UNITED STATES SENATE NEWS RELEASE

Summary of the Small Business Jobs Bill

Provisions to Promote Access to Capital

100% Exclusion of Small Business Capital Gains. Generally, non-corporate taxpayers may exclude 50 percent of the gain from the sale of certain small business stock acquired at original issue and held for more than five years. For stock acquired after February 17, 2009 and before January 1, 2011, the exclusion is increased to 75 percent. At the time of sale, however, 28% of the excluded gain will be treated as a tax preference item subject to the alternative minimum tax (AMT). Qualifying small business stock is from a C corporation whose gross assets do not exceed $50 million (including the proceeds received from the issuance of the stock) and who meets a specific active business requirement. The amount of gain eligible for the exclusion is limited to the greater of ten times the taxpayer's basis in the stock or $10 million of gain from stock in that corporation. This bill would temporarily increase further the amount of the exclusion to 100 percent of the gain from the sale of qualifying small business stock that is acquired after the date of enactment in 2010 and held for more than five years. Additionally, the bill eliminates the AMT preference item attributable for that sale. *This provision is estimated to cost $517 million over ten years.*

General Business Credit Carried Back Five Years. Under current law, a business' unused general business credit may generally be carried back to offset taxes paid in the previous year, and the remaining amount may be carried forward for 20 years to offset future tax liabilities. This bill extends the one year carryback for general business credits to five years for certain small businesses. This applies to general business credits for those sole proprietorships, partnerships and non-publicly traded corporations with $50 million or less in average annual gross receipts for the prior three years. *This provision is estimated to cost $107 million over ten years.*

General Business Credit Not Subject to AMT. Under the Alternative Minimum Tax (AMT), taxpayers may generally only claim allowable general business credits against their regular tax liability, and only to the extent that their regular tax liability exceeds their AMT liability. A few credits may be used to offset AMT liability, such as the credit for small business employee health insurance expense. This bill allows certain small businesses to use all types of general business credits against their AMT. This applies to general business credits for those sole proprietorships, partnerships and non-publicly traded corporations with $50 million or less in average annual gross receipts for the prior three years. *This provision is estimated to cost $977 million over ten years.*

S Corp Holding Period. Generally, a C corporation converting to an S corporation must hold onto any appreciated assets for 10 years following its conversion or face a business-level tax imposed on the built-in gain at the highest corporate rate of 35 percent. This holding period is reduced where the 7th taxable year in the holding period preceded the taxable year beginning in 2009 or 2010. This bill temporarily shortens the holding period of assets subject to the built-in gains tax to 5 years if the 5th taxable year in the holding period precedes the taxable year beginning in 2011. *This provision is estimated to cost $70 million over ten years.*

Increase Small Business Administration (SBA) Loan Limits. This provision increases 7(a) loan limits from $2 million to $5 million, 504 loans from $1.5 million to $5.5 million, and microloans from $35,000 to $50,000. It also increases the government guarantee on 7(a) loan limits, while providing the elimination of borrower fees on 7(a) and 504 loans through December 31, 2010. It increases the 7(a) Express Loans from $300,000 to $1 million to increase working capital to small businesses. The package also includes Intermediary Lending Pilot program, which allows the SBA to make direct loans to eligible nonprofit lending intermediaries, in turn allowing them to make loans to new or growing small businesses. SBA has estimated that the loan increase would increase lending to small businesses by $5 billion in the first year. *This provision is estimated to cost $26 million over two years.*

Small Business Lending Fund. The bill authorizes the creation of the Small Business Lending Fund to provide Treasury with the ability to purchase preferred stock and other debt instruments from eligible financial institutions with less than $10 billion in total assets. Eligible institutions include insured depositories, bank and savings and loan holding companies, and certain community development loan funds. Eligible institutions with less than $1 billion in total assets can apply to receive investments of up to five percent of their risk-weighted assets. Eligible institutions between $1 billion and $10 billion in total assets can receive investments of up to three percent of risk-weighted assets. Participating institutions will pay a five percent dividend rate on the preferred stock, but this rate can be reduced to as low as one percent if a bank demonstrates a 10 percent increase in small business lending relative to a baseline set using the four quarters prior to enactment. The dividend rate is increased to seven percent after two years, if the bank does not increase its small business lending. To encourage timely repayment, the rate increases to nine percent after four and a half years. Treasury's authority to make capital investments under the program is terminated one year after the date of enactment. *This provision is estimated to raise $1.1 billion over ten years.*

State Small Business Credit Access Fund. The bill provides $900 million in grants to States to support small business lending programs. States will apply for the funds to be used for approved programs that leverage private lenders to extend greater credit to small businesses and manufacturers. The program allows States to build upon successful models for state small business programs, including capital access, loan participation, collateral support, State-run venture capital, and credit guarantee programs. Funds are allocated to the States using formulas based on certain State employment and unemployment rate data. States have nine months to apply for the program. If the state does not apply, the largest municipalities of the states can apply. *This provision is estimated to cost $900 million over ten years.*

