIT provisions**. Under current law, gains on timber sales are eligible for capital gains tax treatment. The American Workers Act would provide an extension of a provision included in the *Food Conservation and Energy Act of 2008* (**P.L. 110-246**) that created an alternative maximum tax rate of 15 percent for gain on qualified timber harvest by a C corporation. Qualified timber gain is gain from the sale or exchange of timber held for at least 15 years. In addition, this provision would extend other *Farm Bill* provisions intended to modernize the taxation of timber real estate investment trusts (REITS) including: 1) clarifying that gains from the sale of timber held for less than one year is qualifying

income; 2) providing that mineral royalty income is qualifying income; and 3) making changes to the safe harbors for timber property sales;

- **Treatment of certain dividends of regulated investment companies (RICs).** The *American Workers Act* would extend a provision allowing a RIC, under certain circumstances, to designate all or a portion of a dividend as an “interest-related dividend,” by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. In addition, an interest-related dividend received by a foreign person generally is exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442 of the Code. This provision would extend the treatment of interest-related dividends and short-term capital gain dividends received from a RIC to taxable years of the RIC beginning before January 1, 2011. This provision would be effective for dividends with respect to taxable years of RICs beginning after December 31, 2009;
- **Extend the treatment of regulated investment companies (RICs) as “qualified investment entities”** under section 897 of the Code for those situations in which that inclusion otherwise expired at the end of 2009. This provision would be effective on January 1, 2010;
- **Exception under Subpart F for active financing income.** The U.S. parent of a foreign subsidiary engaged in a banking, financing, or similar business is eligible for deferral of tax on such subsidiary’s earnings if the subsidiary is predominantly engaged in such business and conducts substantial activity with respect to such business. The subsidiary must pass an entity level income test to demonstrate that the income is active income and not passive income. This provision would extend the provision to the end of 2010. The proposal is effective for tax years beginning after December 31, 2009;

**Look-through treatment of payments between related CFCs under the foreign personal holding company rules.** This provision would allow deferral for certain payments (interest, dividends, rents and royalties) between commonly controlled foreign corporations (CFC). This provision would allow U.S. taxpayers to deploy capital from one CFC to another without triggering U.S. tax. It would extend present law to the end of 2010 and would be effective for tax years beginning after December 31, 2009;

- **Basis adjustment to stock of an S Corporation making charitable contributions of property.** Prior to the *Pension Protection Act* (PPA), if an S corporation made a contribution to a charity, shareholders reduced the basis in their stock by their pro rata share of the fair market value of the contribution. The PPA provided the amount of a shareholder’s basis reduction in the S corporation stock will equal the shareholder’s pro rata share of the adjusted basis of the contributed property. This provision would extend the provision through December 31, 2010 and would be applicable to contributions made in taxable years beginning after December 31, 2009;
- **Extension of tax incentives for Empowerment Zones.** This provision would extend the designation of certain economically depressed census tracts as Empowerment Zones. Businesses and individual residents within Empowerment Zones are eligible for temporary tax incentives;
- **Tax incentives for investments in the District of Columbia.** The *American Workers Act* would provide for the designation of certain economically depressed census



tracts within the District of Columbia as the D.C. Enterprise Zone. Businesses and individual residents within this enterprise zone would be eligible for temporary tax incentives. First time home buyers would receive a \$5,000 credit for D.C. This provision would be effective for tax years beginning after December 31, 2009;

- **Extension of tax incentives for renewal communities.** This provision would extend the designation of certain economically depressed census tracts as Renewal Communities. Businesses and individual residents within Renewal Communities are eligible for temporary tax incentives;
- **Extension of temporary increase in limit on cover-over of rum excise tax revenues to Puerto Rico and the Virgin Islands.** The *American Workers Act* would extend a 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;
- **American Samoa economic development credit.** Certain domestic corporations operating in American Samoa are eligible for a possessions tax credit, which offsets their U.S. tax liability on income earned in American Samoa from active business operations, sales of assets used in a business, or certain investments in American Samoa. Further, the credit is held to an economic activity-based limit, measuring the credit against wages, depreciation, and American Samoa income taxes. This provision would be effective for tax years beginning after December 31, 2009; and
- **Percentage depletion for marginal wells.** This provision would extend the suspension on the taxable income limit for purposes of depreciating a marginal oil or gas well.

