COMMITTEE PRINT

[Budget Reconciliation Legislative Recommendations Relating to Crisis Support for Unemployed Workers]

Subtitle A—Crisis Support for Unemployed Workers

SEC. 1. SHORT TITLE.

This subtitle may be cited as the ''Crisis Support for Unemployed Workers Act''.

PART 1—EXTENSION OF CARES ACT UNEMPLOYMENT PROVISIONS

SEC. 9011. EXTENSION OF PANDEMIC UNEMPLOYMENT ASSISTANCE.

(a) IN GENERAL.—Section 2102(c) of the CARES Act (15 U.S.C. 9021(c)) is amended—

(1) in paragraph (1)—

(A) by striking ''paragraphs (2) and (3)'' and inserting ''paragraph (2)''; and

(B) in subparagraph (A)(ii), by striking ''March 14, 2021'' and inserting ''August 29, 2021''; and

(2) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(b) INCREASE IN NUMBER OF WEEKS.—Section 2102(c)(2) of such Act (15 U.S.C. 9021(c)(2)) is amended—

(1) by striking ''50 weeks'' and inserting ''74 weeks''; and

(2) by striking ''50-week period'' and inserting ''74-week period''.

(c) HOLD HARMLESS FOR PROPER ADMINISTRATION.—In the case of an individual who is eligible to receive pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) as of the day before the date of enactment of this Act and on the date of enactment of this Act becomes eligible for pandemic emergency unemployment compensation under section 2107 of the CARES Act (15 U.S.C. 9025) by reason of the amendments made by section 9016(b) of this title, any payment of pandemic unemployment assistance under such section 2102 made after the date of enactment of this Act to such individual during an appropriate period of time, as determined by the Secretary of Labor, that should have been made under such section 2107 shall not be considered to be an overpayment of assistance under such section 2102, except that an individual may not receive payment for assistance under section 2102 and a

payment for assistance under section 2107 for the same week of unemployment.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply as if included in the enactment of the CARES Act (Public Law 116–136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act.

SEC. 9012. EXTENSION OF EMERGENCY UNEMPLOYMENT RELIEF FOR GOVERNMENTAL ENTITIES AND NONPROFIT ORGANIZATIONS.

Section 903(i)(1)(D) of the Social Security Act (42 U.S.C. 1103(i)(1)(D)) is amended by striking ''March 14, 2021'' and inserting ''August 29, 2021''.

SEC. 9013. EXTENSION OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.

(a) IN GENERAL.—Section 2104(e)(2) of the CARES Act (15 U.S.C. 9023(e)(2)) is amended by striking ''March 14, 2021'' and inserting ''August 29, 2021''.

(b) AMOUNT.—Section 2104(b)(3)(A) of such Act (15 U.S.C. 9023(b)(3)(A)) is amended by adding at the end the following:

''(iii) For weeks of unemployment ending after March 14, 2021, and ending on or before August 29, 2021, $400.''.

(c) DISREGARD OF CERTAIN ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND CHIP.—Section 2104(h) of the CARES Act (15 U.S.C. 9023(h)) is amended by striking ''Federal pandemic unemployment compensation'' and inserting ''Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation''.

SEC. 9014. EXTENSION OF FULL FEDERAL FUNDING OF THE FIRST WEEK OF COMPENSABLE REGULAR UNEMPLOYMENT FOR STATES WITH NO WAITING WEEK.

(a) IN GENERAL.—Section 2105(e)(2) of the CARES Act (15 U.S.C. 9024(e)(2)) is amended by striking ''March 14, 2021'' and inserting ''August 29, 2021''.

(b) FULL REIMBURSEMENT.—Paragraph (3) of section 2105(c) of such Act (15 U.S.C. 9024(c)) is repealed and such section shall be applied to weeks of unemployment to which an agreement under section 2105 of such Act applies as if such paragraph had not been enacted.

SEC. 9015. EXTENSION OF EMERGENCY STATE STAFFING FLEXIBILITY.

Section 4102(b) of the Families First Coronavirus Response Act (26 U.S.C. 3304 note), in the second sentence, is amended by striking ''March 14, 2021'' and inserting ''August 29, 2021''.

SEC. 9016. EXTENSION OF PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(a) IN GENERAL.—Section 2107(g) of the CARES Act (15 U.S.C. 9025(g)) is amended to read as follows:

''(g) APPLICABILITY.—An agreement entered into under this section shall apply to weeks of unemployment—

''(1) beginning after the date on which such agreement is entered into; and

''(2) ending on or before August 29, 2021.''.

(b) INCREASE IN NUMBER OF WEEKS.—Section 2107(b)(2) of such Act (15 U.S.C. 9025(b)(2)) is amended by striking ''24'' and inserting ''48''.

(c) COORDINATION RULES.—

(1) COORDINATION OF PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION WITH EXTENDED COMPENSATION.—

(A) INDIVIDUALS RECEIVING EXTENDED COMPENSATION AS OF THE DATE OF ENACTMENT.—Section 2107(a)(5) of such Act (15 U.S.C. 9025(a)(5)) is amended—

(i) by striking ''RULE.—An agreement'' and inserting the following: ''RULES.—

''(A) IN GENERAL.—Subject to subparagraph (B), an agreement''; and

(ii) by adding at the end the following:

''(B) SPECIAL RULE.—In the case of an individual who is receiving extended compensation under the State law for the week that includes the date of enactment of this subparagraph (without regard to the amendments made by subsections (a) and (b) of section 9016 of the Crisis Support for Unemployed Workers Act), such individual shall not be eligible to receive pandemic emergency unemployment compensation by reason of such amendments until such individual has exhausted all rights to such extended benefits.''.

(B) ELIGIBILITY FOR EXTENDED COMPENSATION.—Section 2107(a) of such Act (15 U.S.C. 9025(a)) is amended by adding at the end the following:

''(8) SPECIAL RULE FOR EXTENDED COMPENSATION.—At the option of a State, for any weeks of unemployment beginning after the date of the enactment of this paragraph and ending on or before August 29, 2021, an individual's eligibility period (as described in section 203(c) of the Federal-State Extended Unemployment Compensation

Act of 1970 (26 U.S.C. 3304 note)) shall, for purposes of any determination of eligibility for extended compensation under the State law of such State, be considered to include any week which begins—

''(A) after the date as of which such individual exhausts all rights to pandemic emergency unemployment compensation; and

''(B) during an extended benefit period that began on or before the date described in subparagraph (A).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply as if included in the enactment of the CARES Act (Public Law 116–136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act.

SEC. 9017. EXTENSION OF TEMPORARY FINANCING OF SHORT-TIME COMPENSATION PAYMENTS IN STATES WITH PROGRAMS IN LAW.

Section 2108(b)(2) of the CARES Act (15 U.S.C. 9026(b)(2)) is amended by striking ''March 14, 2021'' and inserting ''August 29, 2021''.

SEC. 9018. EXTENSION OF TEMPORARY FINANCING OF SHORT-TIME COMPENSATION AGREEMENTS FOR STATES WITHOUT PROGRAMS IN LAW.

Section 2109(d)(2) of the CARES Act (15 U.S.C. 9027(d)(2)) is amended by striking ''March 14, 2021'' and inserting ''August 29, 2021''.

PART 2—EXTENSION OF FFCRA UNEMPLOYMENT PROVISIONS

SEC. 9021. EXTENSION OF TEMPORARY ASSISTANCE FOR STATES WITH ADVANCES.

Section 1202(b)(10)(A) of the Social Security Act (42 U.S.C. 1322(b)(10)(A)) is amended by striking ''March 14, 2021'' and inserting ''August 29, 2021''.

SEC. 9022. EXTENSION OF FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION.

Section 4105 of the Families First Coronavirus Response Act (26 U.S.C. 3304 note) is amended by striking ''March 14, 2021'' each place it appears and inserting ''August 29, 2021''.

PART 3—DEPARTMENT OF LABOR FUNDING FOR TIMELY, ACCURATE, AND EQUITABLE PAYMENT

SEC. 9031. FUNDING FOR ADMINISTRATION.

In addition to amounts otherwise available, there is appropriated to the Employment and Training Administration of the Department of Labor for fiscal year 2021, out of any money in the Treasury not otherwise appro-

priated, $8,000,000, to remain available until expended, for necessary expenses to carry out Federal activities relating to the administration of unemployment compensation programs.

SEC. 9032. FUNDING FOR FRAUD PREVENTION, EQUITABLE ACCESS, AND TIMELY PAYMENT TO ELIGIBLE WORKERS.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary of Labor for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $2,000,000,000, to remain available until expended, to detect and prevent fraud, promote equitable access, and ensure the timely payment of benefits with respect to unemployment insurance programs, including programs extended under this subtitle.

(b) USE OF FUNDS.—Amounts made available under subsection (a) may be used—

(1) for Federal administrative costs related to the purposes described in subsection (a);

(2) for systemwide infrastructure investment and development related to such purposes;

(3) to make grants to States or territories administering unemployment insurance programs described in subsection (a) for such purposes, including the establishment of procedures or the building

of infrastructure to verify or validate identity, implement Federal guidance regarding fraud detection and prevention, and accelerate claims processing or process claims backlogs due to the pandemic; and

(4) for transfer to the Inspector General of the Department of Labor, to the Attorney General, to the Commissioner of Internal Revenue, or to other Federal agencies investigating identity theft crime affecting Federal unemployment benefits, as determined appropriate by the Secretary, for the development of State tools for fraud detection or prevention or for the investigation or prosecution of fraud.

(c) RESTRICTIONS ON GRANTS TO STATES AND TERRITORIES.—As a condition of receiving a grant under subsection (b)(3), the Secretary may require that a State or territory receiving such a grant shall—

(1) use such program integrity tools as the Secretary may specify; and

(2) as directed by the Secretary, conduct user accessibility testing on any new system developed by the Secretary pursuant to subsection (b)(2).

COMMITTEE PRINT

Budget Reconciliation Legislative Recommendations Relating to Emergency Assistance to Families Through Home Visiting Programs

Subtitle B—Emergency Assistance to Families Through Home Visiting Programs

SEC. 9101. EMERGENCY ASSISTANCE TO FAMILIES THROUGH HOME VISITING PROGRAMS.

Title V of the Social Security Act (42 U.S.C. 701-713) is amended by inserting after section 511 the following:

"SEC. 511A. EMERGENCY ASSISTANCE TO FAMILIES THROUGH HOME VISITING PROGRAMS.

''(a) SUPPLEMENTAL APPROPRIATION.—In addition to amounts otherwise appropriated, out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary $150,000,000, to remain available through September 30, 2022, to enable eligible entities to conduct programs in accordance with section 511 and subsection (c) of this section.

''(b) ELIGIBILITY FOR FUNDS.—To be eligible to receive funds made available by subsection (a) of this section, an entity shall—

''(1) as of the date of the enactment of this section, be conducting a program under section 511;

''(2) consent to modifying the terms of any agreement executed under section 511 under which the program is conducted as are necessary to provide that, during the period that begins with the date of the enactment of this section and ends with the end of the 2nd succeeding fiscal year after the funds are awarded, the entity shall—

''(A) not reduce funding for, or staffing levels of, the program on account of reduced enrollment in the program; and

''(B) when using funds to provide emergency supplies to eligible families receiving grant services under section 511, ensure coordination with local diaper banks to the extent practicable; and

''(3) reaffirm that, in conducting the program, the entity will focus on priority populations (as defined in section 511(d)(4)).

''(c) USES OF FUNDS.—An entity to which funds are provided under this section may use the funds—

''(1) to serve families with home visits or with virtual visits, that may be conducted by the use of electronic information and telecommunications technologies, in a service delivery model described in section 511(d)(3)(A);

''(2) to pay hazard pay or other additional staff costs associated with providing home visits or administration for programs funded under section 511;

''(3) to train home visitors employed by the entity in conducting a virtual home visit and in emergency preparedness and response planning for families served, and may include training on how to safely conduct intimate partner violence screenings, and training on safety and planning for families served to support the family outcome improvements listed in section 511(d)(2)(B);

''(4) for the acquisition by families served by programs under section 511 of such technological means as are needed to conduct and support a virtual home visit;

''(5) to provide emergency supplies (such as diapers and diapering supplies including diaper wipes and diaper cream, necessary to ensure that a child using a diaper is properly cleaned and protected from diaper rash, formula, food, water, hand

soap and hand sanitizer) to an eligible family (as defined in section 511(k)(2));

''(6) to coordinate with and provide reimbursement for supplies to diaper banks when using such entities to provide emergency supplies specified in paragraph (5); and

''(7) to provide prepaid grocery cards to an eligible family (as defined in section 511(k)(2)) participating in the maternal, infant, and early childhood home visiting program under section 511 for the purpose of enabling the family to meet the emergency needs of the family.''.

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COMMITTEE PRINT

Budget Reconciliation Legislative Recommendations Relating to Emergency Assistance to Children and Families

Subtitle C—Emergency Assistance to Children and Families

SEC. 9201. PANDEMIC EMERGENCY FUND.

Section 403 of the Social Security Act (42 U.S.C. 603) is amended by adding at the end the following:

''(c) PANDEMIC EMERGENCY FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund which shall be known as the 'Pandemic Emergency Fund' (in this section referred to as the 'Fund') for the duration of the applicable period.

''(2) DEPOSITS INTO FUND.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for payment to the Fund $1,000,000,000, to remain available until expended.

''(3) RESERVATION OF FUNDS FOR TECHNICAL ASSISTANCE.—Of the amount specified in paragraph (2), the Secretary shall reserve $2,000,000 for administrative expenses and the provision of technical

assistance to States and Indian tribes with respect to the use of funds provided under this subsection.

"(4) ALLOTMENTS.—

"(A) 50 STATES AND THE DISTRICT OF COLUMBIA.—

"(i) TOTAL AMOUNT TO BE ALLOTTED.—The Secretary shall allot a total of 92.5 percent of the amount specified in paragraph (2) that is not reserved under paragraph (3) among the States that are not a territory and that are operating a program funded under this part, in accordance with clause (ii) of this subparagraph.

"(ii) ALLOTMENT FORMULA.—The Secretary shall allot to each such State the sum of the following percentages of the total amount described in clause (i):

"(I) 50 percent, multiplied by—

"(aa) the population of children in the State, determined on the basis of the most recent population estimates as determined by the Bureau of the Census; divided by

"(bb) the total population of children in the States that are not territories, as so determined; plus

"(II) 50 percent, multiplied by—

"(aa) the total amount expended by the State for basic assistance, non-recurrent short term benefits, and emergency assistance in fiscal year 2019, as reported by the State under section 411; divided by

"(bb) the total amount expended by the States that are not territories for basic assistance, non-recurrent short term benefits, and emergency assistance in fiscal year 2019, as so reported by the States.

"(B) TERRITORIES AND INDIAN TRIBES.—The Secretary shall allot among the territories and Indian tribes otherwise eligible for a grant under this part such portions of 7.5 percent of the amount specified in paragraph (2) that are not reserved under paragraph (3) as the Sec-

retary deems appropriate based on the needs of the territory or tribe involved.

''(C) EXPENDITURE COMMITMENT REQUIREMENT.—To receive the full amount of funding payable under this subsection, a State or Indian tribe shall inform the Secretary as to whether it intends to use all of its allotment under this paragraph and provide that information—

''(i) in the case of a State that is not a territory, within 45 days after the date of the enactment of this subsection; or

''(ii) in the case of a territory or an Indian tribe, within 90 days after such date of enactment.

''(5) GRANTS.—

''(A) IN GENERAL.—The Secretary shall provide funds to each State and Indian tribe to which an amount is allotted under paragraph (4), from the amount so allotted.

''(B) TREATMENT OF UNUSED FUNDS.—

''(i) REALLOTMENT.—The Secretary shall reallot in accordance with paragraph (4) all funds provided to any State or Indian tribe under this subsection that are

unused, among the other States and Indian tribes eligible for funds under this subsection. For purposes of paragraph (4), the Secretary shall treat the funds as if included in the amount specified in paragraph (2).

''(ii) PROVISION.—The Secretary shall provide funds to each such other State or Indian tribe in an amount equal to the amount so reallotted.

''(6) RECIPIENT OF FUNDS PROVIDED FOR TERRITORIES.—In the case of a territory not operating a program funded under this part, the Secretary shall provide the funds required to be provided to the territory under this subsection, to the agency that administers the bulk of local human services programs in the territory.

''(7) USE OF FUNDS.—

''(A) IN GENERAL.—A State or Indian tribe to which funds are provided under this subsection may use the funds only for non-recurrent short term benefits, whether in the form of cash or in other forms.

''(B) LIMITATION ON USE FOR ADMINISTRATIVE EXPENSES.—A State to which funds

are provided under this subsection shall not expend more than 15 percent of the funds for administrative purposes.

''(C) NONSUPPLANTATION.—Funds provided under this subsection shall be used to supplement and not supplant other Federal, State, or tribal funds for services and activities that promote the purposes of this part.

''(D) EXPENDITURE DEADLINE.—

''(i) IN GENERAL.—Except as provided in clause (ii), a State or Indian tribe to which funds are provided under this subsection shall expend the funds not later than the end of fiscal year 2022.

''(ii) EXCEPTION FOR REALLOTTED FUNDS.—A State or Indian tribe to which funds are provided under paragraph (5)(B) shall expend the funds within 12 months after receipt.

''(8) EXPENDITURE REPORTS.—

''(A) IN GENERAL.—On expending all funds provided to a State or Indian tribe under this subsection, the entity shall submit to the Secretary a written report that describes how

the funds were expended, which report shall be so submitted—

"(i) if the entity is a State that is not a territory, within 90 days after expenditure; or

"(ii) if the entity is a territory or is operating a tribal program funded under this part, within 120 days after expenditure.

"(B) AUTHORITY TO COLLECT AND ADJUST EXPENDITURE DATA.—For the purpose of determining whether a State has expended the funds provided to the State under this subsection, the Secretary may—

"(i) develop a mechanism for collecting the expenditure data;

"(ii) make appropriate adjustments to the data, on a State-by-State basis, to ensure that the data are comparable with respect to the groups of families served and the types of aid provided; and

"(iii) set deadlines for making revisions to the data.

''(9) SUSPENSION OF TERRITORY SPENDING CAP.—Section 1108 shall not apply with respect to any funds provided under this subsection.

''(10) IMPLEMENTATION.—The Secretary shall implement this subsection as soon as is practicable, pursuant to appropriate guidance to States.

''(11) DEFINITIONS.—In this subsection:

''(A) APPLICABLE PERIOD.—The term 'applicable period' means the period that begins with April 1, 2021, and ends with September 30, 2022.

''(B) NON-RECURRENT SHORT TERM BENEFITS.—The term 'non-recurrent short term benefits' has the meaning given the term in OMB approved Form ACF-196R, published on July 31, 2014.

''(C) STATE.—The term 'State' means the 50 States of the United States, the District of Columbia, and the territories.

''(D) TERRITORY.—The term 'territory' means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.''.

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COMMITTEE PRINT

Budget Reconciliation Legislative Recommendations Relating to Elder Justice and Support Guarantee

Subtitle D—Elder Justice and Support Guarantee

SEC. 9301. ADDITIONAL FUNDING FOR AGING AND DISABILITY SERVICES PROGRAMS.

Subtitle A of title XX of the Social Security Act (42 U.S.C. 1397-1397h) is amended by adding at the end the following:

"SEC. 2010. ADDITIONAL FUNDING FOR AGING AND DISABILITY SERVICES PROGRAMS.

''For the programs described in subtitle B, the Secretary shall make available for each of fiscal years 2021 and 2022 the amount (if any) by which $188,000,000 exceeds the total of the amounts otherwise made available for the programs for the fiscal year, and shall ensure that not less than $100,000,000 is used in the fiscal year for activities described in section 2042(b).''.

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COMMITTEE PRINT

Budget Reconciliation Legislative Recommendations Relating to Providing Support to Skilled Nursing Facilities In Response to COVID–19

Subtitle E—Support to Skilled Nursing Facilities in Response to COVID–19

SEC. 9401. PROVIDING FOR INFECTION CONTROL SUPPORT TO SKILLED NURSING FACILITIES THROUGH CONTRACTS WITH QUALITY IMPROVEMENT ORGANIZATIONS.

Section 1862(g) of the Social Security Act (42 U.S.C. 1395y(g)) is amended—

(1) by striking ''The Secretary'' and inserting ''(1) The Secretary''; and

(2) by adding at the end the following new paragraph:

''(2) In addition to any amounts otherwise available, there are appropriated to the Secretary, out of any monies in the Treasury not otherwise appropriated, $200,000,000, to remain available until expended, for purposes of carrying out infection control support (as determined appropriate by the Secretary) through the development and dissemination of protocols relating to the pre-

vention or mitigation of COVID–19 in skilled nursing facilities (as defined in section 1819(a)).''.

SEC. 9402. FUNDING FOR STRIKE TEAMS FOR RESIDENT AND EMPLOYEE SAFETY IN SKILLED NURSING FACILITIES.

Section 1819 of the Social Security Act (42 U.S.C. 1395i–3) is amended by adding at the end the following new subsection:

''(k) FUNDING FOR STRIKE TEAMS.—In addition to amounts otherwise available, there are appropriated to the Secretary, out of any monies in the Treasury not otherwise appropriated, $250,000,000, to remain available until expended, for purposes of allocating such amount among the States (including the District of Columbia and each territory of the United States) to increase the capacity of such a State to respond to COVID–19 by allowing such a State to establish and implement a strike team that will be deployed to a skilled nursing facility in the State with diagnosed or suspected cases of COVID–19 among residents or staff for the purposes of assisting with clinical care, infection control, or staffing during the emergency period described in section 1135(g)(1)(B).''.

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DESCRIPTION OF THE BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO CONTINUATION OF JOB-BASED COVERAGE

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 10, 2021

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

February 8, 2021
JCX-2-21

CONTENTS

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of the Budget Reconciliation Legislative Recommendations Relating to Continuation of Job-Based Coverage on February 10, 2021. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Budget Reconciliation Legislative Recommendations Relating to Continuation of Job-Based Coverage* (JCX-2-21), February 8, 2021. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (herein "Code"), unless otherwise stated.

BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO CONTINUATION OF JOB-BASED COVERAGE

SUBTITLE F—PRESERVING HEALTH BENEFITS FOR WORKERS

A. Preserving Health Benefits for Workers

Present Law

In general

Employer-sponsored health plans (referred to as "group health plans")[2] generally are required to offer an employee, spouse, or dependent child covered by the plan the opportunity to continue coverage under the plan for a specified period of time after the occurrence of certain events that otherwise would have terminated the coverage ("qualifying events").[3] These continuation of coverage requirements are often referred to as "COBRA continuation coverage" or "COBRA" requirements.[4]

The Code imposes an excise tax on the failure of a group health plan to comply with the COBRA continuation coverage rules with respect to a qualified beneficiary (as defined below). The excise tax with respect to a qualified beneficiary generally is equal to $100 for each day in the noncompliance period with respect to the failure. A plan's noncompliance period generally begins on the date the failure first occurs and ends when the failure is corrected. Special rules limit the amount of the excise tax if the failure would not have been discovered despite the exercise of reasonable diligence or if the failure is due to reasonable cause and not willful neglect.