<u>Provisions to Stimulate Investment</u>

Increase of Section 179 Expensing and Expansion to Certain Real Property. Under current law, taxpayers may elect to write-off the costs of certain tangible personal property that is purchased for use in the active conduct of a trade or business in the year of acquisition in lieu of recovering these costs over time through depreciation. For the taxable year beginning in 2010, taxpayers may write-off up to $250,000 of these capital expenditures subject to a phase-out once these capital expenditures exceed $800,000. After 2010, the thresholds revert to $25,000 and $200,000, respectively. This bill would increase the thresholds to $500,000 and $2,000,000 for the taxable years beginning in 2010 and 2011. Within those thresholds, this bill would allow taxpayers to expense up to $250,000 of the cost of

qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. *This provision is estimated to cost $2.2 billion over ten years.*

Extension of Bonus Depreciation. Businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress temporarily allowed businesses to recover the costs of certain capital expenditures made in 2008 and 2009 more quickly than under ordinary depreciation schedules by permitting those businesses to immediately write-off 50 percent of the cost of depreciable property placed in service in those years. This bill extends the additional, first-year 50 percent depreciation for qualifying property purchased and placed in service in 2010. *This provision is estimated to cost $5.5 billion over ten years.*

Provisions to Promote Entrepreneurship

Increased Deduction for Start-up Expenditures. Under current law, taxpayers may deduct up to $5,000 in trade or business start-up expenditures. The amount that a business may deduct is reduced by the amount by which start-up expenditures exceed $50,000. Start-up expenditures are defined as expenses paid or incurred in connection with investigating or creating an active trade or business, which would be deductible if paid or incurred in connection with the operation of an existing trade or business. For the taxable year beginning in 2010, this bill would temporarily increase the amount of start-up expenditures that may be deducted to $10,000 subject to a $60,000 phase-out threshold. *This provision is estimated to cost $230 million over ten years.*

Small Business Export Promotion. The Office of the United States Trade Representative (USTR) plays an important role in promoting U.S. exports, and recently increased its focus on small business export promotion in particular. USTR has done so in several respects, including the creation of the position of Assistant USTR for Small Business, Market Access, and Industrial Competitiveness within USTR. This official will help ensure that USTR's trade policy addresses the challenges facing smaller U.S. exporters and promotes global export opportunities for them. The bill funds USTR's market access and trade enforcement activities targeted at helping small business increase market access and ensure a level playing field on which to sell their U.S. made goods . *This provision is estimated to cost $5.23 million over ten years.*

Enhanced Small Business Trade Opportunities. This provision improves the SBA's trade and export finance programs and elevates the Office of International Trade within the SBA. It adds Export Finance Specialists to the SBA's trade counseling programs. It also establishes the State Export Promotion Grant Program (STEP), which would increase the number of small businesses that export. In addition, it improves coordination between federal and state agencies and SBA resource partners. This leverages more than $1 billion in export capitol for small businesses, which will create or save as many as 40,000 – 50,000 jobs in 2010. *This provision is estimated to cost $58 million over two years.*

Improved Small Business Contracting. Removes the red tape and closes loopholes that too often put government work into the hands of multinational corporations instead of Main Street businesses. Increasing contracts to small businesses by just 2 percent can create more than 60,000 jobs. This legislation also provides for a periodic review of small business size standards to ensure that size indicators are consistent with inflation and industry growth of small businesses. It establishes accountability of large business prime contractors for prompt payment to small business subcontractors. *This provision is estimated to cost $142 million over two years.*

Relief for Community Partners. This provision allows SBA to waive or reduce the non-federal share of its funding requirements for up to one year, through fiscal year 2012. It also gives relief to Women's Business Centers (WBCs) and microloan intermediaries, which provide assistance to underserved communities to start and grow small businesses. The SBA estimates that the microloan program will create or save more than 10,000 jobs in Fiscal Year 2011. This legislation also provides an additional $50 million for the Small Business Development Centers to provide technical assistance to small business owners and entrepreneurs. *This provision is estimated to cost $50 million for one year.*

Provisions to Promote Equity

Modify Section 6707A Penalty. The bill revises section 6707A of the Internal Revenue Code to make the penalty for failing to disclose a reportable transaction proportionate to the underlying tax savings. The penalty for failure to disclose reportable transactions to the IRS would be set at 75 percent of the tax benefit received. Reportable transactions are defined as investments in transactions that the IRS has identified as listed tax shelters or that have characteristics of tax shelters, including large losses or confidentiality agreements. The minimum penalty under this bill is $10,000 for corporations and $5,000 for individuals, and the maximum penalty is $200,000 for corporations and $100,000 for individuals. The bill also requires the IRS to provide an annual report to the Senate Finance Committee and to the House Ways and Means Committee giving an account of certain tax-shelter related penalties asserted during the year. *This provision is estimated to cost $176 million over ten years.*

Deductibility of Health Insurance for the Purposes of Calculating Self-Employment Tax. Under current law, business owners are not permitted to deduct the cost of health insurance for themselves and their family members for purposes of calculating self-employment tax. This provision would allow business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in the calculation of their 2010 self-employment tax. *This provision is estimated to cost $1.96 billion over ten years.*