### [Disaster Relief Provisions](#)

The *American Workers Act* would extend for one year, the:

- **Relaxed mortgage revenue bond limitations for federal disasters.** The *Emergency Economic Stabilization Act* (EESA) (**P.L. 110-143**) included a provision that waived the 10 percent penalty tax for certain distributions from an individual retirement accounts or tax-favored retirement plans and 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 as a residence due to 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;
- **Expanded and enhanced casualty loss deductions relating to federal disasters,** which 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 allows these taxpayers to calculate their casualty loss deduction without regard to adjusted gross income. This provision would also extend, through December 31, 2010, the current law \$500 per loss threshold;

- **Bonus depreciation for qualified disaster property**, which 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 federally-declared disaster area;
- **Five-year carry-back period for certain losses relating to federal disasters**, which 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;
- **Expensing of Qualified Disaster Expenses**, which allows businesses that have been affected by a federally-declared disaster to currently expense demolition, repair, clean-up, and environmental remediation expenses (“Qualified Disaster Expenses”). In addition, this provision would extend for one year, through 2010, the expensing provision for small businesses that increases by \$100,000 (or the cost of qualified property, whichever is less) the amount of expensing available for qualifying expenditures made in a federally-declared disaster area and increases by \$600,000 (or the cost of qualified property, whichever is less) the level of investment at which the small business expensing benefits phase-out;
- **Tax incentives for the New York Liberty Zone**, a temporary depreciation allowance for certain real property within the New York Liberty Zone and the time for issuing New York Liberty Zone bonds;
- **Temporary depreciation allowance for Gulf Opportunity Zone property**, which provides for an additional depreciation deduction claimed by businesses equal to 50 percent of the cost of new property investments made in the Gulf Opportunity Zone. The provision would apply to property placed in service through December 31, 2010;
- **Increased rehabilitation credit for historic structures in the Gulf Opportunity Zone.** The *Gulf Opportunity Zone Act of 2005 (P.L. 109-135)* 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;
- **Work Opportunity Tax Credit (WOTC) for Hurricane Katrina employees** for certain employers hiring in the Hurricane Katrina core disaster area (through August 28, 2010);
- **Temporary rules for use of retirement fund distributions and loans in Midwestern disaster areas.** A provision enacted in the EESA waived the 10 percent penalty tax for certain distributions from an individual retirement accounts or tax-favored retirement plans (*e.g.*, Code sections 401(k), 403(b), or 457(b) plans). The penalty tax is waived if the distribution is made on or after the federally-declared disaster date and before January 1, 2011 and is made to an individual whose principal residence on the applicable declaration date was located in a Midwestern disaster area and who sustained an economic loss by reason of the disaster. In addition, this proposal would extend the provision enacted in the EESA that effectively doubles the limitation on loans from a 401(k), 403(b), or a governmental 457(b) plan by allowing participants

located in a Midwestern disaster area who sustained economic loss by reason of the disaster. Finally, for loans made after December 31, 2009 and before January 1, 2011, outstanding loan payments due on or after the applicable declaration date and before January 1, 2011 may be deferred an additional 12 months; and

- **Cancellations of indebtedness related to a Midwestern disaster.** The EESA included a provision that ensures that individuals are not taxed on personal debt that is discharged in response to damage suffered from the Midwestern disaster. For example, if a house is damaged or destroyed and the mortgage lender discharges all or part of this mortgage debt, the amount discharged would not be treated as income as a result of this proposal.

## ***Pension Funding Relief***

The *American Workers Act* would provide temporary, targeted funding relief for single employer and multiemployer pension plans that suffered significant losses in asset value due to the steep market slide in 2008. This proposal is estimated to raise approximately \$5.3 billion over ten years.

## ***Extension of Economic Safety Net Provisions***

### **Unemployment Insurance Extension**

The *American Workers Act* would extend unemployment benefits through December 31, 2010. These unemployment benefits expired on February 28, 2010. Prior to the expiration, an unemployed worker could receive up to 26 weeks of unemployment benefits provided by the state in which they were employed. After the state-provided benefits were exhausted, the worker could qualify for 34 more weeks of benefits provided by the federal government. If that person was unemployed in a state with an unemployment rate above six percent, they qualified for an additional 13 weeks of benefits also provided by the federal government. Unemployed workers in states with an unemployment level over 8.5 percent qualified for an additional six weeks of benefits also provided by the federal government. In addition, the federal government paid 100 percent of the cost of state Extended Benefits programs which provided up to 13 additional weeks of benefits for unemployed workers who had exhausted regular state benefits or Emergency Unemployment Compensation. Last year the *Recovery Act* increased weekly unemployment benefits by an additional \$25 per week. The legislation would retroactively extend these provisions.