In the case of a multiemployer plan, the excise tax generally is imposed on the group health plan. A multiemployer plan is a plan to which more than one employer is required to contribute that is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and that satisfies such other requirements as the Secretary of Labor may prescribe by regulation. In the case of a plan other than a multiemployer plan (a "single employer plan"), the excise tax generally is imposed on the employer.

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[2] A group health plan may include a health flexible spending arrangement, under which medical care expenses of an employee (and family members, if applicable) that are not covered by insurance may be paid or reimbursed.

[3] Sec. 4980B. Section 4980B(d) provides exceptions for plans maintained by employers with fewer than 20 employees, plans of governmental employers, and church plans.

[4] The COBRA requirements were originally enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272.

Plans subject to COBRA

A group health plan is defined as a plan of, or contributed to by, an employer (including a self-employed person) or an employee organization to provide health care (directly or otherwise) to its employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. A group health plan includes a self-insured plan. The term "group health plan" does not, however, include a plan under which substantially all of the coverage is for qualified long-term care services.

The following types of group health plans are not subject to the Code's COBRA rules: (1) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 (a "church plan"); (2) a plan established and maintained for its employees by the Federal government, by the government of any State or political subdivision thereof, or by any instrumentality of the foregoing (a "governmental plan");[5] and (3) a plan maintained by an employer that normally employed fewer than 20 employees on a typical business day during the preceding calendar year[6] (a "small employer plan").

Qualifying events and qualified beneficiaries

A "qualifying event" that gives rise to COBRA continuation coverage is, with respect to any covered employee, any of the following events which would result in a loss of coverage of a qualified beneficiary under a group health plan (but for COBRA continuation coverage): (1) death of the covered employee; (2) the termination (other than by reason of such employee's gross misconduct), or a reduction in hours, of the covered employee's employment; (3) divorce or legal separation of the covered employee; (4) the covered employee's becoming entitled to Medicare benefits under title XVIII of the Social Security Act; (5) a dependent child ceasing to be a dependent child under the generally applicable requirements of the plan; and (6) a proceeding in a case under the U.S. Bankruptcy Code commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

A "covered employee" is an individual who is (or was) provided coverage under the group health plan on account of the performance of services by the individual for one or more persons maintaining the plan. A covered employee includes a self-employed individual. A "qualified beneficiary" means, with respect to a covered employee, any individual who on the day before the employee's qualifying event is a beneficiary under the group health plan as the spouse or dependent child of the employee. A qualified beneficiary also includes the covered employee in the case of a qualifying event that is a termination of employment or reduction in hours.

[5] A governmental plan also includes certain plans established by an Indian tribal government.

[6] If the plan is a multiemployer plan, then each of the employers contributing to the plan for a calendar year must normally employ fewer than 20 employees during the preceding calendar year.

Continuation coverage requirements

Continuation coverage that must be offered to qualified beneficiaries pursuant to COBRA must consist of coverage which, as of the time coverage is provided, is identical to the coverage provided under the plan to similarly situated non-COBRA beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under a plan is modified for any group of similarly situated non-COBRA beneficiaries, the coverage must also be modified in the same manner for qualified beneficiaries. Similarly situated non-COBRA beneficiaries are covered employees, spouses of covered employees, or dependent children of covered employees who (i) are receiving coverage under the group health plan for a reason other than pursuant to COBRA, and (ii) are the most similarly situated to the qualified beneficiary immediately before the qualifying event, based on all of the facts and circumstances.

The minimum required period of continuation coverage for a qualified beneficiary (*i.e.*, the minimum period for which continuation coverage must be offered) depends upon a number of factors, including the specific qualifying event that gives rise to a qualified beneficiary's right to elect continuation coverage. In the case of a qualifying event that is the termination or reduction of hours of a covered employee's employment, the minimum period of coverage that must be offered to the qualified beneficiary is coverage for the period beginning with the loss of coverage on account of the qualifying event and ending on the date that is 18 months[7] after the date of the qualifying event. If coverage under a plan is lost on account of a qualifying event but the loss of coverage occurs on a date after the qualifying event, the minimum coverage period may be extended by the plan so that it is measured from the date when coverage is lost.

The minimum coverage period for a qualified beneficiary generally ends upon the earliest to occur of the following events: (1) the date on which the employer ceases to provide any group health plan to any employee, (2) the date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required with respect to the qualified beneficiary, and (3) the date on which the qualified beneficiary first becomes (after the date of election of continuation coverage) either (i) covered under any other group health plan (as an employee or otherwise) which does not include any exclusion or limitation with respect to any preexisting condition of such beneficiary or (ii) entitled to Medicare benefits under title XVIII of the Social Security Act. Mere eligibility for another group health plan or Medicare benefits is not sufficient to terminate the minimum coverage period. Instead, the qualified beneficiary must be actually covered by the other group health plan or must be enrolled in Medicare. Coverage under another group health plan or enrollment in Medicare does not terminate the minimum coverage period if such other coverage or Medicare enrollment begins on or before the date on which continuation coverage is elected.

[7] In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled during the first 60 days of continuation coverage, the 18 month minimum coverage period is extended to 29 months with respect to all qualified beneficiaries if notice is given before the end of the initial 18 month continuation coverage period.

Election of continuation coverage

The COBRA rules specify a minimum election period under which a qualified beneficiary is entitled to elect continuation coverage. The election period begins no later than the date on which coverage under the plan terminates on account of the qualifying event, and ends no earlier than the later of 60 days or 60 days after notice is given to the qualified beneficiary of the qualifying event and the beneficiary's election rights.

Notice requirements

A group health plan is required to give notice of COBRA continuation coverage rights to employees and their spouses at the time of enrollment in the group health plan.

An employer is required to give notice to the plan administrator of certain qualifying events (including a loss of coverage on account of a termination of employment or reduction in hours) generally within 30 days of the qualifying event. A covered employee or qualified beneficiary is required to give notice to the plan administrator of certain qualifying events within 60 days after the event. The qualifying events giving rise to an employee or beneficiary notification requirement are the divorce or legal separation of the covered employee or a dependent child ceasing to be a dependent child under the terms of the plan. Upon receiving notice of a qualifying event from the employer, covered employee, or qualified beneficiary, the plan administrator is required to give notice of COBRA continuation coverage rights within 14 days to all qualified beneficiaries with respect to the event.

Premiums

A plan may require payment of a premium for any period of continuation coverage. The amount of such premium generally may not exceed 102 percent[8] of the "applicable premium" for such period, and the premium must be payable, at the election of the payor, in monthly installments.

The applicable premium for any period of continuation coverage means the cost to the plan for such period of coverage for similarly situated non-COBRA beneficiaries with respect to whom a qualifying event has not occurred, and it is determined without regard to whether the cost is paid by the employer or employee. The determination of any applicable premium is made for a period of 12 months (the "determination period") and is required to be made before the beginning of such 12-month period.

In the case of a self-insured plan, the applicable premium for any period of continuation coverage of qualified beneficiaries is equal to a reasonable estimate of the cost of providing coverage during such period for similarly situated non-COBRA beneficiaries, determined on an actuarial basis, and takes into account such factors as the Secretary of the Treasury ("Secretary") prescribes in regulations. A self-insured plan may elect to determine the applicable premium on

[8] In the case of a qualified beneficiary whose minimum coverage period is extended to 29 months on account of a disability determination, the premium for the period of the disability extension may not exceed 150 percent of the applicable premium for the period.

the basis of an adjusted cost to the plan for similarly situated non-COBRA beneficiaries during the preceding determination period.

A plan may not require payment of any premium before the day which is 45 days after the date on which the qualified beneficiary made the initial election for continuation coverage. A plan is required to treat any required premium payment as timely if it is made within 30 days after the date the premium is due or within such longer period as applies to, or under, the plan.

Other continuation coverage rules

Continuation coverage rules that are parallel to the Code's continuation coverage rules apply to group health plans under the Employee Retirement Income Security Act of 1974 ("ERISA").[9] ERISA generally permits the Secretary of Labor and group health plan participants to bring a civil action to obtain appropriate equitable relief to enforce the continuation coverage rules. In the case of a plan administrator who fails to give timely notice to a participant or beneficiary with respect to COBRA continuation coverage, a court may hold the plan administrator liable to the participant or beneficiary in the amount of up to $110 a day from the date of such failure.

Although the Federal government and State and local governments are not subject to the Code and ERISA's continuation coverage rules, other laws impose similar continuation coverage requirements with respect to plans maintained by such governmental employers.[10] In addition, many States have enacted laws or promulgated regulations that provide continuation coverage rights that are similar to COBRA continuation coverage rights in the case of a loss of group health coverage. Such State laws, for example, may apply in the case of a loss of coverage under a group health plan maintained by a small employer.

Federal employment taxes

Federal employment taxes are imposed on wages paid to employees with respect to employment and include taxes levied under the Federal Insurance Contributions Act ("FICA"), the Federal Unemployment Tax Act ("FUTA"), and Federal income tax.[11] In addition, tier 1 of the Railroad Retirement Tax Act ("RRTA") imposes a tax on compensation paid to railroad employees and representatives.[12]

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[9] Pub. L. No. 93-406, secs. 601 to 608.

[10] Continuation coverage rights similar to COBRA continuation coverage rights are provided to individuals covered by health plans maintained by the Federal government. 5 U.S.C. sec. 8905a. Group health plans maintained by a State that receives funds under Chapter 6A of Title 42 of the United States Code (the Public Health Service Act) are required to provide continuation coverage rights similar to COBRA continuation coverage rights for individuals covered by plans maintained by such State (and plans maintained by political subdivisions of such State and agencies and instrumentalities of such State or political subdivision of such State). 42 U.S.C. sec. 300bb-1.

[11] Secs. 3101, 3111, 3301, and 3401.

[12] Sec. 3221.

FICA taxes are comprised of two components: Old-Age, Survivors, and Disability Insurance ("OASDI") taxes and Hospital Insurance ("HI") taxes. With respect to OASDI taxes, the applicable rate is 12.4 percent with half of such rate (6.2 percent) imposed on the employee and the remainder (6.2 percent) imposed on the employer.[13] The tax is assessed on covered wages up to the OASDI wage base ($137,700 in 2020).[14] The Hospital Insurance ("HI") tax has two components: Medicare tax and Additional Medicare tax. Medicare tax is imposed on wages, as defined in section 3121(a), with respect to employment, as defined in section 3121(b), at a rate of 1.45 percent for the employer.[15] An equivalent 1.45 percent is withheld from employee wages.[16] Additional Medicare taxes are withheld from employee wages in excess of $200,000 at a rate of 0.9 percent.[17] There is no equivalent employer's share of Additional Medicare taxes. For purposes of this description, HI tax does not include Additional Medicare tax.

The employee portion of OASDI taxes must be withheld and remitted to the Federal government by the employer during the calendar quarter, as required by the applicable deposit rules.[18] The employer is liable for the employee portion of OASDI taxes, in addition to its own share, whether or not the employer withholds the amount from the employee's wages.[19] OASDI and HI taxes are generally allocated by statute among separate trust funds: the OASDI Trust Funds, Medicare's Hospital Insurance Trust Fund, and Supplementary Medical Insurance Trust Fund.[20]

Premium assistance for COBRA benefits

As part of the American Recovery and Reinvestment Act of 2009,[21] Congress provided temporary premium assistance for COBRA benefits to eligible individuals who had been terminated from employment. The premium assistance under this Act applied to 65 percent of a terminated employee's COBRA premium and was available for individuals who were eligible for COBRA between September 1, 2008 and December 31, 2009. Eligible individuals were treated as paying 100 percent of the premium required for COBRA continuation coverage if the individual paid 35 percent of the premium. Employers, plan administrators, or insurance

[13] Sec. 3101.

[14] Generally, the OASDI wage base rises based on increases in the national average wage index. Sec. 230 of the Social Security Act (42 U.S.C. sec. 430).

[15] Sec. 3111(b)(1).

[16] Sec. 3101(b)(1).

[17] Sec. 3101(b)(2).

[18] Sec. 3102(a) and Treas. Reg. sec. 31.3121(a)-2. See also sec. 6302.

[19] Sec. 3102(b).

[20] Secs. 201 and 1817 of the Social Security Act, Pub. L. No. 74-271 as amended (42 U.S.C. secs. 401 and 1395i).

[21] Pub. L. No. 111-5.

companies to whom the premiums were payable were allowed a refundable credit against payroll tax liability for the portion of premiums not paid by individuals eligible for premium assistance.

Description of Proposal

Reduced COBRA premium

The proposal provides that for a period of coverage during the period beginning on the first day of the first month beginning after the date of enactment and ending on September 30, 2021, an assistance eligible individual is treated as having paid any premium required for COBRA continuation coverage under a group health plan if the individual pays 15 percent of the premium. This reduction in the individual's premium is referred to as premium assistance. An assistance eligible individual is any qualified beneficiary who, with respect to a period of coverage during the period beginning on the first day of the first month beginning after the date of enactment of this proposal and ending on September 30, 2021 (1) is eligible for COBRA continuation coverage by reason of the termination of the covered employee's employment (except for a voluntary termination) or reduction of the covered employee's hours,[22] and (2) elects such coverage.

Under the proposal, any premium assistance provided is excludible from the gross income of the assistance eligible individual.[23] In addition, if an assistance eligible individual pays the amount of a premium eligible for premium assistance that the individual would have been required to pay but for the assistance provided under the proposal, the person to whom such payment is made must reimburse the individual for the amount paid in excess of the amount required to be paid.[24] Such reimbursement must occur no later than 60 days after the date that the individual elects the continuation coverage that is eligible for premium assistance.

The continuation coverage that qualifies for premium assistance also includes continuation coverage offered by a State[25] program that provides comparable continuation coverage. It does not include coverage under a health flexible spending arrangement offered under a cafeteria plan.[26]

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[22] The qualified beneficiary must be eligible by reason of a qualifying event specified in section 4980B(f)(3)(B), section 603(2) of ERISA, or section 2203(2) of the Public Health Service Act, Pub. L. No. 78-410, except for a voluntary termination. Terminations due to the employee's gross misconduct do not qualify the beneficiary for COBRA continuation coverage.

[23] The proposal creates a new section 139I to provide the income exclusion.

[24] The person reimbursing the individual is eligible for a payroll credit (against the HI tax under section 3111(b)) for the amount of the reimbursement. See description of payroll tax credit below.

[25] For this purpose, "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[26] Sec. 125.

Plan enrollment option

A group health plan is permitted to provide a special plan enrollment option to assistance eligible individuals to allow them to change coverage options under the plan in conjunction with electing COBRA continuation coverage. Under this plan enrollment option, the assistance eligible individual may elect to enroll in different coverage within 90 days of the date of notice of the enrollment option. The individual must only be offered the option to change to a coverage option offered to similarly-situated active employees, and the premium for such option must not exceed the premium for the individual's group health plan coverage as of the date of the qualifying event. If the individual elects a different coverage option under this plan enrollment right in conjunction with electing COBRA continuation coverage, that coverage must be provided for purposes of satisfying the COBRA continuation coverage requirement. The different coverage offered may not include: a coverage option that provides only excepted benefits;[27] a qualified small employer health reimbursement arrangement;[28] or a flexible spending arrangement.[29]

This plan enrollment option only allows a group health plan to offer additional coverage options to assistance eligible individuals and does not change the basic requirement that a group health plan must allow an individual to continue enrollment with the coverage in which the individual is enrolled as of the qualifying event. If different coverage is elected, under the COBRA rules it must generally be permitted to be continued for the applicable required period (generally 18 months or 36 months, absent an event that permits coverage to be terminated) even though the premium assistance may only apply for nine months (or less).

Termination of eligibility for reduced premiums

The assistance eligible individual's eligibility for premium assistance generally terminates with the first month beginning on or after the earliest of (1) September 30, 2021, (2) the date following the expiration of the maximum required period of continuation coverage for the qualified beneficiary under the applicable COBRA continuation coverage provision, (3) the date following the expiration of the period of continuation coverage applicable under the special COBRA election opportunity described below, or (4) the first date that the assistance eligible individual becomes eligible for Medicare benefits under title XVIII of the Social Security Act or health coverage under another group health plan (including, for example, a group health plan maintained by the new employer of the individual or a plan maintained by the employer of the individual's spouse). However, eligibility for coverage under another group health plan does not terminate eligibility for premium assistance if the other group health plan coverage: consists only of excepted benefits; is a qualified small employer health reimbursement arrangement; or is a flexible spending arrangement.

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[27] Excepted benefits include, for example, certain dental or vision benefits, long-term care, and coverage for on-site medical clinics. Sec. 9832(c); sec. 733(c) of ERISA; sec. 2791(c) of the PHSA.

[28] Sec. 9831(d)(2).

[29] Sec. 106(c)(2).

If an assistance eligible individual receiving premium assistance for COBRA continuation coverage under the proposal becomes eligible for coverage under another group health plan (except as described in the prior paragraph) or Medicare, the proposal requires the individual to notify the group health plan providing the COBRA continuation coverage of such eligibility. The notification must be provided in the time and manner specified by the Secretary of Labor. If an individual fails to provide this notification at the required time and in the required manner, a penalty of $250 is imposed unless it is shown that such failure is due to reasonable cause and not willful neglect.[30] In addition, if the failure is fraudulent, the individual must pay a penalty equal to the greater of $250 or 110 percent of the premium assistance provided after termination of eligibility.

Special COBRA election opportunity

The proposal provides a special election period for a qualified beneficiary who either (1) does not have an election of COBRA continuation coverage in effect on the first day of the first month beginning after the date of enactment of the proposal but who would be an assistance eligible individual were such an election in effect, or (2) elected COBRA continuation coverage and discontinued from such coverage before such first day of such first month. The special election period begins on the first day of the first month beginning after the date of the enactment of the proposal and ends 60 days after the date on which notice is provided to the individual regarding the availability of premium assistance (see notice requirements described below). COBRA continuation coverage elected during this special election period commences (including for purposes of premium assistance and any cost-sharing requirements for items and services under a group health plan) with the first period of coverage beginning on or after the first day of the first month beginning after the date of enactment of this proposal, and must not extend beyond the end of the period of COBRA continuation coverage that would have applied had the individual elected coverage under the COBRA rules (and not discontinued such coverage).

Payroll credit provided to person paying premium

The proposal provides that the person[31] to whom continuation coverage premiums are payable is allowed a credit for each calendar quarter against HI tax[32] or the equivalent amount of RRTA tax[33] in an amount equal to the premiums not paid by assistance eligible individuals for continuation coverage by reason of the proposal with respect to such quarter.[34] The person to

[30] The proposal creates a new section 6720C with the penalty provision.

[31] For this purpose, "person" includes the government of any State or political subdivision thereof, any Indian tribal government (as defined in section 139E(c)(1)), any agency or instrumentality of any of the foregoing, and any agency or instrumentality of the Government of the United States that is described in section 501(c)(1) and exempt from taxation under section 501(a).

[32] Sec. 3111(b).

[33] Sec. 3221(a).

[34] The proposal creates new section 6432 to provide for the credit. Also, the proposal does not include express language that "holds harmless" the Federal Hospital Insurance Trust Fund from any effects of the proposal.

whom the premiums are payable is treated as being (1) the multiemployer group health plan; (2) in the case of a group health plan not described in (1) that is subject to COBRA continuation coverage requirements and under which some or all of the coverage is not provided by insurance, the employer maintaining the plan; or (3) in the case of a group health plan not described in (1) or (2), the insurer providing coverage under an insured plan.

The credit allowed may not exceed the HI tax or the equivalent amount of RRTA tax imposed on the employer, reduced by any credits allowed against such taxes under the Families First Coronavirus Response Act[35] or for purposes of the employee retention credit[36] on the wages paid with respect to the employment of all employees of the employer. However, if for any calendar quarter the amount of the credit exceeds the HI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.[37]

Under the proposal, the gross income of the person receiving the HI credit is increased by the amount of such credit for the taxable year that includes the last day of any calendar quarter with respect to which such credit is allowed. No amount for which a credit is allowed under the proposal may be taken into account as qualified wages for purposes of the employee retention credit or as qualified health plan expenses for purposes of the credits against HI tax and RRTA tax in the Families First Coronavirus Response Act.[38]

The proposal provides an appropriation of $10,000,000 to the Secretary of Labor (in addition to amounts otherwise made available, out of any funds in the Treasury not otherwise appropriated) for fiscal year 2021, to remain available until expended, for the Employee Benefits Security Administration to carry out the proposal.

Notice requirements

Under the proposal, the notice of COBRA continuation coverage that a plan administrator is required to provide under present law to qualified beneficiaries with respect to a qualifying event must contain certain additional information if the notice is provided to an individual who becomes entitled to elect COBRA continuation coverage during the period beginning on the first day of the first month beginning after the date of enactment of the proposal and ending on

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Under present law, amounts appropriated and transferred to the trust fund include amounts equivalent to 100 percent of the taxes imposed by section 3111(b) with respect to applicable wages reported by the Secretary, determined by applying the rate to the reported wages. Sec. 1807 of the Social Security act, 42 U.S.C. sec. 1395i. Because the proposal does not affect either the rate under section 3111(b) or applicable wages, but only provides a credit against the amount of tax, the proposal does not affect the trust fund, and no hold harmless language is needed.

[35] Pub. L. No. 116-127, secs. 7001 and 7003.

[36] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, sec. 2301.

[37] The excess is treated as an overpayment and refunded under sections 6402(a) and 6413(b). In addition, any amount that is due to an employer is treated in the same manner as a refund due from a credit provision. 31 U.S.C. 1324. Thus, amounts are appropriated to the Secretary of Treasury for refunding such excess amounts.

[38] Pub. L. No. 116-127, secs. 7001 and 7003.

September 30, 2021. (Thus, this requirement applies generally to individuals who become entitled to elect COBRA continuation coverage during this time period, and not only those who were involuntarily terminated or had hours reduced.) The additional information that must be provided includes (1) information about the qualified beneficiary's right to premium assistance and any conditions on entitlement to that assistance; (2) a description of the option to enroll in different coverage if permitted; and (3) a description of the obligation of the qualified beneficiary to notify the group health plan of eligibility under another group health plan or eligibility for Medicare, and the penalty for failure to provide this notification.

The proposal provides that notice must also be furnished to an assistance eligible individual or to an individual eligible for the special COBRA election opportunity described above if such individual became entitled to elect COBRA continuation coverage before the first day of the first month beginning after the date of enactment of the proposal. In such case, the notice must provide the additional information that is required to be added to the notice described above, and must be provided within 60 days of such first day of such first month. Failure to provide such a notice is treated as a failure to satisfy the notice rules under the COBRA continuation coverage requirements.

In the case of group health plans that are not subject to the notice provisions of the COBRA continuation coverage requirements of the Code, ERISA, or the Public Health Service Act,[39] the proposal requires that notice be given to the relevant employees and beneficiaries as well, as specified by the Secretary of Labor (in consultation with the Secretary and the Secretary of Health and Human Services). Within 30 days after enactment, the Secretary of Labor is generally directed to provide model language for the additional notification required under the proposal.