Enhancements to Small Business Contracting Parity Programs. This provision removes the priority one contracting program has over another, making clear that no single restricted competition program has priority over another. It places the small business contracting programs, HUBZone, 8(a), Service-Disabled Veterans and Women-Owned Businesses on a level playing field when competing for Federal contracts. *This provision has no cost associated with it.*

Improvements to Disaster Recovery to Include Aquaculture. Currently, the SBA excludes aquaculture businesses from receiving SBA Economic Injury Disaster Loans (EIDL). This section would allow SBA, provided it does not duplicate other Federal disaster programs for that disaster, to make economic injury disaster loans to these businesses. *This provision has no cost associated with it.*

Require Federal Agencies to Expand Their Assessments of Economic Effects on Small Businesses. This provision strengthens the Regulatory Flexibility Act by requiring agencies to respond to the SBA Chief Counsel of Advocacy's comments in the final rule. It also seeks more independence for the Office of Advocacy by mandating a separate line item in the SBA's annual budget. *This provision has no cost associated with it.*

Offsets – Reducing the Tax Gap

Require Information Reporting for Rental Property Expense Payments. The bill requires persons receiving rental income from real property to file information returns to the IRS and to service providers reporting payments of $600 or more during the year for rental property expenses. In general, there is an exception for individuals renting their principal residences, including active members of the military, from the reporting requirements. *This provision is estimated to raise $2.5 billion over ten years.*

Increase Penalties for Failure to File Information Returns. The bill increases penalties for failure to timely file information returns to the IRS. The first-tier penalty is increased from $15 to $30, and the calendar year maximum is increased from $75,000 to $250,000. The second-tier penalty is increased from $30 to $60, and the calendar year maximum is increased from $150,000 to $500,000. The third-tier penalty is increased from $50 to $100, and the calendar year maximum is increased from $250,000 to $1.5 million. For small filers, the calendar year maximum is increased from $25,000 to $75,000 for the first-tier penalty, from $50,000 to $200,000 for the second-tier penalty, and from $100,000 to $500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard is increased from $100 to $250. The penalty amounts are adjusted every five years for inflation. Penalties for failure to file information returns to payees are similarly increased. *This provision is estimated to raise $421 million over ten years.*

Application of Levy to Payments to Federal Vendors Relating to Property. The bill clarifies that Treasury's continuous levy authority on government payments to Federal contractors who owe back taxes to the IRS applies to amounts paid for property, as well as to payments for goods and services. *This provision is estimated to raise $144 million over ten years.*

Application of Continuous Levy to Tax Liabilities of Certain Federal Contractors. Generally, before the IRS can issue a levy for an unpaid Federal tax liability, it must give the taxpayer an opportunity for a collection due process (CDP) hearing. Prior to the Federal government making disbursements to Federal contractors, an automated check for a Federal tax liability occurs. When such a liability is identified, the IRS issues a CDP notice to the contractor but cannot levy on payments to the contractor until the CDP requirements are complete. The bill allows IRS to issue levies prior to a CDP hearing on Federal tax liabilities of Federal contractors. It also provides the taxpayer with an opportunity for a CDP hearing within a reasonable time after a levy is issued. *This provision is estimated to raise $1.1 billion over ten years.*

Clarify Bad Check Penalty. The bill expands the penalty for submitting a bad check to the IRS for payments made through any commercially acceptable means, including electronic payments. *This proposal is estimated to raise $49 million over ten years.*

Offsets – Increasing Flexibility in Retirement Preparation

Allow Participants in Governmental 457 Plans to Treat Elective Deferrals as Roth Contributions. Beginning in 2011, the bill would allow retirement savings plans sponsored by state and local governments (governmental 457(b) plans) to include Roth accounts, which are currently available only in 401(k) and 403(b) plans and will be available in the federal Thrift Savings Plan in 2011. Contributions to Roth accounts are made on an after-tax basis, but distributions of both principal and earnings are generally tax-free. *This provision is estimated to raise $506 million over ten years.*

Allow Rollovers from Elective Deferral Plans to Roth Designated Accounts. The bill would allow 401(k), 403(b), and governmental 457(b) plans to permit participants to roll their pre-tax account balances into a Roth account. The amount of the rollover would be includible in taxable income except to the extent it is the return of after-tax contributions. If the rollover is made in 2010, the participant can elect to pay the tax in 2011 and 2012. Plans would be able to allow these rollovers immediately upon enactment. *This provision is estimated to raise $5.1 billion over ten years.*

Offsets – Closing Unintended Loopholes

Crude Tall Oil Ineligible for Cellulosic Biofuel Producer Credit. In 2008, Congress enacted a $1.01 per gallon tax credit for the production of biofuel from cellulosic feedstocks in order to encourage the development of new production capacity for biofuels that are not derived from food source materials. Some taxpayers are seeking to claim the cellulosic biofuel tax credit for processed fuels that are highly corrosive, such as crude tall oil (another waste by-product of the paper manufacturing process). The bill limits eligibility for the tax credit to fuels that are not highly corrosive (i.e., fuels that could be used in a car engine or in a home heating application). *This provision is estimated to raise $1.8 billion over ten years.*