### **Extension of COBRA Premium Assistance**

The *American Workers Act* would extend the 65 percent COBRA continuation coverage subsidy for terminated workers through December 31, 2010 and also includes technical clarifications to the program. The subsidy was originally enacted as part of the *Recovery Act* and was expanded later in 2009.

### **Extension of 2009 Federal Poverty Guidelines**

The *American Workers Act* would keep the 2009 federal poverty guidelines in place for 2010 to avoid a reduction in eligibility for poverty-based programs. A reduction would otherwise occur

because of the decrease in the average cost of goods that results from the economic downturn. This provision would allow all currently eligible individuals to remain eligible for poverty-based programs.

### Extension of Federal Assistance to States

The *American Workers Act* would extend for six months the increased federal medical assistance percentage (FMAP) made available to states in the *Recovery Act*. This extension would provide states additional funding through June 30, 2011.

## ***Other Provisions***

### Health Care Provisions

**Extension of exceptions process for Medicare therapy caps.** This provision would extend the therapy caps exception process through December 31, 2010. Current law places annual per beneficiary payment limits for all outpatient therapy services provided by non-hospital providers. The Secretary was required to implement an exceptions process for cases in which the provision of additional therapy services was determined to be medically necessary and this process expired on December 31, 2009.

**Accreditation exemption for certain pharmacies that furnish durable medical equipment.** Under current law, suppliers of durable medical equipment, prosthetics, orthotics, and other supplies (DMEPOS) must prove their compliance with quality standards by being accredited. Certain eligible professionals are specifically exempted from the accreditation requirement. The provision would make pharmacies eligible for an exemption from the accreditation requirements under certain circumstances.

**Extension of physician fee schedule mental health add-on.** This provision would extend the five percent increase in payments for certain Medicare mental health services through December 31, 2010.

**Extension of ambulance add-on.** This provision would extend the increased Medicare rates for ambulance services, including in super rural areas, through December 31, 2010.

**Extension of the 1.0 floor on the Work Geographic Practice Cost Index (GPCI).** This provision would extend the existing 1.0 floor on the work geographic adjustment through December 31, 2010.

**Extension of payments for the technical component of certain physician pathology services.** This provision would extend the ability of independent laboratories to receive direct payments for the technical component for certain pathology services through December 31, 2010.

**Outpatient hospital hold harmless.** This provision would extend the existing hospital outpatient hold harmless provision for small rural hospitals through December 31, 2010 and also allows Sole Community Hospitals with over 100 beds to qualify.

**Electronic health record clarification.** This provision would clarify the health information technology provision in current law that allows non-hospital-based physicians and other health

professionals who bill Medicare and Medicaid through a hospital to receive electronic health record incentives.

**Extension of direct billing for Indian Health Service providers.** This provision would extend the authorization for Indian Health Service providers to be directly reimbursed by Medicare Part B through December 31, 2010.

**Extension of certain payment rules for long-term care hospital services and of moratorium on the establishment of certain hospitals and facilities.** This provision would extend Sections 114 (c) and (d) of the *Medicare, Medicaid and SCHIP Extension Act of 2007 (P.L. 110-173)* by one year.

**Extension of the Medicare Rural Hospital Flexibility Program.** This provision would extend the authorization for the Flex Grant program through Fiscal Year 2011.

**Section 508 hospital wage index program.** This provision would extend hospital reclassifications under section 508 of the *Medicare Modernization Act (P.L. 108-173)* through the end of Fiscal Year 2010.

**Technical correction related to Critical Access Hospitals (CAHs).** This provision would make a technical correction to clarify that CAHs are eligible to receive 101 percent of reasonable costs for providing outpatient care regardless of eligible billing method the facility uses and for providing qualifying ambulance services.