The proposal also requires employers to provide assistance eligible individuals a written notice regarding the expiration of the period of premium assistance. Such notice must be provided no earlier than 45 days before the date of such expiration and no later than 15 days before such date. The notice must identify the date that the premium assistance will expire and explain that the individual may be eligible for COBRA continuation coverage without premium assistance or for coverage under a group health plan. Such notice is not required to be provided to an individual who is no longer eligible to receive premium assistance due to eligibility under a group health plan. The Secretary of Labor must prescribe model language for such notice within 45 days of the date of enactment.

Expedited review

The proposal also provides an expedited 15-day review process by the Secretary of Labor or the Secretary of Health and Human Services (both in consultation with the Secretary), under which an individual may request review of a denial of treatment as an assistance eligible individual by a group health plan. Either Secretary's determination upon review is de novo and is the final determination of such Secretary.

[39] Pub. L. No. 78-410.

Coordination with the HCTC

Under the proposal, any assistance eligible individual who receives premium assistance under the proposal for any month is not eligible with respect to such month for the health coverage tax credit (HCTC).[40]

Regulatory authority

The proposal provides authority to the Secretary and the Secretary of Labor to jointly prescribe such regulations or other guidance as may be necessary and appropriate to carry out the proposal as it relates to the premium assistance, including the prevention of fraud and abuse.[41] In addition, the proposal provides authority to the Secretary to issue regulations or other guidance as may be necessary or appropriate to carry out the rules relating to the HI credit for persons to whom the COBRA continuation coverage premium is payable, including (1) any reporting requirements or the establishment of other methods for verifying the correct amounts of reimbursements; (2) the application of the proposal to a multiemployer group health plan; (3) to allow the advance payment of the HI credit; (4) to provide for the reconciliation of such advance payment with the amount of the credit at the time of filing the tax return for the applicable quarter or taxable year; and (5) to allow the credit to third party payors (including professional employer organizations, certified professional employer organizations, or agents[42]).

Effective Date

The proposal is generally effective on date of enactment.[43]

[40] Sec. 35. In addition, such individual is not treated as a qualifying family member or certified individual for purposes of section 35 or section 7527 (providing for the advance payment of the HCTC).

[41] The proposal grants the Secretary of Labor and the Secretary of Health and Human Services the authority to prescribe regulations or other guidance relating to the notices under the proposal, in addition to the rules relating to expedited review and outreach.

[42] As described in section 3504.

[43] The rules relating to the HI credit for persons to whom COBRA continuation coverage premiums are payable apply to premiums to which premium assistance applies under the proposal and to wages paid on or after April 1, 2021. The exclusion from gross income of premium assistance for assistance eligible individuals, as well as a coordination rule with the HCTC, are effective for taxable years ending after the date of enactment of the proposal.

COMMITTEE PRINT

Budget Reconciliation Legislative Recommendations Relating to Continuation of Job-Based Coverage

Subtitle F—Preserving Health Benefits for Workers

SEC. 9500. SHORT TITLE.

This subtitle may be cited as the ''Worker Health Coverage Protection Act''.

SEC. 9501. PRESERVING HEALTH BENEFITS FOR WORKERS.

(a) PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE FOR INDIVIDUALS AND THEIR FAMILIES.—

(1) PROVISION OF PREMIUM ASSISTANCE.—

(A) REDUCTION OF PREMIUMS PAYABLE.—In the case of any premium for a period of coverage during the period beginning on the first day of the first month beginning after the date of the enactment of this Act, and ending on September 30, 2021, for COBRA continuation coverage with respect to any assistance eligible individual described in paragraph (3), such individual shall be treated for purposes of any COBRA continuation provision as having paid the amount of such premium if

such individual pays (or any person other than such individual's employer pays on behalf of such individual) 15 percent of the amount of such premium.

(B) PLAN ENROLLMENT OPTION.—

(i) IN GENERAL.—Notwithstanding the COBRA continuation provisions, any assistance eligible individual who is enrolled in a group health plan offered by a plan sponsor may, not later than 90 days after the date of notice of the plan enrollment option described in this subparagraph, elect to enroll in coverage under a plan offered by such plan sponsor that is different than coverage under the plan in which such individual was enrolled at the time, in the case of any assistance eligible individual described in paragraph (3), the qualifying event specified in section 603(2) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(3)(B) of the Internal Revenue Code of 1986, or section 2203(2) of the Public Health Service Act, except for the voluntary termination of such individual's employment by

such individual, occurred, and such coverage shall be treated as COBRA continuation coverage for purposes of the applicable COBRA continuation coverage provision.

(ii) REQUIREMENTS.—Any assistance eligible individual may elect to enroll in different coverage as described in clause (i) only if—

(I) the employer involved has made a determination that such employer will permit such assistance eligible individual to enroll in different coverage as provided under this subparagraph;

(II) the premium for such different coverage does not exceed the premium for coverage in which such individual was enrolled at the time such qualifying event occurred;

(III) the different coverage in which the individual elects to enroll is coverage that is also offered to similarly situated active employees of the

employer at the time at which such election is made; and

(IV) the different coverage in which the individual elects to enroll is not—

(aa) coverage that provides only excepted benefits as defined in section 9832(c) of the Internal Revenue Code of 1986, section 733(c) of the Employee Retirement Income Security Act of 1974, and section 2791(c) of the Public Health Service Act;

(bb) a qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986); or

(cc) a flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986).

(2) LIMITATION OF PERIOD OF PREMIUM ASSISTANCE.—

(A) ELIGIBILITY FOR ADDITIONAL COVERAGE.—Paragraph (1)(A) shall not apply with respect to any assistance eligible individual described in paragraph (3) for months of coverage beginning on or after the earlier of—

(i) the first date that such individual is eligible for coverage under any other group health plan (other than coverage consisting of only excepted benefits (as defined in section 9832(c) of the Internal Revenue Code of 1986, section 733(c) of the Employee Retirement Income Security Act of 1974, and section 2791(c) of the Public Health Service Act), coverage under a flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986), coverage under a qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986)), or eligible for benefits under the Medicare program under title XVIII of the Social Security Act; or

(ii) the earlier of—

(I) the date following the expiration of the maximum period of continuation coverage required under the applicable COBRA continuation coverage provision; or

(II) the date following the expiration of the period of continuation coverage allowed under paragraph (4)(B)(ii).

(B) NOTIFICATION REQUIREMENT.—Any assistance eligible individual shall notify the group health plan with respect to which paragraph (1)(A) applies if such paragraph ceases to apply by reason of clause (i) of subparagraph (A) (as applicable). Such notice shall be provided to the group health plan in such time and manner as may be specified by the Secretary of Labor.

(3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For purposes of this section, the term ''assistance eligible individual'' means, with respect to a period of coverage during the period beginning on the first day of the first month beginning after the date of the enactment of this Act, and ending on September 30,

2021, any individual that is a qualified beneficiary who—

(A) is eligible for COBRA continuation coverage by reason of a qualifying event specified in section 603(2) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(3)(B) of the Internal Revenue Code of 1986, or section 2203(2) of the Public Health Service Act, except for the voluntary termination of such individual's employment by such individual; and

(B) elects such coverage.

(4) EXTENSION OF ELECTION PERIOD AND EFFECT ON COVERAGE.—

(A) IN GENERAL.—For purposes of applying section 605(a) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(5)(A) of the Internal Revenue Code of 1986, and section 2205(a) of the Public Health Service Act, in the case of—

(i) an individual who does not have an election of COBRA continuation coverage in effect on the first day of the first month beginning after the date of the enactment of this Act but who would be an assistance

eligible individual described in paragraph (3) if such election were so in effect; or

(ii) an individual who elected COBRA continuation coverage and discontinued from such coverage before the first day of the first month beginning after the date of the enactment of this Act,

such individual may elect the COBRA continuation coverage under the COBRA continuation coverage provisions containing such provisions during the period beginning on the first day of the first month beginning after the date of the enactment of this Act and ending 60 days after the date on which the notification required under paragraph (6)(C) is provided to such individual.

(B) COMMENCEMENT OF COBRA CONTINUATION COVERAGE.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (A)—

(i) shall commence (including for purposes of applying the treatment of premium payments under paragraph (1)(A) and any cost-sharing requirements for

items and services under a group health plan) with the first period of coverage beginning on or after the first day of the first month beginning after the date of the enactment of this Act, and

(ii) shall not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the coverage had been elected as required under such provision.

(5) EXPEDITED REVIEW OF DENIALS OF PREMIUM ASSISTANCE.—In any case in which an individual requests treatment as an assistance eligible individual described in paragraph (3) and is denied such treatment by the group health plan, the Secretary of Labor (or the Secretary of Health and Human Services in connection with COBRA continuation coverage which is provided other than pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974), in consultation with the Secretary of the Treasury, shall provide for expedited review of such denial. An individual shall be entitled to such review upon application to such Secretary in such form and manner

as shall be provided by such Secretary, in consultation with the Secretary of the Treasury. Such Secretary shall make a determination regarding such individual's eligibility within 15 business days after receipt of such individual's application for review under this paragraph. Such Secretary's determination upon review of the denial shall be de novo and shall be the final determination of such Secretary. A reviewing court shall grant deference to such Secretary's determination. The provisions of this paragraph, paragraphs (1) through (4), and paragraphs (6) through (7) shall be treated as provisions of title I of the Employee Retirement Income Security Act of 1974 for purposes of part 5 of subtitle B of such title.

(6) NOTICES TO INDIVIDUALS.—

(A) GENERAL NOTICE.—

(i) IN GENERAL.—In the case of notices provided under section 606(a)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166(4)), section 4980B(f)(6)(D) of the Internal Revenue Code of 1986, or section 2206(4) of the Public Health Service Act (42 U.S.C. 300bb–6(4)), with respect to individuals

who, during the period described in paragraph (3), become entitled to elect COBRA continuation coverage, the requirements of such provisions shall not be treated as met unless such notices include an additional written notification to the recipient in clear and understandable language of—

(I) the availability of premium assistance with respect to such coverage under this subsection; and

(II) the option to enroll in different coverage if the employer permits assistance eligible individuals described in paragraph (3) to elect enrollment in different coverage (as described in paragraph (1)(B)).

(ii) ALTERNATIVE NOTICE.—In the case of COBRA continuation coverage to which the notice provision under such sections does not apply, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall, in consultation with administrators of the group health plans (or other entities) that provide

or administer the COBRA continuation coverage involved, provide rules requiring the provision of such notice.

(iii) FORM.—The requirement of the additional notification under this subparagraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(B) SPECIFIC REQUIREMENTS.—Each additional notification under subparagraph (A) shall include—

(i) the forms necessary for establishing eligibility for premium assistance under this subsection;

(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium assistance;

(iii) a description of the extended election period provided for in paragraph (4)(A);

(iv) a description of the obligation of the qualified beneficiary under paragraph

(2)(B) and the penalty provided under section 6720C of the Internal Revenue Code of 1986 for failure to carry out the obligation;

(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium; and

(vi) a description of the option of the qualified beneficiary to enroll in different coverage if the employer permits such beneficiary to elect to enroll in such different coverage under paragraph (1)(B).

(C) NOTICE IN CONNECTION WITH EXTENDED ELECTION PERIODS.—In the case of any assistance eligible individual described in paragraph (3) (or any individual described in paragraph (4)(A)) who became entitled to elect COBRA continuation coverage before the first day of the first month beginning after the date of the enactment of this Act, the administrator of the applicable group health plan (or other entity) shall provide (within 60 days after such first day of such first month) for the additional

notification required to be provided under subparagraph (A) and failure to provide such notice shall be treated as a failure to meet the notice requirements under the applicable COBRA continuation provision.

(D) MODEL NOTICES.—Not later than 30 days after the date of enactment of this Act, with respect to any assistance eligible individual described in paragraph (3), the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the additional notification required under this paragraph.

(7) NOTICE OF EXPIRATION OF PERIOD OF PREMIUM ASSISTANCE.—

(A) IN GENERAL.—With respect to any assistance eligible individual, subject to subparagraph (B), the requirements of section 606(a)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166(4)), section 4980B(f)(6)(D) of the Internal Revenue Code of 1986, or section 2206(4) of the Public Health Service Act (42 U.S.C. 300bb–6(4)), shall not be treated as met unless the plan ad-

ministrator of the individual, during the period specified under subparagraph (C), provides to such individual a written notice in clear and understandable language—

(i) that the premium assistance for such individual will expire soon and the prominent identification of the date of such expiration; and

(ii) that such individual may be eligible for coverage without any premium assistance through—

(I) COBRA continuation coverage; or

(II) coverage under a group health plan.

(B) EXCEPTION.—The requirement for the group health plan administrator to provide the written notice under subparagraph (A) shall be waived if the premium assistance for such individual expires pursuant to clause (i) of paragraph (2)(A).

(C) PERIOD SPECIFIED.—For purposes of subparagraph (A), the period specified in this subparagraph is, with respect to the date of expiration of premium assistance for any assist-

ance eligible individual pursuant to a limitation requiring a notice under this paragraph, the period beginning on the day that is 45 days before the date of such expiration and ending on the day that is 15 days before the date of such expiration.

(D) MODEL NOTICES.—Not later than 45 days after the date of enactment of this Act, with respect to any assistance eligible individual, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the notification required under this paragraph.

(8) REGULATIONS.—The Secretary of the Treasury and the Secretary of Labor may jointly prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this subsection, including the prevention of fraud and abuse under this subsection, except that the Secretary of Labor and the Secretary of Health and Human Services may prescribe such regulations (including interim final regulations) or other guidance as may be necessary or appropriate to carry

out the provisions of paragraphs (5), (6), (7), and (9).

(9) OUTREACH.—

(A) IN GENERAL.—The Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall provide outreach consisting of public education and enrollment assistance relating to premium assistance provided under this subsection. Such outreach shall target employers, group health plan administrators, public assistance programs, States, insurers, and other entities as determined appropriate by such Secretaries. Such outreach shall include an initial focus on those individuals electing continuation coverage who are referred to in paragraph (6)(C). Information on such premium assistance, including enrollment, shall also be made available on websites of the Departments of Labor, Treasury, and Health and Human Services.

(B) ENROLLMENT UNDER MEDICARE.—The Secretary of Health and Human Services shall provide outreach consisting of public education. Such outreach shall target individuals

who lose health insurance coverage. Such outreach shall include information regarding enrollment for benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for purposes of preventing mistaken delays of such enrollment by such individuals, including lifetime penalties for failure of timely enrollment.

(10) DEFINITIONS.—For purposes of this section:

(A) ADMINISTRATOR.—The term ''administrator'' has the meaning given such term in section 3(16)(A) of the Employee Retirement Income Security Act of 1974.

(B) COBRA CONTINUATION COVERAGE.—The term ''COBRA continuation coverage'' means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, or section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or under a State program that provides comparable continuation coverage. Such term does

not include coverage under a health flexible spending arrangement under a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986.

(C) COBRA CONTINUATION PROVISION.—The term ''COBRA continuation provision'' means the provisions of law described in subparagraph (B).

(D) COVERED EMPLOYEE.—The term ''covered employee'' has the meaning given such term in section 607(2) of the Employee Retirement Income Security Act of 1974.

(E) QUALIFIED BENEFICIARY.—The term ''qualified beneficiary'' has the meaning given such term in section 607(3) of the Employee Retirement Income Security Act of 1974.

(F) GROUP HEALTH PLAN.—The term ''group health plan'' has the meaning given such term in section 607(1) of the Employee Retirement Income Security Act of 1974.

(G) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(H) PERIOD OF COVERAGE.—Any reference in this subsection to a period of coverage shall be treated as a reference to a monthly or shorter period of coverage with respect to which premiums are charged with respect to such coverage.

(I) PLAN SPONSOR.—The term ''plan sponsor'' has the meaning given such term in section 3(16)(B) of the Employee Retirement Income Security Act of 1974.

(J) PREMIUM.—The term ''premium'' includes, with respect to COBRA continuation coverage, any administrative fee.

(11) IMPLEMENTATION FUNDING.—In addition to amounts otherwise made available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Labor for fiscal year 2021, $10,000,000, to remain available until expended, for the Employee Benefits Security Administration to carry out the provisions of this subtitle.

(b) COBRA PREMIUM ASSISTANCE.—

(1) ALLOWANCE OF CREDIT.—

(A) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 is

amended by adding at the end the following new section:

"SEC. 6432. CONTINUATION COVERAGE PREMIUM ASSISTANCE.

"(a) IN GENERAL.—The person to whom premiums are payable for continuation coverage under section 9501(a)(1) of the Worker Health Coverage Protection Act shall be allowed as a credit against the tax imposed by section 3111(b), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), for each calendar quarter an amount equal to the premiums not paid by assistance eligible individuals for such coverage by reason of such section 9501(a)(1) with respect to such calendar quarter.

"(b) PERSON TO WHOM PREMIUMS ARE PAYABLE.—For purposes of subsection (a), except as otherwise provided by the Secretary, the person to whom premiums are payable under such continuation coverage shall be treated as being—

"(1) in the case of any group health plan which is a multiemployer plan (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974), the plan,

"(2) in the case of any group health plan not described in paragraph (1), and under which some

or all of the coverage is not provided by insurance, the employer maintaining the plan, and

''(3) in the case of any group health plan not described in paragraph (1) or (2), the insurer providing the coverage under the group health plan.

''(c) LIMITATIONS AND REFUNDABILITY.—

''(1) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(b), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), for such calendar quarter (reduced by any credits allowed against such taxes under sections 7001 and 7003 of the Families First Coronavirus Response Act and section 2301 of the CARES Act) on the wages paid with respect to the employment of all employees of the employer.

''(2) REFUNDABILITY OF EXCESS CREDIT.—

''(A) CREDIT IS REFUNDABLE.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (1) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

"(B) CREDIT MAY BE ADVANCED.—In anticipation of the credit, including the refundable portion under subparagraph (A), the credit may be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a) through the end of the most recent payroll period in the quarter.

"(C) TREATMENT OF DEPOSITS.—The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of the tax imposed by section 3111(b), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.

"(D) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any amounts due to an employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

''(3) OVERSTATEMENTS.—Any overstatement of the credit to which a person is entitled under this section (and any amount paid by the Secretary as a result of such overstatement) shall be treated as an underpayment by such person of the taxes described in paragraph (1) and may be assessed and collected by the Secretary in the same manner as such taxes.

''(d) GOVERNMENTAL ENTITIES.—For purposes of this section, the term 'person' includes the government of any State or political subdivision thereof, any Indian tribal government (as defined in section 139E(c)(1)), any agency or instrumentality of any of the foregoing, and any agency or instrumentality of the Government of the United States that is described in section 501(c)(1) and exempt from taxation under section 501(a).

''(e) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1, the gross income of any person allowed a credit under this section shall be increased for the taxable year which includes the last day of any calendar quarter with respect to which such credit is allowed by the amount of such credit. No amount for which a credit is allowed under this section shall be taken into account as qualified wages under section 2301 of the CARES Act or as qualified health plan expenses under section 7001(d) or 7003(d) of the Families First Coronavirus Response Act.

''(f) REGULATIONS.—The Secretary shall issue such regulations, or other guidance, forms, instructions, and publications, as may be necessary or appropriate to carry out this section, including—

''(1) the requirement to report information or the establishment of other methods for verifying the correct amounts of reimbursements under this section,

''(2) the application of this section to group health plans that are multiemployer plans (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974),

''(3) to allow the advance payment of the credit determined under subsection (a), subject to the limitations provided in this section, based on such information as the Secretary shall require,

''(4) to provide for the reconciliation of such advance payment with the amount of the credit at the time of filing the return of tax for the applicable quarter or taxable year, and

''(5) allowing the credit to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504).''.

(B) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 6432. Continuation coverage premium assistance.".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to premiums to which subsection (a)(1)(A) applies and wages paid on or after April 1, 2021.

(D) SPECIAL RULE IN CASE OF EMPLOYEE PAYMENT THAT IS NOT REQUIRED UNDER THIS SECTION.—

(i) IN GENERAL.—In the case of an assistance eligible individual who pays, with respect any period of coverage to which subsection (a)(1)(A) applies, the amount of the premium for such coverage that the individual would have (but for this Act) been required to pay, the person to whom such payment is payable shall reimburse such individual for the amount of such premium paid in excess of the amount required to be paid under subsection (a)(1)(A).

(ii) CREDIT OF REIMBURSEMENT.—A person to which clause (i) applies shall be

allowed a credit in the manner provided under section 6432 of the Internal Revenue Code of 1986 for any payment made to the employee under such clause.

(iii) PAYMENT OF CREDITS.—Any person to which clause (i) applies shall make the payment required under such clause to the individual not later than 60 days after the date on which such individual elects continuation coverage under subsection (a)(1).

(2) PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Part I of subchapter B of chapter 68 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR CONTINUATION COVERAGE PREMIUM ASSISTANCE.

''(a) IN GENERAL.—Except in the case of a failure described in subsection (b) or (c), any person required to notify a group health plan under section 9501(a)(2)(B)

of the Worker Health Coverage Protection Act who fails to make such a notification at such time and in such manner as the Secretary of Labor may require shall pay a penalty of $250 for each such failure.

''(b) INTENTIONAL FAILURE.—In the case of any such failure that is fraudulent, such person shall pay a penalty equal to the greater of—

''(1) $250, or

''(2) 110 percent of the premium assistance provided under section 9501(a)(1)(A) of the Worker Health Coverage Protection Act after termination of eligibility under such section.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.''.

(B) CLERICAL AMENDMENT.—The table of sections of part I of subchapter B of chapter 68 of such Code is amended by adding at the end the following new item:

''Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility for continuation coverage premium assistance.''.

(3) COORDINATION WITH HCTC.—

(A) IN GENERAL.—Section 35(g)(9) of the Internal Revenue Code of 1986 is amended to read as follows:

''(9) CONTINUATION COVERAGE PREMIUM ASSISTANCE.—In the case of an assistance eligible individual who receives premium assistance for continuation coverage under section 9501(a)(1) of the Worker Health Coverage Protection Act for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act.

(4) EXCLUSION OF CONTINUATION COVERAGE PREMIUM ASSISTANCE FROM GROSS INCOME.—

(A) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139H the following new section:

''SEC. 139I. CONTINUATION COVERAGE PREMIUM ASSISTANCE.

''In the case of an assistance eligible individual (as defined in subsection (a)(3) of section 9501 of the Worker Health Coverage Protection Act), gross income does not

include any premium assistance provided under subsection (a)(1) of such section.''.

(B) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139H the following new item:

''Sec. 139I. Continuation coverage premium assistance.''.

(C) EFFECTIVE DATE.—The amendments made by this subparagraph shall apply to taxable years ending after the date of the enactment of this Act.

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COMMITTEE PRINT

Budget Reconciliation Legislative Recommendations Relating to Promoting Economic Security

Subtitle G—Promoting Economic Security

PART 1—2021 RECOVERY REBATES TO INDIVIDUALS

SEC. 9601. 2021 RECOVERY REBATES TO INDIVIDUALS.