**Medicare Advantage changes.** This provision would extend the authority of certain types of private plans to offer coverage under Medicare Advantage for one year (to 2011). Those plan types are special needs plans, cost plans, and senior housing programs. This provision would also provide a technical fix for existing employer-sponsored private fee-for-service plans and provides \$20 million in added funds for State Health Insurance Assistance Programs and similar organizations that assist beneficiaries with Medicare benefits.

**Family to Family Centers.** This provision would extend funding for the development and support of Family to Family Health Information Centers through Fiscal Year 2011, which helps families of children with disabilities or special health care needs make informed decisions about health care. The policy was first authorized in the *Deficit Reduction Act of 2005 (P.L. 109-171)*.

**Implementation funding.** This provision would appropriate funding to the Secretary of Health and Human Services (HHS) from amounts in the general fund of the Treasury to implement provisions in this title.

**Extension of gainsharing demonstration.** The *Deficit Reduction Act of 2005* authorized a demonstration to evaluate arrangements between hospitals and physicians designed to improve the quality and efficiency of care provided to beneficiaries. This provision would extend the demonstration through September 30, 2011 and extend the date for the final report to Congress on the demonstration to September 30, 2012.

## National Flood Insurance Program

In 1968, the U.S. Congress established the National Flood Insurance Program (NFIP) to address the nation's flood exposure and challenges inherent in financing and managing flood risks in the private sector. NFIP was created to: 1) identify areas across the nation most at risk of flooding; 2) minimize the economic impact of flooding events through floodplain management ordinances; and 3) provide flood insurance to individuals and businesses. After several short term extensions, the program expired February 28, 2010. As of October 2009, there were over 5.5 million active policies nationwide.

## SBA Loan Provisions

The *Recovery Act* provided \$375 million to increase guarantees on 7(a) loans from 75 percent to 90 percent and eliminated fees charged to borrowers on 7(a) and 504 loans to small businesses. These funds were used to provide loans to more than 40,000 small businesses, providing more than \$16 billion in loans. The *Recovery Act* funding was exhausted in November and the *Defense Appropriations Bill* provided an additional \$125 million to fund the increased guarantee and fee elimination through February. The *American Workers Act* would provide for \$354 million in funding through the end of the fiscal year and extend the authorization through December 31, 2010. The Small Business Administration estimates that the extension of *Recovery Act* funding will support \$18.5 billion in 504 and 7(a) loans to small businesses.

## Agriculture Disaster Assistance

The *American Workers Act* would provide \$1.98 billion in agricultural disaster assistance for crop, cottonseed, aquaculture, poultry, grazing, and specialty crop losses in 2009.

## Satellite Home Viewer

The *American Worker, State, and Business Relief Act* would provide a five-year reauthorization of satellite home viewer legislation. The legislation provides a statutory copyright license and communications regulatory framework that enables satellite providers to offer local broadcast stations to their subscribers. The *American Workers Act* would expand access for satellite television viewers, especially residents of rural areas, to local network channels normally available through cable operators.

The legislation would extend for five years the obligation on broadcasters and cable and satellite operators to engage in good faith retransmission consent negotiations.

The *American Workers Act* would update existing law to reflect the transition from analog to digital television broadcasts. It would also update copyright law so that satellite viewers will be able to access statewide public television networks. This provision would increase the penalties for violating the terms of the licenses in an effort to deter infringement.

## ***Statutory Licenses***

- **Modifications to statutory license for satellite carriers under Section 119.** The *American Workers Act* would modify the “distant signal” license for satellite carriers to reflect the transition from analog to digital and modernizes the process for determining royalty rates. The legislation would update the definition of an “unserved”

household to fix the “Grade B Bleed issue” in which an out of market station serves some households within a market, preventing a satellite carrier from using the distant signal license to provide an affiliate of that network to the entire Designated Market Area (DMA). The new definition of “unserved” would include a household in which there is not digital signal of a station affiliated with the network in the household’s local market.

The *American Workers Act* would also move quasi-local signals (e.g. significantly viewed, local low power, special exceptions) from the distant signal license to the local license (Section 122).

- **Modifications to statutory license for satellite carriers in local markets under Section 122.** The *American Workers Act* would modify secondary transmissions of television broadcast stations within a local market. This action would expand access to lower power stations by broadening the license for low power stations to cover the entire local market. Currently, a satellite provider can only carry a low power station within 20 -35 miles of the station’s transmitter, which makes it nearly impossible for a satellite provider to use.