(a) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by inserting after section 6428A the following new section:

"SEC. 6428B. 2021 RECOVERY REBATES TO INDIVIDUALS.

''(a) IN GENERAL.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by subtitle A for the first taxable year beginning in 2021 an amount equal to the 2021 rebate amount determined for such taxable year.

''(b) 2021 REBATE AMOUNT.—For purposes of this section, the term '2021 rebate amount' means, with respect to any taxpayer for any taxable year, the sum of—

''(1) $1,400 ($2,800 in the case of a joint return), plus

''(2) $1,400 multiplied by the number of dependents of the taxpayer for such taxable year.

''(c) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means any individual other than—

''(1) any nonresident alien individual,

''(2) any individual who is a dependent of another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and

''(3) an estate or trust.

''(d) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—The amount of the credit allowed by subsection (a) (determined without regard to this subsection and subsection (f)) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

''(A) the excess of—

''(i) the taxpayer's adjusted gross income for such taxable year, over

''(ii) $75,000, bears to

''(B) $25,000.

''(2) SPECIAL RULES.—

''(A) JOINT RETURN OR SURVIVING SPOUSE.—In the case of a joint return or a sur-

viving spouse (as defined in section 2(a)), paragraph (1) shall be applied by substituting '$150,000' for '$75,000' and '$50,000' for '$25,000'.

''(B) HEAD OF HOUSEHOLD.—In the case of a head of household (as defined in section 2(b)), paragraph (1) shall be applied by substituting '$112,500' for '$75,000' and '$37,500' for '$25,000'.

''(e) DEFINITIONS AND SPECIAL RULES.—

''(1) DEPENDENT DEFINED.—For purposes of this section, the term 'dependent' has the meaning given such term by section 152.

''(2) IDENTIFICATION NUMBER REQUIREMENT.—

''(A) IN GENERAL.—In the case of a return other than a joint return, the $1,400 amount in subsection (b)(1) shall be treated as being zero unless the taxpayer includes the valid identification number of the taxpayer on the return of tax for the taxable year.

''(B) JOINT RETURNS.—In the case of a joint return, the $2,800 amount in subsection (b)(1) shall be treated as being—

''(i) $1,400 if the valid identification number of only 1 spouse is included on the return of tax for the taxable year, and

''(ii) zero if the valid identification number of neither spouse is so included.

''(C) DEPENDENTS.—A dependent shall not be taken into account under subsection (b)(2) unless the valid identification number of such dependent is included on the return of tax for the taxable year.

''(D) VALID IDENTIFICATION NUMBER.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'valid identification number' means a social security number issued to an individual by the Social Security Administration on or before the due date for filing the return for the taxable year.

''(ii) ADOPTION TAXPAYER IDENTIFICATION NUMBER.—For purposes of subparagraph (C), in the case of a dependent who is adopted or placed for adoption, the term 'valid identification number' shall include the adoption taxpayer identification number of such dependent.

"(E) SPECIAL RULE FOR MEMBERS OF THE ARMED FORCES.—Subparagraph (B) shall not apply in the case where at least 1 spouse was a member of the Armed Forces of the United States at any time during the taxable year and the valid identification number of at least 1 spouse is included on the return of tax for the taxable year.

"(F) COORDINATION WITH CERTAIN ADVANCE PAYMENTS.—In the case of any payment determined pursuant to subsection (g)(6), a valid identification number shall be treated for purposes of this paragraph as included on the taxpayer's return of tax if such valid identification number is available to the Secretary as described in such subsection.

"(G) MATHEMATICAL OR CLERICAL ERROR AUTHORITY.—Any omission of a correct valid identification number required under this paragraph shall be treated as a mathematical or clerical error for purposes of applying section 6213(g)(2) to such omission.

"(3) CREDIT TREATED AS REFUNDABLE.—The credit allowed by subsection (a) shall be treated as

allowed by subpart C of part IV of subchapter A of chapter 1.

''(f) COORDINATION WITH ADVANCE REFUNDS OF CREDIT.—

''(1) REDUCTION OF REFUNDABLE CREDIT.—The amount of the credit which would (but for this paragraph) be allowable under subsection (a) shall be reduced (but not below zero) by the aggregate refunds and credits made or allowed to the taxpayer (or, except as otherwise provided by the Secretary, any dependent of the taxpayer) under subsection (g). Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

''(2) JOINT RETURNS.—Except as otherwise provided by the Secretary, in the case of a refund or credit made or allowed under subsection (g) with respect to a joint return, half of such refund or credit shall be treated as having been made or allowed to each individual filing such return.

''(g) ADVANCE REFUNDS AND CREDITS.—

''(1) IN GENERAL.—Subject to paragraphs (5) and (6), each individual who was an eligible individual for such individual's first taxable year beginning in 2019 shall be treated as having made a pay-

ment against the tax imposed by chapter 1 for such taxable year in an amount equal to the advance refund amount for such taxable year.

''(2) ADVANCE REFUND AMOUNT.—

''(A) IN GENERAL.—For purposes of paragraph (1), the advance refund amount is the amount that would have been allowed as a credit under this section for such taxable year if this section (other than subsection (f) and this subsection) had applied to such taxable year.

''(B) TREATMENT OF DECEASED INDIVIDUALS.—For purposes of determining the advance refund amount with respect to such taxable year—

''(i) any individual who was deceased before January 1, 2021, shall be treated for purposes of applying subsection (e)(2) in the same manner as if the valid identification number of such person was not included on the return of tax for such taxable year (except that subparagraph (E) thereof shall not apply),

''(ii) notwithstanding clause (i), in the case of a joint return with respect to which only 1 spouse is deceased before January

1, 2021, such deceased spouse was a member of the Armed Forces of the United States at any time during the taxable year, and the valid identification number of such deceased spouse is included on the return of tax for the taxable year, the valid identification number of 1 (and only 1) spouse shall be treated as included on the return of tax for the taxable year for purposes of applying subsection (e)(2)(B) with respect to such joint return, and

''(iii) no amount shall be determined under subsection (e)(2) with respect to any dependent of the taxpayer if the taxpayer (both spouses in the case of a joint return) was deceased before January 1, 2021.

''(3) TIMING AND MANNER OF PAYMENTS.—

''(A) TIMING.—The Secretary shall, subject to the provisions of this title, refund or credit any overpayment attributable to this subsection as rapidly as possible, consistent with a rapid effort to make payments attributable to such overpayments electronically if appropriate. No refund or credit shall be made or allowed under this subsection after December 31, 2021.

''(B) DELIVERY OF PAYMENTS.—Notwithstanding any other provision of law, the Secretary may certify and disburse refunds payable under this subsection electronically to—

''(i) any account to which the payee received or authorized, on or after January 1, 2019, a refund of taxes under this title or of a Federal payment (as defined in section 3332 of title 31, United States Code),

''(ii) any account belonging to a payee from which that individual, on or after January 1, 2019, made a payment of taxes under this title, or

''(iii) any Treasury-sponsored account (as defined in section 208.2 of title 31, Code of Federal Regulations).

''(C) WAIVER OF CERTAIN RULES.—Notwithstanding section 3325 of title 31, United States Code, or any other provision of law, with respect to any payment of a refund under this subsection, a disbursing official in the executive branch of the United States Government may modify payment information received from an officer or employee described in section 3325(a)(1)(B) of such title for the purpose of

facilitating the accurate and efficient delivery of such payment. Except in cases of fraud or reckless neglect, no liability under section 3325, 3527, 3528, or 3529 of title 31, United States Code, shall be imposed with respect to payments made under this subparagraph.

''(4) NO INTEREST.—No interest shall be allowed on any overpayment attributable to this subsection.

''(5) APPLICATION TO INDIVIDUALS WHO HAVE FILED A RETURN OF TAX FOR 2020.—

''(A) APPLICATION TO 2020 RETURNS FILED AT TIME OF INITIAL DETERMINATION.—If, at the time of any determination made pursuant to paragraph (3), the individual referred to in paragraph (1) has filed a return of tax for the individual's first taxable year beginning in 2020, paragraph (1) shall be applied with respect to such individual by substituting '2020' for '2019'.

''(B) ADDITIONAL PAYMENT.—

''(i) IN GENERAL.—In the case of any individual who files, before the additional payment determination date, a return of tax for such individual's first taxable year

beginning in 2020, the Secretary shall make a payment (in addition to any payment made under paragraph (1)) to such individual equal to the excess (if any) of—

''(I) the amount which would be determined under paragraph (1) (after the application of subparagraph (A)) by applying paragraph (1) as of the additional payment determination date, over

''(II) the amount of any payment made with respect to such individual under paragraph (1).

''(ii) ADDITIONAL PAYMENT DETERMINATION DATE.—The term 'additional payment determination date' means the earlier of—

''(I) the date which is 90 days after the 2020 calendar year filing deadline, or

''(II) September 1, 2021.

''(iii) 2020 CALENDAR YEAR FILING DEADLINE.—The term '2020 calendar year filing deadline' means the date specified in section 6072(a) with respect to returns for

calendar year 2020. Such date shall be determined after taking into account any period disregarded under section 7508A if such disregard applies to substantially all returns for calendar year 2020 to which section 6072(a) applies.

''(6) APPLICATION TO CERTAIN INDIVIDUALS WHO HAVE NOT FILED A RETURN OF TAX FOR 2019 OR 2020 AT TIME OF DETERMINATION.—

''(A) IN GENERAL.—In the case of any individual who, at the time of any determination made pursuant to paragraph (3), has filed a tax return for neither the year described in paragraph (1) nor for the year described in paragraph (5)(A), the Secretary may apply paragraph (1) on the basis of information available to the Secretary and, on the basis of such information, may determine the advance refund amount with respect to such individual without regard to subsection (d).

''(B) PAYMENT TO REPRESENTATIVE PAYEES AND FIDUCIARIES.—In the case of any payment determined pursuant to subparagraph (A), such payment may be made to an individual or organization serving as the eligible in-

dividual's representative payee or fiduciary for a federal benefit program and the entire amount of such payment so made shall be used only for the benefit of the individual who is entitled to the payment.

''(7) SPECIAL RULE RELATED TO TIME OF FILING RETURN.—Solely for purposes of this subsection, a return of tax shall not be treated as filed until such return has been processed by the Internal Revenue Service.

''(8) NOTICE TO TAXPAYER.—As soon as practicable after the date on which the Secretary distributed any payment to an eligible taxpayer pursuant to this subsection, notice shall be sent by mail to such taxpayer's last known address. Such notice shall indicate the method by which such payment was made, the amount of such payment, a phone number for an appropriate point of contact at the Internal Revenue Service to report any error with respect to such payment, and such other information as the Secretary determines appropriate.

''(9) RESTRICTION ON USE OF CERTAIN PREVIOUSLY ISSUED PREPAID DEBIT CARDS.—Payments made by the Secretary to individuals under this section shall not be in the form of an increase in the

balance of any previously issued prepaid debit card if, as of the time of the issuance of such card, such card was issued solely for purposes of making payments under section 6428 or 6428A.

''(h) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including—

''(1) regulations or other guidance providing taxpayers the opportunity to provide the Secretary information sufficient to allow the Secretary to make payments to such taxpayers under subsection (g) (including the determination of the amount of such payment) if such information is not otherwise available to the Secretary, and

''(2) regulations or other guidance to ensure to the maximum extent administratively practicable that, in determining the amount of any credit under subsection (a) and any credit or refund under subsection (g), an individual is not taken into account more than once, including by different taxpayers and including by reason of a change in joint return status or dependent status between the taxable year for which an advance refund amount is determined and

the taxable year for which a credit under subsection (a) is determined.

''(i) OUTREACH.—The Secretary shall carry out a robust and comprehensive outreach program to ensure that all taxpayers described in subsection (h)(1) learn of their eligibility for the advance refunds and credits under subsection (g); are advised of the opportunity to receive such advance refunds and credits as provided under subsection (h)(1); and are provided assistance in applying for such advance refunds and credits. In conducting such outreach program, the Secretary shall coordinate with other government, State, and local agencies; federal partners; and community-based nonprofit organizations that regularly interface with such taxpayers.''.

(b) TREATMENT OF CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the amendments made by this section. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the amendments made by this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to its residents.

(3) INCLUSION OF ADMINISTRATIVE EXPENSES.—The Secretary of the Treasury shall pay to each possession of the United States to which the Secretary makes a payment under paragraph (1) or (2) an amount equal to the lesser of—

(A) the increase (if any) of the administrative expenses of such possession—

(i) in the case of a possession described in paragraph (1), by reason of the amendments made by this section, and

(ii) in the case of a possession described in paragraph (2), by reason of carrying out the plan described in such paragraph, or

(B) $500,000 ($10,000,000 in the case of Puerto Rico).

The amount described in subparagraph (A) shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(4) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes under section 6428B of the Internal Revenue Code of 1986 (as added by this section), nor shall any credit or refund be made or allowed under subsection (g) of such section, to any person—

(A) to whom a credit is allowed against taxes imposed by the possession by reason of the amendments made by this section, or

(B) who is eligible for a payment under a plan described in paragraph (2).

(5) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term ''mirror code tax system'' means, with respect to any possession of the

United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(6) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(c) ADMINISTRATIVE PROVISIONS.—

(1) DEFINITION OF DEFICIENCY.—Section 6211(b)(4)(A) of the Internal Revenue Code of 1986 is amended by striking ''6428, and 6428A'' and inserting ''6428, 6428A, and 6428B''.

(2) EXCEPTION FROM REDUCTION OR OFFSET.—Any refund payable by reason of section 6428B(g) of the Internal Revenue Code of 1986 (as added by this section), or any such refund payable by reason of subsection (b) of this section, shall not be —

(A) subject to reduction or offset pursuant to section 3716 or 3720A of title 31, United States Code,

(B) subject to reduction or offset pursuant to subsection (c), (d), (e), or (f) of section 6402 of the Internal Revenue Code of 1986, or

(C) reduced or offset by other assessed Federal taxes that would otherwise be subject to levy or collection.

(3) CONFORMING AMENDMENTS.—

(A) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting ''6428B,'' after ''6428A,''.

(B) The table of sections for subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 6428A the following new item:

''Sec. 6428B. 2021 recovery rebates to individuals.''.

(d) APPROPRIATIONS.—Immediately upon the enactment of this Act, in addition to amounts otherwise available, there are appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated:

(1) $1,464,500,000 to remain available until September 30, 2023 for necessary expenses for the Internal Revenue Service for the administration of the advance payments, the provision of taxpayer assistance, and the furtherance of integrated, modernized, and secure Internal Revenue Service systems, which shall supplement and not supplant any other

appropriations that may be available for this purpose.

(2) $7,000,000 to remain available until September 30, 2022, for necessary expenses for the Bureau of the Fiscal Service to carry out this section (and the amendments made by this section), which shall supplement and not supplant any other appropriations that may be available for this purpose, and

(3) $8,000,000 to remain available until September 30, 2023, for the Treasury Inspector General for Tax Administration for the purposes of overseeing activates related to the administration of this section (and the amendments made by this section), which shall supplement and not supplant any other appropriations that may be available for this purpose.

(e) FLEXIBILITY WITH RESPECT TO IRS INFORMATION TECHNOLOGY EMPLOYEES.—

(1) If services performed by an employee of the Internal Revenue Service during the period beginning on January 1, 2020, and ending on December 31, 2022, are determined by the Commissioner of Internal Revenue to be primarily related to information technology, any premium pay for such services shall be disregarded in calculating the aggregate of

such employee's basic pay and premium pay for purposes of a limitation under section 5547(a) of title 5, United States Code, or under any other provision of law, whether such employee's pay is paid on a biweekly or calendar year basis.

(2) Any overtime pay for such services shall be disregarded in calculating any annual limit on the amount of overtime pay payable in a calendar or fiscal year.

(3) With regard to such services, any pay that is disregarded under either paragraph (1) or (2) shall be disregarded in calculating such employees aggregate pay for purposes of the limitations in sections 5307 and 9502 of such title 5.

(4) If application of this subsection results in the payment of additional premium pay to a covered employee of a type that is normally creditable as basic pay for retirement or any other purpose, that additional pay shall not—

(A) be considered to be basic pay of the covered employee for any purpose; or

(B) be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under section 5551 or section 5552 of such title 5.

PART 2—CHILD TAX CREDIT

SEC. 9611. CHILD TAX CREDIT IMPROVEMENTS FOR 2021.

(a) IN GENERAL.—Section 24 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(i) SPECIAL RULES FOR 2021.—In the case of any taxable year beginning after December 31, 2020, and before January 1, 2022—

''(1) REFUNDABLE CREDIT.—If the taxpayer (in the case of a joint return, either spouse) has a principal place of abode in the United States (determined as provided in section 32) for more than one-half of the taxable year or is a bona fide resident of Puerto Rico (within the meaning of section 937(a)) for such taxable year—

''(A) subsection (d) shall not apply, and

''(B) so much of the credit determined under subsection (a) (after application of subparagraph (A)) as does not exceed the amount of such credit which would be so determined without regard to subsection (h)(4) shall be allowed under subpart C (and not allowed under this subpart).

''(2) 17-YEAR-OLDS ELIGIBLE FOR TREATMENT AS QUALIFYING CHILDREN.—This section shall be applied—

"(A) by substituting 'age 18' for 'age 17' in subsection (c)(1), and

"(B) by substituting 'described in subsection (c) (determined after the application of subsection (i)(2)(A))' for 'described in subsection (c)' in subsection (h)(4)(A).

"(3) CREDIT AMOUNT.—Subsection (h)(2) shall not apply and subsection (a) shall be applied by substituting '$3,000 ($3,600 in the case of a qualifying child who has not attained age 6 as of the close of the calendar year in which the taxable year of the taxpayer begins)' for '$1,000'.

"(4) REDUCTION OF INCREASED CREDIT AMOUNT BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—The amount of the credit allowable under subsection (a) (determined without regard to subsection (b)) shall be reduced by $50 for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income (as defined in subsection (b)) exceeds the applicable threshold amount.

"(B) APPLICABLE THRESHOLD AMOUNT.—For purposes of this paragraph, the term 'applicable threshold amount' means—

"(i) $150,000, in the case of a joint return or surviving spouse (as defined in section 2(a)) ,

"(ii) $112,500, in the case of a head of household (as defined in section 2(b)), and

"(iii) $75,000, in any other case.

"(C) LIMITATION ON REDUCTION.—

"(i) IN GENERAL.—The amount of the reduction under subparagraph (A) shall not exceed the lesser of—

"(I) the applicable credit increase amount, or

"(II) 5 percent of the applicable phaseout threshold range.

"(ii) APPLICABLE CREDIT INCREASE AMOUNT.—For purposes of this subparagraph, the term 'applicable credit increase amount' means the excess (if any) of—

"(I) the amount of the credit allowable under this section for the taxable year determined without regard to this paragraph and subsection (b), over

"(II) the amount of such credit as so determined and without regard to paragraph (3).

"(iii) APPLICABLE PHASEOUT THRESHOLD RANGE.—For purposes of this subparagraph, the term 'applicable phase-out threshold range' means the excess of—

"(I) the threshold amount applicable to the taxpayer under subsection (b) (determined after the application of subsection (h)(3)), over

"(II) the applicable threshold amount applicable to the taxpayer under this paragraph.

"(D) COORDINATION WITH LIMITATION ON OVERALL CREDIT.—Subsection (b) shall be applied by substituting 'the credit allowable under subsection (a) (determined after the application of subsection (i)(4)(A)' for 'the credit allowable under subsection (a)'.".

(b) ADVANCE PAYMENT OF CREDIT.—

(1) IN GENERAL.—Chapter 77 of such Code is amended by inserting after section 7527 the following new section:

"SEC. 7527A. ADVANCE PAYMENT OF CHILD TAX CREDIT.

"(a) IN GENERAL.—The Secretary shall establish a program for making monthly payments to taxpayers each of which is equal to 1/12 of the annual advance amount determined with respect to such taxpayer for the calendar year.

"(b) ANNUAL ADVANCE AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'annual advance amount' means, with respect to any taxpayer for any calendar year, the amount (if any) which is estimated by the Secretary as being equal to the amount which would be treated as allowed under subpart C of part IV of subchapter A of chapter 1 by reason of section 24(i)(1) for the taxpayer's taxable year beginning in such calendar year if—

"(A) the status of the taxpayer as a taxpayer described in section 24(i)(1) is determined with respect to the reference taxable year,

"(B) the taxpayer's modified adjusted gross income for such taxable year is equal to the taxpayer's modified adjusted gross income for the reference taxable year,

''(C) the only children of such taxpayer for such taxable year are qualifying children properly claimed on the taxpayer's return of tax for the reference taxable year, and

''(D) the ages of such children (and the status of such children as qualifying children) are determined for such taxable year by taking into account the passage of time since the reference taxable year.

''(2) REFERENCE TAXABLE YEAR.—Except as provided in paragraph (3)(A), the term 'reference taxable year' means, with respect to any taxpayer for any calendar year, the taxpayer's taxable year beginning in the preceding calendar year or, in the case of taxpayer who did not file a return of tax for such taxable year, the taxpayer's taxable year beginning in the second preceding calendar year.

''(3) MODIFICATIONS DURING CALENDAR YEAR.—

''(A) IN GENERAL.—The Secretary may modify, during any calendar year, the annual advance amount with respect to any taxpayer for such calendar year to take into account—

''(i) a return of tax filed by such taxpayer during such calendar year (and the

taxable year to which such return relates may be taken into account as the reference taxable year), and

''(ii) any other information provided by the taxpayer to the Secretary which allows the Secretary to determine payments under subsection (a) which, in the aggregate during any taxable year of the taxpayer, more closely total the Secretary's estimate of the amount treated as allowed under subpart C of part IV of subchapter A of chapter 1 by reason of section 24(i)(1) for such taxable year of such taxpayer.

''(B) ADJUSTMENT TO REFLECT EXCESS OR DEFICIT IN PRIOR PAYMENTS.—In the case of any modification of the annual advance amount under subparagraph (A), the Secretary may adjust the amount of any monthly payment made after the date of such modification to properly take into account the amount by which any monthly payment made before such date was greater than or less than the amount that such payment would have been on the

basis of the annual advance amount as so modified.

''(4) DETERMINATION OF STATUS.—If information contained in the taxpayer's return of tax for the reference taxable year does not establish the status of the taxpayer as being described in section 24(i)(1), the Secretary may, for purposes of paragraph (1)(A), infer such status (or the lack thereof) from such information as is so contained or from other sources.

''(5) TREATMENT OF CERTAIN DEATHS.—A child shall not be taken into account in determining the annual advance amount under paragraph (1) if the death of such child is known to the Secretary as of the beginning of the calendar year for which the estimate under such paragraph is made.

''(c) ON-LINE INFORMATION PORTAL.—The Secretary shall establish an on-line portal which allows taxpayers to—

''(1) elect not to receive payments under this section, and

''(2) provide information to the Secretary which would be relevant to a modification under subsection (b)(3)(B) of the annual advance amount, including information regarding—

''(A) a change in the number of the taxpayer's qualifying children, including by reason of the birth of a child,

''(B) a change in the taxpayer's marital status,

''(C) a significant change in the taxpayer's income, and

''(D) any other factor which the Secretary may provide.

''(d) NOTICE OF PAYMENTS.—Not later than January 31 of the calendar year following any calendar year during which the Secretary makes one or more payments to any taxpayer under this section, the Secretary shall provide such taxpayer with a written notice which includes the taxpayer's taxpayer identity (as defined in section 6103(b)(6)), the aggregate amount of such payments made to such taxpayer during such calendar year, and such other information as the Secretary determines appropriate.

''(e) AUTHORITY TO ADJUST INTERVAL OF PAYMENTS.—If the Secretary determines that it is not administratively feasible to make monthly payments under this section—

''(1) such payments shall be made on the basis of the shortest interval which the Secretary determines is administratively feasible, and

''(2) the amount of such payments shall be determined by substituting the ratio of the length of such interval to the length of the calendar year for '1/12' in subsection (a).

''(f) ADMINISTRATIVE PROVISIONS.—

''(1) APPLICATION OF DIRECT DEPOSIT REQUIREMENT.—Solely for purposes of section 3332 of title 31, United States Code (and notwithstanding the last sentence of subsection (j)(3) thereof), the payments made by the Secretary under subsection (a) shall be treated as Federal payments.

''(2) DELIVERY OF PAYMENTS.—Notwithstanding any other provision of law, the Secretary may certify and disburse refunds payable under this section electronically to—

''(A) any account to which the payee received or authorized, on or after January 1, 2019, a refund of taxes under this title or a Federal payment (as defined in section 3332 of title 31, United States Code),

''(B) any account belonging to a payee from which that individual, on or after January

1, 2019, made a payment of taxes under this title, or

''(C) any Treasury-sponsored account (as defined in section 208.2 of title 31, Code of Federal Regulations).

''(3) WAIVER OF CERTAIN RULES.—Notwithstanding section 3325 of title 31, United States Code, or any other provision of law, with respect to any payment of a refund under this section, a disbursing official in the executive branch of the United States Government may modify payment information received from an officer or employee described in section 3325(a)(1)(B) of such title for the purpose of facilitating the accurate and efficient delivery of such payment. Except in cases of fraud or reckless neglect, no liability under section 3325, 3527, 3528, or 3529 of title 31, United States Code, shall be imposed with respect to payments made under this paragraph.

''(4) EXCEPTION FROM REDUCTION OR OFFSET.—Any payment made to any individual under this section shall not be—

''(A) subject to reduction or offset pursuant to section 3716 or 3720A of title 31, United States Code,

''(B) subject to reduction or offset pursuant to subsection (c), (d), (e), or (f) of section 6402, or

''(C) reduced or offset by other assessed Federal taxes that would otherwise be subject to levy or collection.

''(5) ADVANCE PAYMENTS NOT APPLICABLE TO POSSESSIONS OF THE UNITED STATES.—

''(A) IN GENERAL.—The advance payment amount determined under this section shall be determined—

''(i) by applying section 24(i)(1) without regard to the phrase 'or is a bona fide resident of Puerto Rico (within the meaning of section 937(a))', and

''(ii) without regard to section 24(k)(3)(C)(ii)(I).

''(B) MIRROR CODE POSSESSIONS.—In the case of any possession of the United States with a mirror code tax system (as defined in section 24(k)), this section shall not be treated as part of the income tax laws of the United States for purposes of determining the income tax law of such possession.

''(g) APPLICATION.—No payments shall be made under the program established under subsection (a) with respect to—

''(1) any month beginning before July 1, 2021, or

''(2) any month beginning after December 31, 2021.

''(h) REGULATIONS.—The Secretary shall issue such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this section and subsections (i)(1) and (j) of section 24, including regulations or other guidance which provides for the application of such provisions where the filing status of the taxpayer for a taxable year is different from the status used for determining the annual advance amount.''.

(2) RECONCILIATION OF CREDIT AND ADVANCE CREDIT.—Section 24 of such Code, as amended by the preceding provision of this Act, is amended by adding at the end the following new subsection:

''(j) RECONCILIATION OF CREDIT AND ADVANCE CREDIT.—

''(1) IN GENERAL.—The amount of the credit allowed under this section to any taxpayer for any taxable year shall be reduced (but not below zero) by the aggregate amount of payments made under sec-

tion 7527A to such taxpayer during such taxable year. Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

''(2) EXCESS ADVANCE PAYMENTS.—

''(A) IN GENERAL.—If the aggregate amount of payments under section 7527A to the taxpayer during the taxable year exceeds the amount of the credit allowed under this section to such taxpayer for such taxable year (determined without regard to paragraph (1)), the tax imposed by this chapter for such taxable year shall be increased by the amount of such excess. Any failure to so increase the tax shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

''(B) SAFE HARBOR BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(i) IN GENERAL.—In the case of a taxpayer whose modified adjusted gross income (as defined in subsection (b)) for the taxable year does not exceed 200 percent of the applicable income threshold, the amount of the increase determined under

subparagraph (A) with respect to such taxpayer for such taxable year shall be reduced (but not below zero) by the safe harbor amount.

''(ii) PHASE OUT OF SAFE HARBOR AMOUNT.—In the case of a taxpayer whose modified adjusted gross income (as defined in subsection (b)) for the taxable year exceeds the applicable income threshold, the safe harbor amount otherwise in effect under clause (i) shall be reduced by the amount which bears the same ratio to such amount as such excess bears to the applicable income threshold.

''(iii) APPLICABLE INCOME THRESHOLD.—For purposes of this subparagraph, the term 'applicable income threshold' means—

''(I) $60,000 in the case of a joint return or surviving spouse (as defined in section 2(a)),

''(II) $50,000 in the case of a head of household, and

''(III) $40,000 in any other case.

''(iv) SAFE HARBOR AMOUNT.—For purposes of this subparagraph, the term 'safe harbor amount' means, with respect to any taxable year, the product of—

''(I) $2,000, multiplied by

''(II) the excess (if any) of the number of qualified children taken into account in determining the annual advance amount with respect to the taxpayer under section 7527A with respect to months beginning in such taxable year, over the number of qualified children taken into account in determining the credit allowed under this section for such taxable year.''.

(3) COORDINATION WITH WAGE WITHHOLDING.—Section 3402(f)(1)(C) of such Code is amended by striking ''section 24(a)'' and inserting ''section 24 (determined after application of subsection (j) thereof)''.

(4) CONFORMING AMENDMENTS.—

(A) Section 26(b)(2) of such Code is amended by striking ''and'' at the end of subparagraph (X), by striking the period at the

end of subparagraph (Y) and inserting ", and", and by adding at the end the following new subparagraph:

"(Z) section 24(j)(2) (relating to excess advance payments).".

(B) Section 6211(b)(4)(A) of such Code, as amended by the preceding provisions of this subtitle, is amended—

(i) by striking "24(d)" and inserting "24 by reason of subsections (d) and (i)(1) thereof", and

(ii) by striking "and 6428B" and inserting "6428B, and 7527A".

(C) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended—

(i) by inserting "24," before "25A", and

(ii) by striking " or 6431" and inserting "6431, or 7527A".

(D) The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 7527 the following new item:

"Sec. 7527A. Advance payment of child tax credit.".

(5) APPROPRIATIONS TO CARRY OUT ADVANCE PAYMENTS.—Immediately upon the enactment of

this Act, in addition to amounts otherwise available, there are appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated:

(A) $397,200,000 to remain available until September 30, 2022, for necessary expenses for the Internal Revenue Service to carry out this section (and the amendments made by this section), which shall supplement and not supplant any other appropriations that may be available for this purpose, and

(B) $16,200,000 to remain available until September 30, 2022, for necessary expenses for the Bureau of the Fiscal Service to carry out this section (and the amendments made by this section), which shall supplement and not supplant any other appropriations that may be available for this purpose.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

(2) ESTABLISHMENT OF ADVANCE PAYMENT PROGRAM.—The Secretary of the Treasury (or the Secretary's designee) shall establish the program de-

scribed in section 7527A of the Internal Revenue Code of 1986 as soon as practicable after the date of the enactment of this Act, except that the Secretary shall ensure that the timing of the establishment of such program does not interfere with carrying out section 6428B(g) as rapidly as possible.

SEC. 9612. APPLICATION OF CHILD TAX CREDIT IN POSSESSIONS.

(a) IN GENERAL.—Section 24 of the Internal Revenue Code of 1986, as amended by the preceding provisions of this Act, is amended by adding at the end the following new subsection:

''(k) APPLICATION OF CREDIT IN POSSESSIONS.—

''(1) MIRROR CODE POSSESSIONS.—

''(A) IN GENERAL.—The Secretary shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of this section (determined without regard to this subsection) with respect to taxable years beginning after 2020. Such amounts shall be determined by the Secretary based on information provided by the government of the respective possession.

''(B) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed under this section for any taxable year to any individual to whom a credit is allowable against taxes imposed by a possession of the United States with a mirror code tax system by reason of the application of this section in such possession for such taxable year.

''(C) MIRROR CODE TAX SYSTEM.—For purposes of this paragraph, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

''(2) PUERTO RICO.—

''(A) APPLICATION TO TAXABLE YEARS IN 2021.—

''(i) For application of refundable credit to residents of Puerto Rico, see subsection (i)(1).

''(ii) For nonapplication of advance payment to residents of Puerto Rico, see section 7527A(f)(5)(A).

''(B) APPLICATION TO TAXABLE YEARS AFTER 2021.—In the case of any bona fide resident of Puerto Rico (within the meaning of section 937(a)) for any taxable year beginning after December 31, 2021—

''(i) the credit determined under this section shall be allowable to such resident, and

''(ii) subsection (d)(1)(B)(ii) shall be applied without regard to the phrase 'in the case of a taxpayer with 3 or more qualifying children'.

''(3) AMERICAN SAMOA.—

''(A) IN GENERAL.—The Secretary shall pay to American Samoa amounts estimated by the Secretary as being equal to the aggregate benefits that would have been provided to residents of American Samoa by reason of the application of this section for taxable years beginning after 2020 if the provisions of this section had been in effect in American Samoa (applied as if American Samoa were the United States

and without regard to the application of this section to bona fide residents of Puerto Rico under subsection (i)(1)).

''(B) DISTRIBUTION REQUIREMENT.—Subparagraph (A) shall not apply unless American Samoa has a plan, which has been approved by the Secretary, under which American Samoa will promptly distribute such payments to its residents.

''(C) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—

''(i) IN GENERAL.—In the case of a taxable year with respect to which a plan is approved under subparagraph (B), this section (other than this subsection) shall not apply to any individual eligible for a distribution under such plan.

''(ii) APPLICATION OF SECTION IN EVENT OF ABSENCE OF APPROVED PLAN.—In the case of a taxable year with respect to which a plan is not approved under subparagraph (B)—

''(I) if such taxable year begins in 2021, subsection (i)(1) shall be ap-

plied by substituting 'bona fide resident of Puerto Rico or American Samoa' for 'bona fide resident of Puerto Rico', and

''(II) if such taxable year begins after December 31, 2021, rules similar to the rules of paragraph (2)(B) shall apply with respect to bona fide residents of American Samoa (within the meaning of section 937(a)).

''(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

PART 3—EARNED INCOME TAX CREDIT

SEC. 9621. STRENGTHENING THE EARNED INCOME TAX CREDIT FOR INDIVIDUALS WITH NO QUALIFYING CHILDREN.

(a) SPECIAL RULES FOR 2021.—Section 32 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(n) SPECIAL RULES FOR INDIVIDUALS WITHOUT QUALIFYING CHILDREN.—In the case of any taxable year beginning after December 31, 2020, and before January 1, 2022—

''(1) DECREASE IN MINIMUM AGE FOR CREDIT.—

''(A) IN GENERAL.—Subsection (c)(1)(A)(ii)(II) shall be applied by substituting 'the applicable minimum age' for 'age 25'.

''(B) APPLICABLE MINIMUM AGE.—For purposes of this paragraph, the term 'applicable minimum age' means—

''(i) except as otherwise provided in this subparagraph, age 19,

''(ii) in the case of a specified student (other than a qualified former foster youth or a qualified homeless youth), age 24, and

''(iii) in the case of a qualified former foster youth or a qualified homeless youth, age 18.

''(C) SPECIFIED STUDENT.—For purposes of this paragraph, the term 'specified student' means, with respect to any taxable year, an individual who is an eligible student (as defined in section 25A(b)(3)) during at least 5 calendar months during the taxable year.

''(D) QUALIFIED FORMER FOSTER YOUTH.—For purposes of this paragraph, the term 'qualified former foster youth' means an individual who—

''(i) on or after the date that such individual attained age 14, was in foster care provided under the supervision or administration of an entity administering (or eligible to administer) a plan under part B or part E of title IV of the Social Security Act (without regard to whether Federal assistance was provided with respect to such child under such part E), and

''(ii) provides (in such manner as the Secretary may provide) consent for entities which administer a plan under part B or

part E of title IV of the Social Security Act to disclose to the Secretary information related to the status of such individual as a qualified former foster youth.

''(E) QUALIFIED HOMELESS YOUTH.—For purposes of this paragraph, the term 'qualified homeless youth' means, with respect to any taxable year, an individual who—

''(i) is certified by a local educational agency or a financial aid administrator during such taxable year as being either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting, and

''(ii) provides (in such manner as the Secretary may provide) consent for local educational agencies and financial aid administrators to disclose to the Secretary information related to the status of such individual as a qualified homeless youth.

Terms used in this subparagraph which are also used in section 480(d)(1) of the Higher Education Act of 1965 shall have the same meaning as when used in such section.

''(2) ELIMINATION OF MAXIMUM AGE FOR CREDIT.—Subsection (c)(1)(A)(ii)(II) shall be applied without regard to the phrase 'but not attained age 65'.

''(3) INCREASE IN CREDIT AND PHASEOUT PERCENTAGES.—The table contained in subsection (b)(1) shall be applied by substituting '15.3' for '7.65' each place it appears therein.

''(4) INCREASE IN EARNED INCOME AND PHASEOUT AMOUNTS.—

''(A) IN GENERAL.—The table contained in subsection (b)(2)(A) shall be applied—

''(i) by substituting '$9,820' for '$4,220', and

''(ii) by substituting '$11,610' for '$5,280'.

''(B) COORDINATION WITH INFLATION ADJUSTMENT.—Subsection (j) shall not apply to any dollar amount specified in this paragraph.''.

(b) INFORMATION RETURN MATCHING.—As soon as practicable, the Secretary of the Treasury (or the Secretary's delegate) shall develop and implement procedures to use information returns under section 6050S (relating to returns relating to higher education tuition and related expenses) to check the status of individuals as specified

students for purposes of section 32(n)(1)(B)(ii) of the Internal Revenue Code of 1986 (as added by this section).

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2020.

SEC. 9622. TAXPAYER ELIGIBLE FOR CHILDLESS EARNED INCOME CREDIT IN CASE OF QUALIFYING CHILDREN WHO FAIL TO MEET CERTAIN IDENTIFICATION REQUIREMENTS.

(a) IN GENERAL.—Section 32(c)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (F).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31 2020.

SEC. 9623. CREDIT ALLOWED IN CASE OF CERTAIN SEPARATED SPOUSES.

(a) IN GENERAL.—Section 32(d) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''MARRIED INDIVIDUALS.—In the case of'' and inserting the following: ''MARRIED INDIVIDUALS.—

''(1) IN GENERAL.—In the case of'', and

(2) by adding at the end the following new paragraph:

''(2) DETERMINATION OF MARITAL STATUS.—For purposes of this section—

''(A) IN GENERAL.—Except as provided in subparagraph (B), marital status shall be determined under section 7703(a).

''(B) SPECIAL RULE FOR SEPARATED SPOUSE.—An individual shall not be treated as married if such individual—

''(i) is married (as determined under section 7703(a)) and does not file a joint return for the taxable year,

''(ii) resides with a qualifying child of the individual for more than one-half of such taxable year, and

''(iii)(I) during the last 6 months of such taxable year, does not have the same principal place of abode as the individual's spouse, or

''(II) has a decree, instrument, or agreement (other than a decree of divorce) described in section 121(d)(3)(C) with respect to the individual's spouse and is not a member of the same household with the individual's spouse by the end of the taxable year.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 32(c)(1)(A) of such Code is amended by striking the last sentence.

(2) Section 32(c)(1)(E)(ii) of such Code is amended by striking ''(within the meaning of section 7703)''.

(3) Section 32(d)(1) of such Code, as amended by subsection (a), is amended by striking ''(within the meaning of section 7703)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

SEC. 9624. MODIFICATION OF DISQUALIFIED INVESTMENT INCOME TEST.

(a) IN GENERAL.—Section 32(i) of the Internal Revenue Code of 1986 is amended by striking ''$2,200'' and inserting ''$10,000''.

(b) INFLATION ADJUSTMENT.—Section 32(j)(1) of such Code is amended—

(1) in the matter preceding subparagraph (A), by inserting ''(2021 in the case of the dollar amount in subsection (i)(1))'' after ''2015'',

(2) in subparagraph (B)(i)—

(A) by striking ''subsections (b)(2)(A) and (i)(1)'' and inserting ''subsection (b)(2)(A)'', and

(B) by striking ''and'' at the end,

(3) by striking the period at the end of subparagraph (B)(ii) and inserting '', and'', and

(4) by inserting after subparagraph (B)(ii) the following new clause:

''(iii) in the case of the $10,000 amount in subsection (i)(1), 'calendar year 2020' for 'calendar year 2016'.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

SEC. 9625. APPLICATION OF EARNED INCOME TAX CREDIT IN POSSESSIONS OF THE UNITED STATES.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

''SEC. 7530. APPLICATION OF EARNED INCOME TAX CREDIT TO POSSESSIONS OF THE UNITED STATES.

''(a) PUERTO RICO.—

''(1) IN GENERAL.—With respect to calendar year 2021 and each calendar year thereafter, the Secretary shall, except as otherwise provided in this

subsection, make payments to Puerto Rico equal to—

''(A) the specified matching amount for such calendar year, plus

''(B) in the case of calendar years 2021 through 2025, the lesser of—

''(i) the expenditures made by Puerto Rico during such calendar year for education efforts with respect to individual taxpayers and tax return preparers relating to the earned income tax credit, or

''(ii) $1,000,000.

''(2) REQUIREMENT TO REFORM EARNED INCOME TAX CREDIT.—The Secretary shall not make any payments under paragraph (1) with respect to any calendar year unless Puerto Rico has in effect an earned income tax credit for taxable years beginning in or with such calendar year which (relative to the earned income tax credit which was in effect for taxable years beginning in or with calendar year 2019) increases the percentage of earned income which is allowed as a credit for each group of individuals with respect to which such percentage is separately stated or determined in a manner designed to substantially increase workforce participation.

''(3) SPECIFIED MATCHING AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'specified matching amount' means, with respect to any calendar year, the lesser of—

''(i) the excess (if any) of—

''(I) the cost to Puerto Rico of the earned income tax credit for taxable years beginning in or with such calendar year, over

''(II) the base amount for such calendar year, or

''(ii) the product of 3, multiplied by the base amount for such calendar year.

''(B) BASE AMOUNT.—

''(i) BASE AMOUNT FOR 2021.—In the case of calendar year 2021, the term 'base amount' means the greater of—

''(I) the cost to Puerto Rico of the earned income tax credit for taxable years beginning in or with calendar year 2019 (rounded to the nearest multiple of $1,000,000), or

''(II) $200,000,000.

"(ii) INFLATION ADJUSTMENT.—In the case of any calendar year after 2021, the term 'base amount' means the dollar amount determined under clause (i) increased by an amount equal to—

"(I) such dollar amount, multiplied by—

"(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2020' for 'calendar year 2016' in subparagraph (A)(ii) thereof.

Any amount determined under this clause shall be rounded to the nearest multiple of $1,000,000.

"(4) RULES RELATED TO PAYMENTS AND REPORTS.—

"(A) TIMING OF PAYMENTS.—The Secretary shall make payments under paragraph (1) for any calendar year—

"(i) after receipt of the report described in subparagraph (B) for such calendar year, and

''(ii) except as provided in clause (i), within a reasonable period of time before the due date for individual income tax returns (as determined under the laws of Puerto Rico) for taxable years which began on the first day of such calendar year.

''(B) ANNUAL REPORTS.—With respect to calendar year 2021 and each calendar year thereafter, Puerto Rico shall provide to the Secretary a report which shall include—

''(i) an estimate of the costs described in paragraphs (1)(B)(i) and (3)(A)(i)(I) with respect to such calendar year, and

''(ii) a statement of such costs with respect to the preceding calendar year.

''(C) ADJUSTMENTS.—

''(i) IN GENERAL.—In the event that any estimate of an amount is more or less than the actual amount as later determined and any payment under paragraph (1) was determined on the basis of such estimate, proper payment shall be made by, or to, the Secretary (as the case may be) as soon as practicable after the determination that such estimate was inac-

curate. Proper adjustment shall be made in the amount of any subsequent payments made under paragraph (1) to the extent that proper payment is not made under the preceding sentence before such subsequent payments.

''(ii) ADDITIONAL REPORTS.—The Secretary may require such additional periodic reports of the information described in subparagraph (B) as the Secretary determines appropriate to facilitate timely adjustments under clause (i).

''(D) DETERMINATION OF COST OF EARNED INCOME TAX CREDIT.—For purposes of this subsection, the cost to Puerto Rico of the earned income tax credit shall be determined by the Secretary on the basis of the laws of Puerto Rico and shall include reductions in revenues received by Puerto Rico by reason of such credit and refunds attributable to such credit, but shall not include any administrative costs with respect to such credit.

''(b) POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—

''(1) IN GENERAL.—With respect to calendar year 2021 and each calendar year thereafter, the Secretary shall, except as otherwise provided in this subsection, make payments to the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands equal to—

''(A) 75 percent of the cost to such possession of the earned income tax credit for taxable years beginning in or with such calendar year, plus

''(B) in the case of calendar years 2021 through 2025, the lesser of—

''(i) the expenditures made by such possession during such calendar year for education efforts with respect to individual taxpayers and tax return preparers relating to such earned income tax credit, or

''(ii) $50,000.

''(2) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of subparagraphs (A), (B), (C), and (D) of subsection (a)(4) shall apply for purposes of this subsection.

''(c) AMERICAN SAMOA.—

''(1) IN GENERAL.—With respect to calendar year 2021 and each calendar year thereafter, the

Secretary shall, except as otherwise provided in this subsection, make payments to American Samoa equal to—

"(A) the lesser of—

"(i) 75 percent of the cost to American Samoa of the earned income tax credit for taxable years beginning in or with such calendar year, or

"(ii) $12,000,000, plus

"(B) in the case of calendar years 2021 through 2025, the lesser of—

"(i) the expenditures made by American Samoa during such calendar year for education efforts with respect to individual taxpayers and tax return preparers relating to such earned income tax credit, or

"(ii) $50,000.