The *American Workers Act* would promote consumer access to public television programming by permitting a satellite provider to carry a noncommercial educational broadcast station from within a consumer’s state if the station is part of a state-wide network, even if the station is licensed to a community in a different local market.

- **Modifications to cable system secondary transmission rights under Section 111.** The legislation would update the Section 111 statutory license which allows the cable industry to provide secondary transmissions of broadcast programming. Currently, cable providers may be required to pay royalty fees based on subscribers who do not receive the content for which the royalty is being paid. The license laws would be modified so that royalty fees are based only on subscribers who actually receive content. This modification addresses the “phantom signal” issue.
- **Waivers for providers of local-into-local service for all Designated Market Areas.** The *American Workers Act* provides an incentive for DISH network to provide local service in all 210 DMAs.

### ***Communications Provisions***

- **Extension of authority.** The *American Workers Act* would extend for five years the statutory provision that permits a satellite carrier to retransmit, without first having to obtain consent, the signal of a distant network station to specified unserved households.
- **Significantly viewed stations.** The *American Workers Act* would apply provisions relating to satellite transmissions of significantly viewed broadcast signals only to retransmissions to subscribers of a satellite carrier who receive local-into-local service. This provision would allow a satellite carrier to offer in high definition (HD) format the signal of a significantly viewed station only if the carrier also provides the signal of a local station in the local market of the subscriber in HD format.
- **Eligibility to receive distant signals.** The *American Workers Act* would address the “if local, no distant” principle. This provision would ensure that consumers who are

lawfully receiving distant network signals when the legislation is enacted do not lose access to those distant signals until the consumer decides to terminate the distant signal. New subscribers of satellite, who are not current distant signals subscribers, would not receive such signals, if the satellite carrier offers local signals in the market at the time of subscription.

The legislation also addresses the “buy-through” requirement. If the local signals become available after a consumer subscribes to a satellite carrier, the consumer may keep distant signals only if the subscriber also subscribes to the local signals within 60 days of the local signals becoming available in the market.

The *American Workers Act* would allow satellite carriers to retransmit local-into-local signals in digital and HD to two separate reception antennas.

- **Providing high definition digital signals.** The *American Workers Act* would require each eligible satellite carrier to offer subscribers HD of public broadcasting television stations in local markets, if the subscribers currently receive local television broadcasts in HD.

### ***Reports and Savings Provisions***

The *American Workers Act* would require the Register of Copyrights to submit a report to Congress on market-based alternatives to statutory licensing. The legislation would also require the Comptroller General to conduct a study and produce a report on the changes to the communications laws and regulations currently imposed on cable and satellite providers if Congress implemented a phase-out of the current statutory licensing requirements. The study would be directed to consider the impact these changes would have on consumer prices and access to programming.

This provision would also require the Federal Communications Commission (FCC) to analyze and report on in-state broadcast programming, including whether there are alternatives to the use of designated market areas to define local markets that would provide consumers with in-state broadcast programming. All of these reports would be due within a year of the enactment of the *American Workers Act*.

This provision would require each satellite carrier to submit bi-annual reports to the FCC about local network channel broadcasts.

### **Sustainable Growth Rate (SGR) Extension**

As of March 1, 2010, the sustainable growth rate update formula will require a 21 percent reduction in physician payments. This provision would delay this payment reduction by seven months.

### ***Offsets***

**Cellulosic Biofuels Loophole.** This provision modifies the \$1.01 per gallon cellulosic biofuel producer credit to exclude fuels with significant water, sediment, or ash content, such as black liquor. The provision excludes from the definition of cellulosic biofuel any fuels that (1) are more than four percent (according to weight) water and sediment in any combination, or (2)



have an ash content of more than one percent (according to weight). The provision is effective for fuel sold or used after date of enactment. This proposal is estimated to raise \$23.9 billion over ten years.

**Increased reporting requirements for homebuyer credit.** The bill tightens the anti-fraud provisions included as part of the homebuyer credit passed into law on November 6, 2009. Specifically, the legislation clarifies that the changes made apply to home purchases on or after the date of its enactment. It also clarifies what documentation is necessary for the Internal Revenue Service to properly certify that taxpayers meet the long-time resident requirements and binding contract requirements of the tax credit. This proposal is has a negligible revenue impact.

**Clarification of the economic substance doctrine and penalty for underpayments attributable to transactions lacking economic substance.** This provision clarifies the application of the economic substance doctrine which has been used by courts to deny tax benefits for transactions lacking economic substance. The provision also imposes a 40 percent strict liability penalty on underpayments attributable to a transaction lacking economic substance (unless the transaction was disclosed, in which case the penalty is 20 percent). This proposal is effective for transactions entered into after the date of enactment. The proposal is estimated to raise \$5.5 billion over ten years.

**Reduction in the Medicare Improvement Fund.** The Medicare Improvement Fund (MIF) contains funds that are available to the Secretary to make improvements to the original fee-for-service program under Parts A and B of Medicare. Under current law, approximately \$20 billion is available for services furnished during Fiscal Year 2014. The provision reduces the funding available in the MIF by \$8 billion. This proposal is estimated to save \$8 billion over ten years.

## Legislative History

On December 7, 2009, **H.R. 4213** was introduced in the House and agreed to by a 241 to 181 vote on December 9 ([Roll no. 943](#)).

On December 10th, the measure was received in the Senate and referred to the Committee on Finance. On March 1, the Senate Committee on Finance discharged **H.R. 4213** by Unanimous Consent. Later that day, the measure was laid before the Senate by unanimous consent. Senators Baucus, on behalf of Senator Reid and himself, offered a substitute amendment (**S.A. 3336**), the *American Workers, State, and Business Relief Act*, which is the subject of this bulletin.

The Senate is scheduled to consider **H.R. 4213** the week of March 1, 2010.

## Expected Amendments

The DPC will distribute information on amendments as it becomes available to staff listservs.

# Administration Position

On March 2, 2010, the White House released its Statement of Administration position on S.A. 3332 to H.R. 4213:

“The Administration supports Senate passage of the proposed substitute amendment 3336 to H.R. 4213. Passage of this bill will provide much-needed relief to families and to hard-pressed States while encouraging continued job creation by America’s businesses. The importance of longer-term extensions for various authorities and programs – and the certainty that such extensions bring – has been highlighted by the severe problems caused by interruptions in authorities for these programs.

“H.R. 4213 includes several important provisions, including: (1) an extension of extended unemployment insurance and COBRA subsidies through the end of the year, including reforms to improve COBRA subsidies; (2) prevention of dramatic cuts in reimbursements for doctors in Medicare along with extensions of other important health provisions; (3) an extension of increased American Recovery and Reinvestment Act (ARRA) Federal Medical Assistance Percentage rates that allow for enhanced Federal support for State Medicaid programs; (4) an extension of subsidies so that the Small Business Administration can continue certain lending programs with reduced fees and higher guarantees through the end of the fiscal year; and (5) targeted pension-funding relief.

“The bill also includes several other important measures supported by the Administration. The extensions to expiring tax cuts include several provisions that will encourage companies to invest in new technologies and create more high-tech jobs for the 21st century, including extending the research and experimentation (R&E) tax credit for another year. The legislation also extends the tax credit for biodiesel and renewable diesel, providing clean energy companies with the certainty they need to make critical investments in the Nation’s energy future.

“The Administration also supports the inclusion of other important extensions, either in this bill or in future legislation. These provisions include: (1) an extension and expansion of the TANF Emergency Fund; (2) an extension of bonus depreciation; (3) an extension of Economic Recovery Payments; and (4) the expansion of oversubscribed ARRA programs, including the 48C tax credit for manufacturing and TIGER grants for transportation.

“The Administration looks forward to continuing to work with the Congress on these and additional measures to spur private sector job creation.”

## Resources

Congressional Research Service, “Certain Temporary Tax Provisions Expiring in 2009,” available [here](#).

Congressional Research Service, “Reauthorizing the Satellite Home Viewing Provisions in the Communications Act and the Copyright Act: Issues for Congress,” available [here](#).

Congressional Research Service, “Medicare Physician Payment Updates and the Sustainable Growth Rate (SGR) System,” available [here](#).

Congressional Research Service, “American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5): Title V, Medicaid Provisions,” available [here](#).

Congressional Research Service, “Health Insurance Premium Assistance for the Unemployed: The American Recovery and Reinvestment Act of 2009,” available [here](#)

Senate Democratic Policy Committee, “Democrats Are Committed to Putting Americans Back to Work,” available [here](#).