"(2) REQUIREMENT TO ENACT AND MAINTAIN AN EARNED INCOME TAX CREDIT.—The Secretary shall not make any payments under paragraph (1) with respect to any calendar year unless American Samoa has in effect an earned income tax credit for taxable years beginning in or with such calendar year which allows a refundable tax credit to individuals on the basis of the taxpayer's earned income

which is designed to substantially increase workforce participation.

''(3) INFLATION ADJUSTMENT.—In the case of any calendar year after 2021, the $12,000,000 amount in paragraph (1)(A)(ii) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by—

''(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2020' for 'calendar year 2016' in subparagraph (A)(ii) thereof.

Any increase determined under this clause shall be rounded to the nearest multiple of $100,000.

''(4) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of subparagraphs (A), (B), (C), and (D) of subsection (a)(4) shall apply for purposes of this subsection.

''(d) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 7530. Application of earned income tax credit to possessions of the United States.".

SEC. 9626. TEMPORARY SPECIAL RULE FOR DETERMINING EARNED INCOME FOR PURPOSES OF EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—If the earned income of the taxpayer for the taxpayer's first taxable year beginning in 2021 is less than the earned income of the taxpayer for the taxpayer's first taxable year beginning in 2019, the credit allowed under section 32 of the Internal Revenue Code of 1986 may, at the election of the taxpayer, be determined by substituting-—

(1) such earned income for the taxpayer's first taxable year beginning in 2019, for

(2) such earned income for the taxpayer's first taxable year beginning in 2021.

(b) EARNED INCOME.—

(1) IN GENERAL.—For purposes of this section, the term "earned income" has the meaning given such term under section 32(c) of the Internal Revenue Code of 1986.

(2) APPLICATION TO JOINT RETURNS.—For purposes of subsection (a), in the case of a joint re-

turn, the earned income of the taxpayer for the first taxable year beginning in 2019 shall be the sum of the earned income of each spouse for such taxable year.

(c) SPECIAL RULES.—

(1) ERRORS TREATED AS MATHEMATICAL ERRORS.—For purposes of section 6213 of the Internal Revenue Code of 1986, an incorrect use on a return of earned income pursuant to subsection (a) shall be treated as a mathematical or clerical error.

(2) NO EFFECT ON DETERMINATION OF GROSS INCOME, ETC.—Except as otherwise provided in this subsection, the Internal Revenue Code of 1986 shall be applied without regard to any substitution under subsection (a).

(d) TREATMENT OF CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section (other than this subsection) with respect to section 32 of the Internal Revenue Code of 1986. Such amounts shall be determined by the Secretary of the

Treasury based on information provided by the government of the respective possession.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section (other than this subsection) with respect to section 32 of the Internal Revenue Code of 1986 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to its residents.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term ''mirror code tax system'' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

PART 4—DEPENDENT CARE ASSISTANCE

SEC. 9631. REFUNDABILITY AND ENHANCEMENT OF CHILD AND DEPENDENT CARE TAX CREDIT.

(a) IN GENERAL.—Section 21 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(g) SPECIAL RULES FOR 2021.—In the case of any taxable year beginning after December 31, 2020, and before January 1, 2022—

''(1) CREDIT MADE REFUNDABLE.—If the taxpayer (in the case of a joint return, either spouse) has a principal place of abode in the United States (determined as provided in section 32) for more than one-half of the taxable year, the credit allowed under subsection (a) shall be treated as a credit allowed under subpart C (and not allowed under this subpart).

''(2) INCREASE IN DOLLAR LIMIT ON AMOUNT CREDITABLE.—Subsection (c) shall be applied—

"(A) by substituting '$8,000' for '$3,000' in paragraph (1) thereof, and

"(B) by substituting '$16,000' for '$6,000' in paragraph (2) thereof.

"(3) INCREASE IN APPLICABLE PERCENTAGE.—Subsection (a)(2) shall be applied—

"(A) by substituting '50 percent' for '35 percent ', and

"(B) by substituting '$125,000' for '$15,000'.

"(4) APPLICATION OF PHASEOUT TO HIGH INCOME INDIVIDUALS.—

"(A) IN GENERAL.—Subsection (a)(2) shall be applied by substituting 'the phaseout percentage' for '20 percent'.

"(B) PHASEOUT PERCENTAGE.—The term 'phaseout percentage' means 20 percent reduced (but not below zero) by 1 percentage point for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $400,000.".

(b) APPLICATION OF CREDIT IN POSSESSIONS.—Section 21 of such Code, as amended by subsection (a), is amended by adding at the end the following new subsection:

''(h) APPLICATION OF CREDIT IN POSSESSIONS.—

''(1) PAYMENT TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of this section (determined without regard to this subsection) with respect to taxable years beginning in or with 2021. Such amounts shall be determined by the Secretary based on information provided by the government of the respective possession.

''(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of this section with respect to taxable years beginning in or with 2021 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary, under which such possession will promptly distribute such payments to its residents.

''(3) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—In the case of any taxable year beginning in or with 2021, no credit shall be allowed under this section to any individual—

''(A) to whom a credit is allowable against taxes imposed by a possession with a mirror code tax system by reason of this section, or

''(B) who is eligible for a payment under a plan described in paragraph (2).

''(4) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

''(5) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 6211(b)(4)(A) of such Code, as amended by the preceding provisions of this Act, is amended by inserting ''21 by reason of subsection (g) thereof,'' before ''24''.

(2) Section 1324(b)(2) of title 31, United States Code (as amended by the preceding provisions of this title), is amended by inserting ''21,'' before ''24''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

SEC. 9632. INCREASE IN EXCLUSION FOR EMPLOYER-PROVIDED DEPENDENT CARE ASSISTANCE.

(a) IN GENERAL.—Section 129(a)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

''(D) SPECIAL RULE FOR 2021.—In the case of any taxable year beginning after December 31, 2020, and before January 1, 2022, subparagraph (A) shall be applied be substituting '$10,500 (half such dollar amount' for '$5,000 ($2,500'.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2020.

(c) RETROACTIVE PLAN AMENDMENTS.—A plan that otherwise satisfies all applicable requirements of sections 125 and 129 of the Internal Revenue Code of 1986 (including any rules or regulations thereunder) shall not fail to be treated as a cafeteria plan or dependent care assistance program merely because such plan is amended pursuant to a provision under this section and such amendment is retroactive, if—

(1) such amendment is adopted no later than the last day of the plan year in which the amendment is effective, and

(2) the plan is operated consistent with the terms of such amendment during the period beginning on the effective date of the amendment and ending on the date the amendment is adopted.

PART 5—CREDITS FOR PAID SICK AND FAMILY LEAVE

SEC. 9641. EXTENSION OF CREDITS.

(a) IN GENERAL.—The following provisions of the Families First Coronavirus Response Act are each amended by striking ''March 31, 2021'' and inserting ''September 30, 2021'':

(1) Section 7001(c)(2)(A).

(2) Section 7001(g).

(3) Section 7002(b)(2)(B)(i).

(4) Section 7002(e).

(5) Section 7003(c)(2)(A).

(6) Section 7003(g).

(7) Section 7004(b)(2)(B)(i).

(8) Section 7004(e).

(b) CONFORMING AMENDMENT.—Section 7005(a) of such Act is amended by striking ''April 1, 2021'' and inserting ''October 1, 2021''.

SEC. 9642. INCREASE IN LIMITATIONS ON CREDITS FOR PAID FAMILY LEAVE.

(a) INCREASE IN OVERALL LIMITATION ON QUALIFIED FAMILY LEAVE WAGES.—

(1) IN GENERAL.—Section 7003(b)(1)(B) of the Families First Coronavirus Response Act is amended by striking ''$10,000'' and inserting ''$12,000''.

(2) CONFORMING AMENDMENT.—Section 7004(d)(3) of such Act is amended by striking ''$10,000'' and inserting ''$12,000''.

(b) INCREASE IN QUALIFIED FAMILY LEAVE EQUIVALENT AMOUNT FOR SELF-EMPLOYED INDIVIDUALS.—Section 7004(c)(1)(A) of such Act is amended by striking ''50'' and inserting ''60''.

(c) COORDINATION WITH DEFINITION OF QUALIFIED FAMILY LEAVE WAGES.—Section 7003(c)(2)(A) of such

Act, as amended by the preceding provisions of this part, is amended to read as follows:

''(A) which would be so required to be paid if—

''(i) section 102(a)(1)(F) of the Family and Medical Leave Act of 1993 were applied by substituting 'September 30, 2021' for 'December 31, 2020', and

''(ii) section 110(b)(2)(B)(ii) of such Act were applied by substituting '$12,000' for '$10,000', and''.

SEC. 9643. EXPANSION OF LEAVE TO WHICH PAID FAMILY LEAVE CREDITS APPLIES.

(a) IN GENERAL.—Section 7003(c)(2)(A) of the Families First Coronavirus Response Act, as amended by the preceding provisions of this part, is amended by striking ''and'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) section 110(a)(2)(A) of such Act were applied by inserting 'or any reason for leave described in section 5102(a) of the Families First Coronavirus Response Act' after 'public health emergency', and''.

(b) APPLICATION TO CREDIT FOR PAID FAMILY LEAVE FOR SELF-EMPLOYED INDIVIDUALS.—Section 7004(b)(2)(B) of such Act is amended by striking ''and'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) section 110(a)(2)(A) of such Act were applied by inserting 'or any reason for leave described in section 5102(a) of the Families First Coronavirus Response Act' after 'public health emergency', and''.

SEC. 9644. PAID LEAVE CREDITS ALLOWED FOR LEAVE FOR COVID-VACCINATION.

(a) PAID SICK LEAVE CREDIT.—Section 7001(c)(2)(A) of the Families First Coronavirus Response Act is amended by striking ''and'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) by inserting 'or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization' after 'medical diagnosis' in section 5102(a)(3), and''.

(b) PAID SICK LEAVE CREDIT FOR SELF-EMPLOYED INDIVIDUALS.—Section 7002(b)(2)(B)(i) of such Act, as amended by the preceding provisions of this part, is amended to read as follows:

"(i) such Act were applied—

"(I) by substituting 'September 30, 2021' for 'December 31, 2020' in section 5109 thereof, and

"(II) by inserting 'or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization' after 'medical diagnosis' in section 5102(a)(3), and".

(c) PAID FAMILY LEAVE CREDIT.—Section 7003(c)(2)(A)(ii) of such Act, as amended by the preceding provisions of this part, is amended by inserting "or to obtain immunization related to COVID–19 or to recover from any injury, disability, illness, or condition related to such immunization" after "section 5102(a) of the Families First Coronavirus Response Act".

(d) PAID FAMILY LEAVE CREDIT FOR SELF-EMPLOYED INDIVIDUALS.—Section 7004(b)(2)(B)(ii) of such Act, as amended by the preceding provisions of this part,

is amended by inserting ''or to obtain immunization related to COVID–19 or to recover from any injury, disability, illness, or condition related to such immunization'' after ''section 5102(a) of the Families First Coronavirus Response Act''.

SEC. 9645. APPLICATION OF NON-DISCRIMINATION RULES.

(a) PAID SICK LEAVE CREDIT.—Section 7001 of the Families First and Coronavirus Response Act is amended by adding at the end the following new subsection:

''(j) NON-DISCRIMINATION REQUIREMENT.—No credit shall be allowed under this section to any employer for any calendar quarter if such employer, with respect to the availability of the provision of qualified sick leave wages to which this section otherwise applies for such calendar quarter, discriminates in favor of highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986), full-time employees, or employees on the basis of employment tenure with such employer.''.

(b) PAID FAMILY LEAVE CREDIT.—Section 7003 of such Act is amended by adding at the end the following new subsection:

''(j) NON-DISCRIMINATION REQUIREMENT.—No credit shall be allowed under this section to any employer for any calendar quarter if such employer, with respect

to the availability of the provision of qualified family leave wages to which this section otherwise applies for such calendar quarter, discriminates in favor of highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986), full-time employees, or employees on the basis of employment tenure with such employer.''.

SEC. 9646. RESET OF LIMITATION ON PAID SICK LEAVE.

(a) IN GENERAL.—Section 7001(b)(2) of the Families First Coronavirus Response Act is amended to read as follows:

''(2) OVERALL LIMITATION ON NUMBER OF DAYS TAKEN INTO ACCOUNT.—

''(A) LIMITATION APPLICABLE AFTER THE FIRST QUARTER OF 2021.—In the case of calendar quarters beginning after March 31, 2021, in any calendar year, the aggregate number of days taken into account under paragraph (1) shall not exceed the excess (if any) of—

''(i) 10, over

''(ii) the aggregate number of days so taken into account during preceding calendar quarters in such calendar year (other than the first quarter of calendar year 2021).

''(B) LIMITATION APPLICABLE BEFORE THE SECOND QUARTER OF 2021.—In the case of calendar quarters beginning before April 1, 2021, the aggregate number of days taken into account under paragraph (1) for any calendar quarter shall not exceed the excess (if any) of—

''(i) 10, over

''(ii) the aggregate number of days so taken into account for all preceding calendar quarters.''.

(b) COORDINATION WITH MANDATE PROVISIONS.—Section 7001(c)(2)(A) of such Act, as amended by the preceding provisions of this part, is amended by striking ''and'' at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

''(iii) by applying section 5102(b)(1) of such Act separately with respect to the period before April 1, 2021, and to each calendar year after 2020 (and, in the case of calendar year 2021, without regard to the first quarter thereof), and''.

(c) APPLICATION TO SICK LEAVE CREDIT FOR THE SELF-EMPLOYED.—

(1) IN GENERAL.—Section 7002(c) of such Act is amended—

(A) by striking ''(but not more than the applicable number of days)'' in paragraph (1)(A) and inserting ''(but not more than 10)'', and

(B) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(2) COORDINATION WITH MANDATE PROVISIONS.—Section 7002(b)(2)(B)(i) of such Act, as amended by the preceding provisions of this part, is amended by striking ''and'' at the end of subclause (I), by striking ''and'' at the end of subclause (II), and by adding at the end the following new subclauses:

''(III) by applying section 5102(b)(1) of such Act separately with respect to each taxable year, and

''(IV) without regard to section 5102(b)(3) thereof, and''.

SEC. 9647. CREDITS ALLOWED AGAINST EMPLOYER HOSPITAL INSURANCE TAX.

(a) IN GENERAL.—The following provisions of the Families First Coronavirus Response Act are each amend-

ed by striking ''section 3111(a)'' and inserting ''section 3111(b)'':

(1) Section 7001(a).

(2) Section 7001(b)(3).

(3) The section 7001(e)(4) which relates to references to railroad retirement tax.

(4) Section 7001(i).

(5) Section 7003(a).

(6) Section 7003(b)(2).

(7) The section 7003(e)(4) which relates to references to railroad retirement tax.

(8) Section 7003(i).

(b) CONFORMING AMENDMENTS.—

(1) Section 7001(b)(3) of such Act is amended by striking ''(reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code, and section 303(d) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, for such quarter)''.

(2) Section 7001 of such Act is amended by striking subsection (h).

(3) Section 7003(b)(2) of such Act is amended by striking ''(reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code, section 7001 of this Act, and section 303(d) of the Taxpayer Certainty and Disaster Tax Relief Act of

2020, for such quarter)'' and inserting ''(reduced by any credits allowed under section 7001 of this Act)''.

(4) Section 7003 of such Act is amended by striking subsection (h).

(5) Section 7005(a) of such Act is amended by striking ''section 3111(a)'' both places it appears and inserting ''section 3111(b)''.

(6) Section 7005 of such Act is amended by striking subsection (c).

SEC. 9648. APPLICATION OF CREDITS TO CERTAIN GOVERNMENTAL EMPLOYERS.

(a) CREDIT FOR PAID SICK LEAVE.—Section 7001(e) of the Families First Coronavirus Response Act is amended—

(1) by striking the paragraph (4) which relates to certain governmental employers, and

(2) by adding at the end the following new paragraph:

''(5) CERTAIN GOVERNMENTAL EMPLOYERS.—No credit shall be allowed under this section to the Government of the United States or to any agency or instrumentality thereof. The preceding sentence shall not apply to any organization described in section 501(c)(1) of the Internal Revenue Code of 1986

and exempt from tax under section 501(a) of such Code.''.

(b) CREDIT FOR PAID FAMILY LEAVE.—Section 7003(e) of such Act is amended—

(1) by striking the paragraph (4) which relates to certain governmental employers, and

(2) by adding at the end the following new paragraph:

''(5) CERTAIN GOVERNMENTAL EMPLOYERS.—No credit shall be allowed under this section to the Government of the United States or to any agency or instrumentality thereof. The preceding sentence shall not apply to any organization described in section 501(c)(1) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.''.

SEC. 9649. GROSS UP OF CREDIT IN LIEU OF EXCLUSION FROM TAX.

(a) IN GENERAL.—Section 7005 of the Families First Coronavirus Response Act (as amended by the preceding provisions of this part) is amended—

(1) by amending subsection (a) to read as follows:

''(a) IN GENERAL.—The credit allowed by section 7001 and the credit allowed by section 7003 shall each

be increased by the amount of the taxes imposed by subsections (a) and (b) of section 3111 and section 3221(a) of the Internal Revenue Code of 1986 on qualified sick leave wages, or qualified family leave wages, for which credit is allowed under such section 7001 or 7003 (respectively).'',

(2) by striking so much of subsection (b) as precedes paragraph (2) thereof,

(3) by redesignating such paragraph (2) as subsection (b) and adjusting the indentation thereof accordingly, and

(4) by striking ''paragraph (1)'' in such subsection (b) (as so redesignated) and inserting ''subsection (a)''.

(b) COORDINATION WITH DEFINITION OF QUALIFIED WAGES.—

(1) Section 7001(c) of such Act is amended—

(A) by striking ''and section 7005(a) of this Act,'', and

(B) by striking ''and without regard to section 7005(a) of this Act)''.

(2) Section 7003(c) of such Act is amended by striking ''wages (as defined'' and all that follows through ''paid by an employer'' and inserting ''wages (as defined in section 3121(a) of the Inter-

nal Revenue Code of 1986, determined without regard to paragraphs (1) through (22) of section 3121(b) of such Code) and compensation (as defined in section 3231(e) of the Internal Revenue Code, determined without regard to the sentence in paragraph (1) thereof which begins 'Such term does not include remuneration') paid by an employer''.

SEC. 9650. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this part shall apply to amounts paid with respect to calendar quarters beginning after March 31, 2021.

(b) APPLICATION TO SELF-EMPLOYMENT TAX CREDITS.—The amendments made by this part to any provision of section 7002 or 7004 of the Families First Coronavirus Response Act shall apply to taxable years beginning after December 31, 2020.

PART 6—EMPLOYEE RETENTION CREDIT

SEC. 9651. EXTENSION OF EMPLOYEE RETENTION CREDIT.

(a) IN GENERAL.—Section 2301(m) of the CARES Act is amended by striking ''July 1, 2021'' and inserting ''January 1, 2022''.

(b) CREDIT ALLOWED AGAINST EMPLOYER HOSPITAL INSURANCE TAX.—

(1) IN GENERAL.—Subparagraphs (A) and (B) of section 2301(c)(1) of such Act are each amended by striking ''section 3111(a)'' and inserting ''section 3111(b)''.

(2) CONFORMING AMENDMENTS.—Section 2301(b)(2) of such Act is amended—

(A) by striking ''subsections (e) and (f) of section 3111 of the Internal Revenue Code of 1986,'', and

(B) by striking '', and section 303(d) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning after June 30, 2021.

PART 7—PREMIUM TAX CREDIT

SEC. 9661. IMPROVING AFFORDABILITY BY EXPANDING PREMIUM ASSISTANCE FOR CONSUMERS.

(a) IN GENERAL.—Section 36B(b)(3)(A) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

''(iii) TEMPORARY PERCENTAGES FOR 2021 AND 2022.—In the case of a taxable year beginning in 2021 or 2022—

"(I) clause (ii) shall not apply for purposes of adjusting premium percentages under this subparagraph, and

"(II) the following table shall be applied in lieu of the table contained in clause (i):

"In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 150.0 percent	0.0	0.0
150.0 percent up to 200.0 percent	0.0	2.0
200.0 percent up to 250.0 percent	2.0	4.0
250.0 percent up to 300.0 percent	4.0	6.0
300.0 percent up to 400.0 percent	6.0	8.5
400.0 percent and higher	8.5	8.5".

(b) CONFORMING AMENDMENT.—Section 36B(c)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(E) TEMPORARY RULE FOR 2021 AND 2022.—In the case of a taxable year beginning in 2021 or 2022, subparagraph (A) shall be applied without regard to 'but does not exceed 400 percent'.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

SEC. 9662. TEMPORARY MODIFICATION OF LIMITATIONS ON RECONCILIATION OF TAX CREDITS FOR COVERAGE UNDER A QUALIFIED HEALTH PLAN WITH ADVANCE PAYMENTS OF SUCH CREDIT.

(a) IN GENERAL.—Section 36B(f)(2)(B) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

"(iii) TEMPORARY MODIFICATION OF LIMITATION ON INCREASE.—In the case of any taxable year beginning in 2020, for any taxpayer who files for such taxable year an income tax return reconciling any advance payment of the credit under this section, the Secretary shall treat subparagraph (A) as not applying.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2019.

SEC. 9663. APPLICATION OF PREMIUM TAX CREDIT IN CASE OF INDIVIDUALS RECEIVING UNEMPLOYMENT COMPENSATION DURING 2021.

(a) IN GENERAL.—Section 36B of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) SPECIAL RULE FOR INDIVIDUALS WHO RECEIVE UNEMPLOYMENT COMPENSATION DURING 2021.—

"(1) IN GENERAL.—For purposes of this section, in the case of a taxpayer who has received, or has been approved to receive, unemployment compensation for any week beginning during 2021, for the taxable year in which such week begins—

"(A) such taxpayer shall be treated as an applicable taxpayer, and

"(B) there shall not be taken into account any household income of the taxpayer in excess of 133 percent of the poverty line for a family of the size involved.

"(2) UNEMPLOYMENT COMPENSATION.—For purposes of this subsection, the term 'unemployment compensation' has the meaning given such term in section 85(b).

"(3) EVIDENCE OF UNEMPLOYMENT COMPENSATION.—For purposes of this subsection, a taxpayer shall not be treated as having received (or been approved to receive) unemployment compensation for any week unless such taxpayer provides self-attestation of, and such documentation as the Secretary shall prescribe which demonstrates, such receipt or approval.

''(4) CLARIFICATION OF RULES REMAINING APPLICABLE.—

''(A) JOINT RETURN REQUIREMENT.—Paragraph (1)(A) shall not affect the application of subsection (c)(1)(C).

''(B) HOUSEHOLD INCOME AND AFFORDABILLITY.—Paragraph (1)(B) shall not apply to any determination of household income for purposes of paragraph (2)(C)(i)(II) or (4)(C)(ii) of subsection (c)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

PART 8—MISCELLANEOUS PROVISIONS

SEC. 9671. REPEAL OF ELECTION TO ALLOCATE INTEREST, ETC. ON WORLDWIDE BASIS.

(a) IN GENERAL.—Section 864 of the Internal Revenue Code of 1986 is amended by striking subsection (f).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2020.

SEC. 9672. TAX TREATMENT OF TARGETED EIDL ADVANCES.

For purposes of the Internal Revenue Code of 1986—

(1) amounts received from the Administrator of the Small Business Administration in the form of a Targeted EIDL Advance shall not be included in the gross income of the person that receives such amounts,

(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

(3) in the case of a partnership or S corporation that receives such amounts—

(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986, and

(B) the Secretary of the Treasury (or the Secretary's delegate) shall prescribe rules for determining a partner's distributive share of any amount described in subparagraph (A) for purposes of section 705 of the Internal Revenue Code of 1986.

SEC. 9673. TAX TREATMENT OF RESTAURANT REVITALIZATION GRANTS.

For purposes of the Internal Revenue Code of 1986—

(1) amounts received from the Administrator of the Small Business Administration in the form of a Restaurant Revitalization Grant shall not be included in the gross income of the person that receives such amounts,

(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

(3) in the case of a partnership or S corporation that receives such amounts—

(A) except as otherwise provided by the Secretary of the Treasury (or the Secretary's delegate), any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986, and

(B) the Secretary of the Treasury (or the Secretary's delegate) shall prescribe rules for determining a partner's distributive share of any amount described in subparagraph (A) for

purposes of section 705 of the Internal Revenue Code of 1986.

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DESCRIPTION OF THE BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO PROMOTING ECONOMIC SECURITY

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 10, 2021

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

February 8, 2021
JCX-3-21

CONTENTS

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of the Budget Reconciliation Legislative Recommendations Relating to Promoting Economic Security on February 10, 2021. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Budget Reconciliation Legislative Recommendations Relating to Promoting Economic Security* (JCX-3-21), February 8, 2021. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (herein "Code"), unless otherwise stated.

GENERAL BACKGROUND

A. Present Law

The following descriptions of present law are relevant to the income tax credit proposals in Part 1, Part 2, Part 3, Part 4, and Part 7 of the bill.

Individual refundable income tax credits

An individual may reduce his or her income tax liability by available income tax credits. In some instances, a credit is wholly or partially refundable. That is, if the amount of a taxpayer's refundable income tax credits exceeds the taxpayer's income tax liability (net of other nonrefundable credits), these credits create an overpayment, which may generate a refund or be credited against any other internal revenue tax liability.[2] A refund or credit is authorized for a taxable year only if an overpayment exists, that is, if the amounts paid or deemed paid exceed the tax liability for that year.[3]

Dependents

Under section 152 of the Code, a taxpayer's dependents include both the taxpayer's qualifying children and the taxpayer's qualifying relatives.[4] A dependent must be a citizen, national,[5] or resident of the United States or of a country contiguous to the United States (*i.e.*, Canada or Mexico).[6]

Generally, a qualifying child of a taxpayer is any individual who (1) meets the age test,[7] and (2) is the taxpayer's son, daughter, stepson, stepdaughter, adopted child, foster child, brother, sister, stepbrother, stepsister, or a descendant of any such individual.[8] The individual also (3) must share the same principal place of abode as the taxpayer for more than one-half of the taxable year,[9] (4) may not have provided over one-half of his or her own support for the taxable

[2] See secs. 37, 6401, 6402.

[3] See sec. 6402(a).

[4] Sec. 152.

[5] Non-citizen U.S. nationals include (i) individuals born in American Samoa or (ii) certain individuals born in the Commonwealth of the Northern Mariana Islands who have chosen to be U.S. nationals instead of U.S. citizens. See 8 U.S.C. sec. 1408; *Tuaua v. United States*, 788 F.3d 300 (D.C. Cir. 2015); 48 U.S.C. sec. 1801 note, Article III.

[6] Sec. 152(b)(3). There are special rules for certain adopted children.

[7] Sec. 152(c)(1)(C), (c)(3).

[8] Sec. 152(c)(1)(A), (c)(2), (f)(1).

[9] Sec. 152(c)(1)(B).

year,[10] and (5) may not file a joint return with a spouse.[11] The age test requires that the qualifying child must be either (1) under the age of 19 at the end of the calendar year, (2) under the age of 24 at the end of the calendar year and a full-time student,[12] or (3) permanently and totally disabled at any time during the calendar year, regardless of age.[13]

A qualifying relative of a taxpayer is any individual who (1) bears the appropriate relationship to the taxpayer,[14] (2) has gross income for the taxable year that does not exceed the personal exemption amount,[15] (3) receives over one-half of his or her support from the taxpayer,[16] and (4) is not a qualifying child of the taxpayer.[17] A qualifying relative who files a joint return with a spouse does not qualify as a dependent.[18]

For purposes of the definition of qualifying relative, an individual bears the appropriate relationship to the taxpayer if the individual is the taxpayer's lineal descendent or ancestor, brother, sister, aunt, uncle, niece, or nephew.[19] Some relations by marriage also qualify, including stepmothers, stepfathers, stepbrothers, stepsisters, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law. In addition, an individual bears the appropriate relationship if the individual has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.[20]

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[10] Sec. 152(c)(1)(D).

[11] Sec. 152(c)(1)(E); see also sec. 152(b)(2).

[12] Sec. 152(f)(2). To qualify as a full-time student, the individual must be, during five calendar months during a calendar year: (1) a full-time student at a school that has a regular teaching staff, course of study, and regular student body at the school, or (2) a student taking a full-time, on-farm training course given by a school described in (1), or a state, county, or local government.

[13] An individual is permanently and totally disabled if he or she cannot engage in any substantial gainful activity because of a physical or mental condition and a doctor determines the condition has lasted or can be expected to last continuously for at least a year or can lead to death. Secs. 22(e)(3), 152(c)(3)(B).

[14] Sec. 152(d)(1)(A), (d)(2).

[15] Sec. 152(d)(1)(B). For taxable years beginning in 2018 through 2025, the reduction of the personal exemption amount to zero under section 151(d)(5) will not be taken into account in determining whether an individual is a qualifying relative under section 152(d)(1)(B). The exemption amount referenced in section 152(d)(1)(B) will be treated as $4,150 (adjusted for inflation for taxable years beginning after 2018). See Prop. Treas. Reg. sec. 1.152-3(c)(3); Notice 2018-70, 2018-38 I.R.B. 441. The personal exemption amount for this purpose is $4,300 for taxable years beginning in 2021. Rev. Proc. 2020-45, 2020-46 I.R.B. 1016.

[16] Sec. 152(d)(1)(C).

[17] Sec. 152(d)(1)(D).

[18] Sec. 152(b)(2).

[19] Sec. 152(d)(2).

[20] Sec. 152(d)(2)(H).

Qualifying child for purposes of the child tax credit

Generally, for purposes of the child tax credit, a qualifying child is a qualifying child under section 152 who is under the age of 17.[21] Only a child who is a U.S. citizen, national, or resident may be a qualifying child; citizens of contiguous countries are ineligible under the child tax credit definition of qualifying child.

Identification number requirements

Many provisions of the Code require a taxpayer to include either a o Number ("TIN") or Social Security Number ("SSN") for specified individuals. A taxpayer is required to include a TIN when filing a U.S. tax return. Generally, an individual taxpayer's TIN is his or her SSN.[22]

SSNs are issued to United States citizens and nationals. In addition, noncitizens may be eligible to receive SSNs. The Social Security Administration ("SSA") is authorized to issue an SSN to a noncitizen for certain purposes including (1) for purposes relating to the lawful admission for employment in the United States, or (2) for claiming a benefit financed in whole or in part from Federal funds.[23]

An individual who has a U.S. tax filing obligation but who is not eligible to receive an SSN must apply to the Internal Revenue Service ("IRS") for an individual taxpayer identification number ("ITIN") for use in connection with the individual's tax filing obligation. [24] An individual who is eligible to receive an SSN may not apply for an ITIN.[25] An ITIN does not provide eligibility to work in the United States or allow the ITIN holder to claim Social Security benefits.

The taxation of the U.S. territories

Citizens of the United States are generally subject to Federal income tax on their U.S. and foreign income regardless of whether they live in a State, a foreign country, or a U.S. territory. Residents of the five U.S. territories[26] are generally subject to the Federal income tax system based on their status as U.S. citizens or residents of the territories, with certain special rules for determining residence and source of income specific to the territory. Broadly, a bona fide

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[21] Sec. 24(c). The age requirement must be met at the close of the taxable year. See 2020 Instructions 1040, p.18.

[22] Sec. 6109(a); Treas. Reg. sec. 301.6109-1(a)(1)(ii)(A).

[23] See Section 205(c)(2)(B)(i)(I), (II) of the Social Security Act, codified as 42 U.S.C. sec. 405(c)(2)(B)(i)(I), (II). The SSA also is authorized to issue SSNs to individuals who could have been but were not assigned SSNs for either of these purposes, if certain other conditions are met. Section 205(c)(2)(B)(i)(IIII) of the Social Security Act, codified as 42 U.S.C. sec. 405(c)(2)(B)(i)(III).

[24] Treas. Reg. Sec. 301.6109-1(a)(1)(ii)(B), (d)(3).

[25] Treas. Reg. Sec. 301.6109-1(d)(3)(ii).

[26] The Code refers to the territories are referred to as "possessions."

individual resident of a territory is exempt from U.S. tax on income derived from sources within that territory but is subject to U.S. tax on U.S.-source and non-territory-source income.[27] A bona fide resident of a territory for a taxable year is generally an individual (1) who is present for at least 183 days during the taxable year in the territory, and (2) who does not have either a tax home outside the territory or a closer connection to the United States or a foreign country than to the territory.[28]

The application of the Federal tax rules to the territories varies from one territory to another. Three territories—Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands—are referred to as mirror Code territories because the Code serves as the internal tax law of those territories (substituting the particular territory for the United States wherever the Code refers to the United States).[29] Thus, for example, there is a mirror Code version of the earned income tax credit under the internal revenue laws of each mirror Code territory. A resident of one of those territories generally files a single tax return only with the territory of which the individual is a resident, and not with the United States.[30]

American Samoa and Puerto Rico, by contrast, are non-mirror Code territories. These two territories have their own internal tax laws, and a resident of either American Samoa or Puerto Rico may be required to file income tax returns with both their territory of residence and the United States.

The non-mirror Code territories may offer individual refundable income tax credits to their residents under their own tax laws. In addition, residents of the territories may be entitled to individual refundable income tax credits from the U.S. Treasury under the Code.

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[27] See secs. 932, 933, and 937; see also former sec. 935 (1986), which remains in effect pursuant to the Tax Reform Act of 1986, Pub. L. No. 99-514, sec. 1277(b), October 22, 1986; 48 U.S.C. sec. 1801 note, sec. 601.

[28] Sec. 937.

[29] 48 U.SC. sec. 1397 (U.S. Virgin Islands); 48 U.S.C. sec. 1421i (Guam); 48 U.S.C. 1801 note, sec. 601 (Commonwealth of the Northern Mariana Islands).

[30] Sec. 932 and former sec. 935.

BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO PROMOTING ECONOMIC SECURITY

SUBTITLE G—PROMOTING ECONOMIC SECURITY

PART I—2021 RECOVERY REBATES TO INDIVIDUALS

A. 2021 Recovery Rebates to Individuals

Present Law

In response to the economic and health crises in 2020, Congress enacted two refundable income tax credits for individuals that could be advanced to eligible individuals. Each credit is described below.

2020 CARES Act recovery rebate

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") provides a one-year refundable income tax credit for 2020, referred to as the 2020 recovery rebate.[31] The credit is referred to as a rebate because it includes rules, described below, under which the Secretary of the Treasury (herein "Secretary") makes an advance payment to a taxpayer for the amount of the credit (determined based on prior year filing characteristics or other information) before the taxpayer files a 2020 Federal income tax return.[32]

An eligible individual is allowed a refundable income tax credit for the first taxable year beginning in 2020 equal to the sum of:

- $1,200 ($2,400 in the case of a joint return), and
- $500 for each qualifying child of such individual.

[31] Sec. 6428. Pub L. No. 116-136, sec. 2201, March 27, 2020. The CARES Act provision was subsequently amended by the Consolidated Appropriations Act, 2021 ("CAA"), and those amendments were given effect as if included in the CARES Act. See Pub. L. No. 116-260, Div. N, sec. 273, December 27, 2020. The CAA also added an additional 2020 recovery rebate (described below). *Id.*, sec. 272.

The two 2020 one-time rebates are similar in structure to a one-time rebate enacted in 2008 during a prior financial crisis, codified as section 6428 and later repealed. Economic Stimulus Act of 2008, Pub. L. No. 110-185, sec. 101, February 13, 2008. For a description of former section 6428, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 110th Congress* (JCS-1-09), March 2009, at 75-80.

[32] In total, Treasury disbursed 161.9 million advance payments worth $271.4 billion. IRS, "SOI Tax Stats - Coronavirus Aid, Relief, and Economic Security (CARES Act) Statistics, available at https://www.irs.gov/statistics/soi-tax-stats-coronavirus-aid-relief-and-economic-security-act-cares-act-statistics (last visited January 28, 2021).

An eligible individual is any individual other than (1) a nonresident alien, (2) an estate or trust, or (3) a dependent.[33] For these purposes, the child tax credit definition of a qualifying child applies (generally, a qualifying child as defined in section 152 who is under the age of 17).

The amount of the credit is phased out at a rate of five percent of the amount of adjusted gross income ("AGI") above certain threshold amounts.[34] The threshold amount at which the credit begins phasing out is $150,000 of AGI for joint filers and surviving spouses,[35] $112,500 of AGI for head of household filers, and $75,000 of AGI for all other filers.[36] Thus, the credit is fully phased out (*i.e.*, reduced to zero) for joint filers with no children at $198,000 of AGI and for a single filer at $99,000 of AGI.

Identification number requirement

No credit is allowed to an individual who does not include a valid identification number on the individual's income tax return.[37] In the case of a joint return that does not include a valid identification number for either spouse, no credit is allowed. In the case of a joint return that includes a valid identification number for only one spouse, one-half of the joint return amount ($1,200) is allowed.[38] A qualifying child may not be taken into account in determining the amount of the credit unless valid identification numbers for the taxpayer (or for at least one spouse in the case of a joint return) and the child are included on the return.

For purposes of this requirement, a valid identification number is an SSN as defined for purposes of the child tax credit,[39] which means that it must be issued by the SSA before the due date of the return (including extensions) to a citizen of the United States or pursuant to a provision of the Social Security Act relating to the lawful admission for employment in the

[33] Sec. 6428(d).

[34] Sec. 6428(c).

[35] Under the CARES Act, the phaseout threshold for surviving spouses was $75,000 of AGI. The CAA amended the phaseout threshold for surviving spouses to be $150,000 AGI.

[36] For example, a married couple that files jointly with two qualifying children and has an AGI below the phaseout range would be entitled to a recovery rebate credit of $3,400 ($2,400 + $500 + $500). If that couple's AGI were $175,000, the credit would be $2,150 ($3,400 - .05 * ($175,000 - $150,000)). The credit would be fully phased out for this taxpayer at $218,000 of AGI.

[37] Sec. 6428(g).

[38] This valid identification number rule for joint returns was amended from the rule in the CARES Act by the CAA. Pub. L. No. 116-260, Div. N, sec. 273(a)(3). The CARES Act required that in the case of a joint return that does not include valid identification numbers for both spouses, no credit is allowed. Advance refunds were made on the basis of the CARES Act rule. Any additional amounts owed as a result of the amended rule can be claimed on a 2020 Federal income tax return.

[39] Sec. 24(h)(7).

United States.[40] Two exceptions to this requirement are provided. First, an adoption identification number is considered a valid identification number in the case of a qualifying child who is adopted or placed for adoption. Second, when a married couple files a joint return and at least one spouse was a member of the Armed Forces of the United States during the taxable year for which the return is filed, a full $2,400 credit (subject to the income-based phaseout) is allowed even if the return includes a valid identification number for only one spouse.

The failure to provide a correct valid identification number is treated as a mathematical or clerical error. If a taxpayer claims an individual as a qualifying child, but based on the SSN provided the individual is too old to be a qualifying child, the provision of the SSN is treated as a mathematical or clerical error.[41]

Advance payments of the recovery rebate credit

A taxpayer may receive the recovery rebate credit as an advance refund in the form of a direct deposit to their bank account or as a check or prepaid debit card issued by the Secretary during calendar year 2020.[42] The amount of the advance refund is computed in the same manner as the recovery rebate credit, except that the calculation is made on the basis of the income tax return filed for 2019 (instead of 2020), if available, or otherwise on the basis of the income tax return filed for 2018.[43] Accordingly, the advance refund amount generally is based on a taxpayer's filing status, number of qualifying children, and AGI as reported for 2019 or 2018. The Secretary is directed to issue advance refunds as rapidly as possible.

If a taxpayer has not filed an income tax return for 2019 or 2018, in administering the advance refund the Secretary may use information with respect to that taxpayer that is provided on a 2019 Form SSA-1099, Social Security Benefit Statement, or a 2019 Form RRB-1099, Social Security Equivalent Benefit Statement.[44] Recipients of these forms include Social Security retirement, disability, and survivor benefit recipients and railroad retirees who are not otherwise required to file a Federal income tax return. An individual in one of these categories is allowed a $1,200 payment per person without the necessity of a return filing or other action.[45]

Supplemental Security Income recipients and recipients of compensation and benefit payments from the Department of Veterans Affairs similarly are allowed $1,200 per-person

[40] Sec. 205(c)(2)(B)(i)(I) (or that portion of subclause (III) that relates to subclause (I)) of the Social Security Act.

[41] CARES Act, sec. 2201(b)(2).

[42] The Treasury Department referred to these advance refunds as "economic impact payments."

[43] Sec. 6428(f).

[44] Sec. 6428(f)(5)(B).

[45] IRS, "Economic impact payments: what you need to know," IR-2020-61 (March 30, 2020), available at https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know.

payments automatically without the requirement of filing a return or taking other action.[46] Other taxpayers who do not have return-filing obligations in 2018 or 2019 could register to receive advance refunds using the "non-filer portal," a web tool developed by the IRS; alternatively they could use a simplified Federal income tax return filing procedure for taxable year 2019.[47]

In the case of any individual for which payment information is provided to the Secretary by the Commissioner of Social Security, the Railroad Retirement Board, or the Secretary of Veterans Affairs, the advance refund may be provided to the individual's representative payee or fiduciary. The entire payment must be provided to the individual or used for the benefit of the individual. Enforcement provisions apply to prevent the misuse of the payment.

The amount of the recovery rebate credit allowed on a taxpayer's 2020 income tax return (based on 2020 information) must be reduced by any advance refund received during 2020 (based on 2019 or 2018 information).[48] If the recovery rebate amount less the advance refund is a positive number (because, for example, a qualifying child was born to the taxpayer during 2020), the taxpayer is allowed that difference as a refundable credit against 2020 income tax liability. If, however, the result is negative (because, for example, the taxpayer's AGI was higher in 2020 and was in the phaseout range), the taxpayer's 2020 tax liability is not increased by that negative amount. In addition, a taxpayer that does not receive an advance refund may claim the recovery rebate amount on his or her 2020 income tax return. A taxpayer's failure to reduce the recovery rebate amount by an advance refund is treated as a mathematical or clerical error. The advance refund is not includible in gross income.

The Secretary may not issue an advance refund after December 31, 2020. Within 15 days of distribution of the advance refund the Secretary is required to send a notice by mail to the

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[46] IRS, "Supplemental Security Income recipients will receive automatic Economic Impact Payments," IR-2020-73 (April 15, 2020), available at https://www.irs.gov/newsroom/supplemental-security-income-recipients-will-receive-automatic-economic-impact-payments-step-follows-work-between-treasury-irs-social-security-administration; IRS, "Veterans Affairs recipients will receive automatic Economic Impact Payments," IR-2020-75 (April 17, 2020), available at https://www.irs.gov/newsroom/veterans-affairs-recipients-will-receive-automatic-economic-impact-payments-step-follows-work-between-treasury-irs-va.

[47] Rev. Proc. 2020-28, 2020-19 I.R.B. 792; IRS, "Treasury, IRS launch new tool to help non-filers register for Economic Impact Payments," IR-2020-69 (April 10, 2020), available at https://www.irs.gov/newsroom/treasury-irs-launch-new-tool-to-help-non-filers-register-for-economic-impact-payments. Federal benefit recipients also could use the web tool for non-filers to enter information regarding any qualifying children to claim the additional $500 per child payment as an advance refund. IRS, "IRS takes new steps to ensure people with children receive $500 economic impact payments," IR-2020-180 (August 14, 2020), available at https://www.irs.gov/newsroom/irs-takes-new-steps-to-ensure-people-with-children-receive-500-economic-impact-payments; IRS, "Register by Nov. 21 to get an Economic Impact Payment," IR-2020-260, November 19, 2020, available at https://www.irs.gov/newsroom/register-by-nov-21-to-get-an-economic-impact-payment-same-deadline-for-federal-beneficiaries-to-get-missed-500-per-child-payments.

Under the CARES Act, the Secretary (or the Secretary's delegate) is directed to conduct a public awareness campaign, in coordination with the Commissioner of Social Security and the heads of other relevant Federal agencies, to provide information regarding the availability of the recovery rebate credit, including information with respect to individuals who may not have filed a tax return for 2019 or 2018.

[48] Sec. 6428(e).

taxpayer's last known address that indicates the method by which the payment was made, the amount of such payment, and a phone number at the IRS to report any failure to receive such payment.

Treatment of the U.S. territories

The CARES Act directs the Secretary to make payments to each mirror Code territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) that relate to the cost (if any) of each territory's recovery rebate credit. The Secretary is further directed to make similar payments to each non-mirror Code territory (American Samoa and Puerto Rico).

The CARES Act requires the Secretary to pay to each mirror Code territory amounts equal to the aggregate amount of the credits allowable by reason of the CARES Act to that territory's residents against its income tax. Such amounts are determined by the Secretary based on information provided by the government of the respective territory.

To each non-mirror Code territory, the CARES Act requires the Secretary to pay amounts estimated by the Secretary as being equal to the aggregate credits that would have been allowed to residents of that territory if a mirror Code tax system had been in effect in that territory. Accordingly, the amount of each payment to a non-mirror Code territory is an estimate of the aggregate amount of the credits that would be allowed to the territory's residents if the credit provided by the CARES Act to U.S. residents were provided by the territory to its residents. This payment may not be made to any U.S. territory unless it has a plan that has been approved by the Secretary under which the territory will promptly distribute the payment to its residents.

No credit against U.S. income taxes is permitted under the CARES Act for any person to whom a credit is allowed against territory income taxes as a result of the CARES Act (for example, under that territory's mirror income tax). Similarly, no credit against U.S. income taxes is permitted for any person who is eligible for a payment under a non-mirror Code territory's plan for distributing to its residents the payment described above from the U.S. Treasury.

Exception from reduction or offset

Any refund allowed or made to an individual as an advance refund or as a similar payment to a resident of the U.S. territories is not subject to reduction or offset by other assessed Federal taxes that would otherwise be subject to levy or collection. In addition, these overpayments generally are not subject to offset for other taxes or non-tax debts owed to the Federal government or State governments.[49]

[49] Prior to amendment, the CARES Act prohibited refunds from recovery rebate credits and advance refunds from being subject to reduction or offset. This prohibition was amended to only apply to advance refunds. See Pub. L. No. 116-260, Div. N, sec. 273(b)(1).

As an exception, an overpayment resulting from the advance refund is subject to the offset against overpayments of the amount of any past-due child support.[50] The term past-due child support means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child (whether or not a minor), or of a child (whether or not a minor) and the parent with whom the child is living.[51] The State must have notified the Secretary of the taxpayer's delinquency in order for the offset to apply. If the offset applies, the Secretary remits the offset amount to the State collecting such support and notifies the taxpayer of the remittance. The offset of past-due child support applies before any other reductions allowed by law and before the crediting of the overpayment to the taxpayer's future tax liability.

An overpayment resulting from the recovery rebate credit may be subject to claims by the taxpayer's creditors under applicable State law or Federal bankruptcy law.

2020 additional recovery rebate

In general

The Consolidated Appropriations Act, 2021 ("CAA"), provides an additional one-year refundable income tax credit for 2020, referred to as the additional 2020 recovery rebate.[52] Like the first 2020 recovery rebate, the additional 2020 recovery rebate includes rules, described below, under which the Secretary makes an advance payment to a taxpayer for the amount of the credit (determined based on prior year filing characteristics or other information) before the taxpayer files a 2020 Federal income tax return. The additional 2020 recovery rebate has many of the same features as the first recovery rebate, with some modifications. These modifications are described below.

The additional 2020 recovery rebate is equal to the sum of:

- $600 ($1,200 in the case of a joint return), and
- $600 for each qualifying child of such individual.[53]

The phaseout thresholds and phaseout rate for the additional 2020 recovery rebate are the same as those of the first rebate, but because of the different amounts of the additional rebate, the

[50] See Sec. 6402(c). Following distribution of a significant share of the advance payments, the IRS announced that it would issue catch-up payments to individuals where such individual's portion of the payment had been diverted to pay their spouse's past-due child support. IRS, "50,000 spouses to get catch-up Economic Impact Payments," IR-2020-192, August 25, 2020, available at, https://www.irs.gov/newsroom/irs-50000-spouses-to-get-catch-up-economic-impact-payments; IRS, "Economic Impact Payment Information Center -- Topic D: Receiving My Payment," Q&A D2, available at, https://www.irs.gov/newsroom/register-by-nov-21-to-get-an-economic-impact-payment-same-deadline-for-federal-beneficiaries-to-get-missed-500-per-child-payments.

[51] Sec. 464(c) of the Social Security Act, 42 U.S.C. sec. 664(c).

[52] Pub. L. No. 116-260, Div. N, sec. 272, December 27, 2020.

[53] Sec. 6428A(a).

additional rebate is fully phased out at different levels of AGI. Thus, the additional 2020 recovery rebate is fully phased out (*i.e.*, reduced to zero) for joint filers with no children at $174,000 of AGI and for a single filer at $87,000 of AGI.

Identification number requirement

The identification number requirements for the additional 2020 recovery rebate follow those for the first recovery rebate (as amended by the CAA) and described above. Because the amounts of the additional 2020 recovery rebate differ from the first rebate, several rules are affected. In the case of a joint return that includes a valid identification number for only one spouse, a $600 credit is allowed. In the case of a married couple filing a joint return where at least one spouse was a member of the Armed Forces of the United States during the taxable year for which the return is filed, a full $1,200 credit (subject to the income-based phaseout) is allowed even if the return includes a valid identification number for only one spouse.

Advance payments of the 2020 additional recovery rebate

Just as with the first recovery rebate, many taxpayers receive the additional 2020 recovery rebate automatically as an advance refund in the form of a direct deposit to their bank account or as a check or prepaid debit card issued by the Secretary.[54] The amount of the additional advance refund is calculated on the basis of the income tax return filed for 2019, if available (rather than 2018 or 2019 as with the first advance refund).[55] Accordingly, the amount of the additional advance refund generally is based on a taxpayer's filing status, number of qualifying children, and AGI as reported for 2019. The Secretary is directed to issue additional advance refunds as rapidly as possible, and no additional advance refund is to be made or allowed after January 15, 2021.[56]

If a taxpayer did not file an income tax return for 2019 at the time the Secretary makes a determination regarding payments, the Secretary may use information to administer the additional advance refund with respect to that taxpayer that is provided (1) in the case of a specified Social Security or Supplemental Security Income recipient, by the SSA, (2) in the case of a specified railroad retirement beneficiary, by the Railroad Retirement Board, and (3) in the

[54] Payments started during the last week of December 2020 and continued into January 2021. Direct deposit payments were issued to individuals with valid routing and account information on file with the IRS. IRS, "Questions and Answers about the Second Economic Impact Payment," available at https://www.irs.gov/coronavirus/second-eip-faqs (last visited January 24, 2021). As of January 8, 2021, over 100 million advance refunds had been direct deposited into eligible recipients' bank accounts. IRS, "IRS Statement -- Update on Economic Impact Payments," January 11, 2021, available at https://www.irs.gov/newsroom/irs-statement-update-on-economic-impact-payments.

The Treasury Department referred to these additional advance refunds as "second economic impact payments."

[55] Sec. 6428A(f).

[56] In the case of a mirror Code territory, the additional advance refund can be made or allowed until September 30, 2021.

case of a specified veterans beneficiary, by the Department of Veterans Affairs.[57] As with the first advance refund, payments for such specified individuals may be provided to the individual's representative payee or fiduciary.

For other individuals who did not have a return-filing obligation, the Secretary could utilize information provided by such individuals who either successfully registered for the first advance refund using the non-filer portal, or submitted a simplified Federal income tax return to receive the advance refund.[58]

An individual who died before January 1, 2020, is not eligible to receive the additional advance refund. If a married couple files a joint return and one spouse died before January 1, 2020, the surviving spouse is allowed (subject to other requirements) a $600 payment. No payment may be issued with respect to qualifying children of a taxpayer who died before January 1, 2020 (or, in the case of joint return, if both taxpayers died before January 1, 2020).

The rules regarding reconciliation of the second advance refund are the same as those for the first advance refund. The second advance refund similarly is not includible in gross income.

The Secretary is required to send a notice of the second advance refund that includes the same information as that required for the first advance refund. The Secretary is also required to carry out a public awareness campaign regarding the availability of the additional recovery rebate credit and the additional advance refund.

Treatment of the U.S. territories

The CAA directs the Secretary to make payments to each mirror Code territory that relate to the cost of each territory's additional recovery rebate and to make similar payments to each non-mirror Code territory. The same rules as those that applied to territory payments for the first recovery rebate apply to territory payments for the additional recovery rebate.

Exception from reduction or offset

As with the first recovery rebate, any refund payable as an advance refund or as a similar payment to a resident of the U.S. territories is not subject to reduction or offset by other assessed Federal taxes that would otherwise be subject to levy or collection, by other taxes, or by non-tax debts owed to the Federal government or State governments.

Unlike the first advance refund, the additional advance refund is not subject to reduction or offset for past-due child support. The additional advance refund also is not subject to transfer, assignment, execution, levy, attachment, garnishment, or other legal process, or the operation of any bankruptcy or insolvency law. The CAA directs the Secretary to encode payments that are

[57] Sec. 6428A(f)(5).

[58] IRS, "Treasury and IRS begin delivering second round of Economic Impact Payments to millions of Americans, IR-2020-280, December 29, 2020, available at https://www.irs.gov/newsroom/treasury-and-irs-begin-delivering-second-round-of-economic-impact-payments-to-millions-of-americans.

paid electronically with a unique identifier that allows the financial institution maintaining the account to identify the payment as protected.

Description of Proposal

In general

The proposal provides a one-year refundable income tax credit for 2021, referred to as the 2021 recovery rebate. The rebate may be paid as an advance refund before the taxpayer files a 2021 income tax return.

An eligible individual is allowed a refundable income tax credit for the first taxable year beginning in 2021 equal to the sum of:

- $1,400 ($2,800 in the case of a joint return), and
- $1,400 for each dependent of the individual.[59]

An eligible individual is any individual other than: (1) a nonresident alien; (2) an estate or trust; or (3) a dependent.[60]

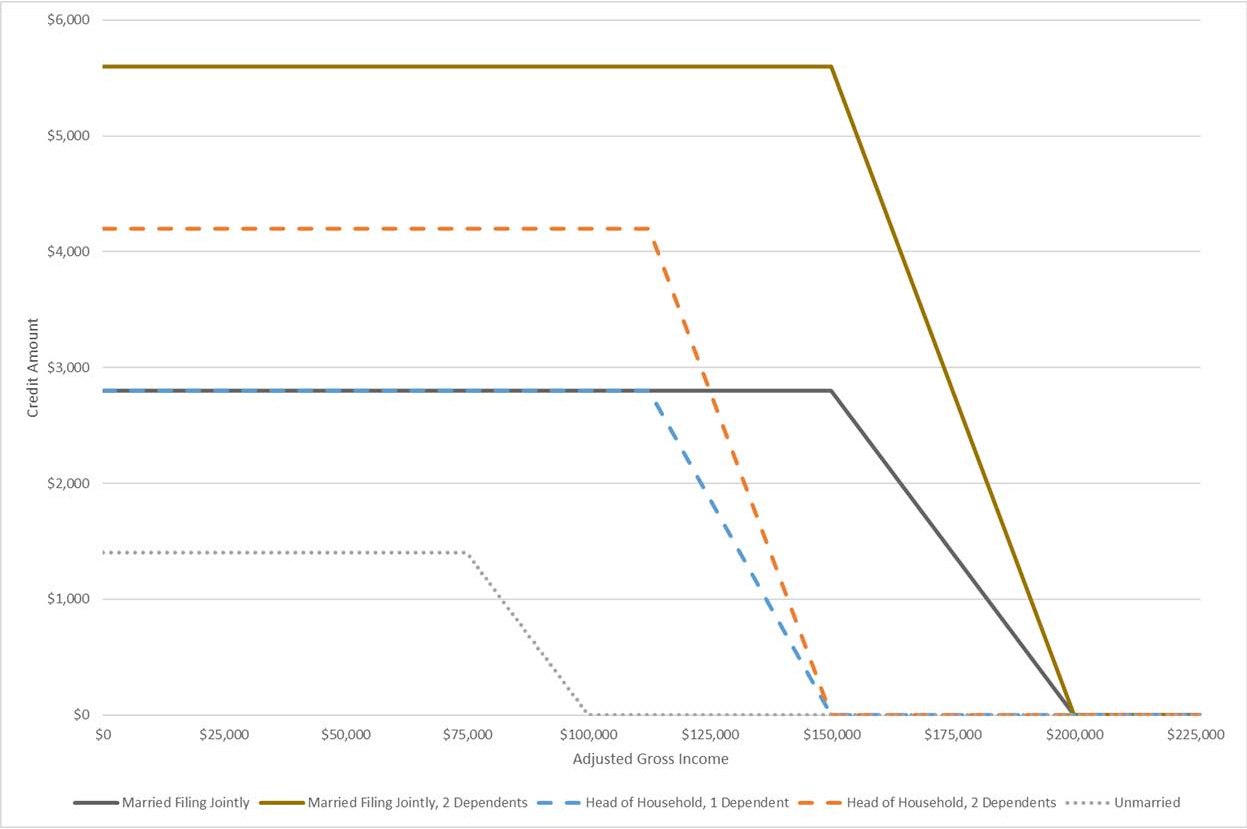
The amount of the credit is phased out above certain income levels.[61] For joint filers or a surviving spouse, the credit phases out ratably over a range beginning at $150,000 and ending at $200,000 of AGI. For heads of household, the credit phases out between $112,500 and $150,000 of AGI. For all other return filers, the credit phases out between $75,000 and $100,000 of AGI. Figure 1 illustrates the credit amount by AGI for selected filing status and dependent combinations.

[59] Proposed sec. 6428B(b). A dependent is defined in section 152 of the Code.

[60] Proposed sec. 6428B(c).

[61] Proposed sec. 6428B(d).

Figure 1.−Proposed 2021 Recovery Rebate Credit Amount by AGI for Selected Taxpayers



Identification number requirement

A credit is allowed for an individual—that is, the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer—only if the income tax return on which the credit is claimed includes that individual's valid identification number.[62] Thus, in the case of a joint return that includes a valid identification for both spouses, a $2,800 credit is allowed. In the case of a joint return that includes a valid identification number for only one spouse, a $1,400 credit is allowed. In the case of a joint return that includes a valid identification number for neither spouse, no credit is allowed for either spouse. A $1,400 credit is allowed for each dependent for which the taxpayer provides a valid identification number even if the return does not include a valid identification number for the taxpayer or spouse. All credit amounts are subject to the income-based phaseout described above.

For purposes of this requirement, a valid identification number is an SSN issued by the SSA on or before the due date for filing the return for the taxable year (including extensions). Unlike the 2020 recovery rebate and the 2020 additional recovery rebate, the 2021 recovery rebate credit does not require the SSN to be issued to a citizen or in relation to lawful admission

[62] Proposed sec. 6428B(e)(3).

for employment in the United States.[63] As with the 2020 recovery rebate and the 2020 additional recovery rebate, two exceptions to the identification number requirement are provided. First, an adoption identification number is considered a valid identification number in the case of a qualifying child who is adopted or placed for adoption. Second, when a married couple files a joint return and at least one spouse is a member of the Armed Forces of the United States during the taxable year for which the return is filed, a full $2,800 credit (subject to the income-based phaseout) is allowed even if the return includes a valid identification number for only one spouse.

The failure to provide a correct valid identification number is treated as a mathematical or clerical error.

Advance payments of the 2021 recovery rebate

The proposal provides that the 2021 recovery rebate may be paid as an advance refund in the form of a direct deposit to a taxpayer's bank account or as a check or prepaid debit card issued by the Secretary.[64] The amount of the advance refund is computed in the same manner as the 2021 recovery rebate, except that the calculation is made on the basis of the income tax return filed for 2019 or 2020 (instead of 2021), if available.[65] Accordingly, the amount of the advance refund generally is based on a taxpayer's filing status, number of dependents, and AGI as reported for 2019 or 2020. The Secretary is directed to issue advance refunds as rapidly as possible, consistent with efforts to make payments electronically where appropriate. No advance refund is to be made or allowed after December 31, 2021.

If a taxpayer files a 2020 income tax return and the return is processed before the additional payment determination date, the Secretary may make an additional payment to the taxpayer of any excess advance refund. The excess advance refund is the advance refund based on 2020 return information less any advance refund that was paid on based on 2019 return

[63] SSNs that are not issued to a citizen or in relation to lawful admission for employment in the United States include (i) SSNs for claiming a benefit financed in whole or in part from Federal funds or (ii) SSNs to individuals that could have been but were not assigned SSNs for work or benefit purposes, if certain other conditions were met. See section 205(c)(2)(B)(i) of the Social Security Act, codified as 42 U.S.C. sec. 405(c)(2)(B)(i). Prior to 2003, the SSA issued SSNs to noncitizens for valid nonwork and non-benefit reasons such as to obtain drivers' licenses or to open bank accounts; these SSNs are no longer issued, but previously-issued SSNs for these purposes have not been rescinded. See 20 C.F.R. sec. 422.104(a)(3) (2002).

[64] With respect to any payment made by the Secretary as a prepaid debit card, (1) the Secretary may not make the payment by increasing the balance of an existing prepaid debit card issued solely with respect to the 2020 recovery rebate or additional 2020 recovery rebate, but (2) may increase the balance of an existing prepaid debit card issued for other purposes (such as, for example, a Direct Express card used to pay Federal benefits). Proposed sec. 6428B(g)(9).

[65] Proposed sec. 6428B(g).

information. The additional payment determination date is the earlier of (i) 90 days after the 2020 filing deadline,[66] or (ii) September 1, 2021.

If a taxpayer did not file an income tax return for 2019 or 2020 (or if the return has been filed but is not yet processed by the IRS) at the time the Secretary makes a determination regarding payments of advance refunds, the Secretary may determine the eligibility of individuals and the advance refund amount that they may be paid on the basis of information available to the Secretary. Payments for such individuals may be provided to the individual's representative payee or fiduciary for a Federal benefit program, on the condition that the entire payment is used for the benefit of the individual.

An individual who died before January 1, 2021, is not eligible to receive the advance refund. If a married couple files a joint return and one spouse died before January 1, 2021, the surviving spouse is allowed (subject to other requirements) a $1,400 payment (subject to the income-based phaseout). No additional payment is issued with respect to dependents of a taxpayer who died before January 1, 2021 (or, in the case of joint return, if both taxpayers died before January 1, 2021). When a married couple has filed a joint return and one spouse died before January 1, 2021 who was a member of the Armed Forces of the United States during the taxable year for which the return is filed, a $1,400 payment (subject to the income-based phaseout) is allowed if the return includes a valid identification number for the deceased spouse but no valid identification number for the other spouse.

The amount of the recovery rebate credit allowed on a taxpayer's 2021 income tax return (based on 2021 information) must be reduced by any advance refund received during 2021 (based on 2019 or 2020 information).[67] If the 2021 recovery rebate less the advance refund is a positive number (because, for example, a qualifying child was born to the taxpayer during 2021), the taxpayer is allowed that difference as a refundable credit against 2021 income tax liability. If, however, the result is negative (because, for example, the taxpayer's AGI was higher in 2021 and was in the phaseout range), the taxpayer's 2021 tax liability is not increased by that negative amount. In addition, a taxpayer that does not receive an advance refund may claim the 2021 recovery rebate on his or her 2021 income tax return. Failure to reduce the 2021 recovery rebate by the advance refund is treated as a mathematical or clerical error.

The advance refund is not includible in gross income.[68]

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[66] The 2020 filing deadline is specified in section 6072(a) and is April 15, 2021. However, the 2020 filing deadline must be determined after taking into account any period disregarded under section 7508A if such disregard applies to substantially all 2020 income tax returns.

[67] Proposed sec. 6428B(f).

[68] Under section 6409, the 2021 recovery rebate is disregarded in the administration of Federal programs and Federally assisted programs. Any refund due to the credit, including any advance payment of the credit, is not taken into account as income and is not taken into account as resources for a period of 12 months from receipt for purposes of determining eligibility for benefits or assistance under any Federal program or under any State or local program financed with Federal funds.

As soon as practicable after the distribution of the advance refund, the Secretary is required to send a notice by mail to the taxpayer's last known address that indicates the method by which the payment was made, the amount of such payment, a phone number at the IRS to report any error with respect to such payment, and such other information as the Secretary determines appropriate. The Secretary also is required to carry out a robust and comprehensive outreach program to ensure that taxpayers for whom the Secretary might not otherwise have the necessary information to make an advance payment, such as non-filers, are aware of their eligibility for advance refunds and the 2021 recovery rebates and are provided assistance in applying for such refunds and credits.

The Secretary is provided regulatory authority as may be necessary or appropriate to carry out the purposes of the 2021 recovery rebate credit, including authority to allow taxpayers to provide the Secretary with information sufficient to make an advance refund to the taxpayer if such information is not otherwise available.[69] The Secretary also is provided specific regulatory authority to ensure that in determining the amount of the 2021 recovery rebate, an individual is not taken into account more than once, including by being claimed by different taxpayers or by reason of a change in filing status or dependent status between the tax year used to make the advance refund (2019 or 2020) and the tax year of eligibility for the 2021 recovery rebate (2021).

Treatment of the U.S. territories

Under the proposal, the Secretary is directed to make payments to each mirror Code territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) that relate to the cost (if any) of each territory's 2021 recovery rebate. The Secretary is further directed to make similar payments to each non-mirror Code territory (American Samoa and Puerto Rico).

The Secretary is directed to pay to each mirror Code territory amounts equal to the aggregate amount of the credits allowable by reason of the proposal to that territory's residents against its income tax. These amounts are determined by the Secretary based on information provided by the government of the respective territory.

To each non-mirror Code territory, the Secretary is required to pay amounts estimated by the Secretary as being equal to the aggregate credits that would have been allowed to residents of that territory if a mirror Code tax system had been in effect in that territory. Accordingly, the total amount of payments to a non-mirror Code territory is an estimate of the aggregate amount of the credits that would be allowed to the territory's residents if the credit provided by the proposal to U.S. residents were provided by the territory to its residents. These payments will not be made to any U.S. territory unless it has a plan that has been approved by the Secretary under which the territory will promptly distribute the payment to its residents.

No credit against U.S. income taxes is permitted under the proposal for any person to whom a credit is allowed against territory income taxes as a result of the proposal (*i.e.*, under that

[69] Proposed sec. 6428B(h). In 2020, the Secretary established a non-filer portal and provided a method to file a simplified Federal income tax return so that non-filers could provide information to the Secretary to receive the advance refund with respect to the 2020 recovery rebate.

territory's mirror income tax). Similarly, no credit against U.S. income taxes is permitted for any person who is eligible for a payment under a non-mirror Code territory's plan for distributing to its residents the payments described above from the U.S. Treasury.

The Secretary is directed to pay to each territory, in addition to the amounts described above, an amount equal to the territory's administrative expenses relating to the 2021 recovery rebate up to $10 million for Puerto Rico and $500,000 for each of the other territories. Such amounts are determined by the Secretary based on information provided by the government of the respective territory.

Exception from reduction or offset

Any refund payable as an advance refund or as a similar payment to a resident of the U.S. territories is not subject to reduction or offset by other assessed Federal taxes that would otherwise be subject to levy or collection. In addition, these refunds or payments are not subject to offset for other taxes or non-tax debts owed to the Federal government or State governments.

Effective Date

The proposal is effective on the date of enactment.

PART II—CHILD TAX CREDIT

A. Child Tax Credit Improvements

Present Law

In general

Taxpayers are allowed a child tax credit of $2,000 for each qualifying child.[70] The aggregate amount of otherwise allowable child tax credit is phased out for taxpayers with income over a threshold amount of $400,000 for taxpayers filing jointly and $200,000 for all other taxpayers.[71] The otherwise allowable child tax credit amount is reduced by $50 for each $1,000 (or fraction thereof) of modified AGI over the applicable threshold amount. For purposes of this limitation, modified AGI means AGI increased by any amount excluded from gross income under section 911 (foreign earned income exclusion), 931 (exclusion of income for a bona fide resident of American Samoa), or 933 (exclusion of income for a bona fide resident of Puerto Rico).[72]

The name and SSN of the qualifying child must appear on the return, and the SSN must be issued before the due date for filing the return.[73] The SSN also must be issued to a citizen or national of the United States or pursuant to a provision of the Social Security Act relating to the lawful admission for employment in the United States.[74] The TIN of the taxpayer must be issued on or before the due date for filing the return.[75]

Partial refundability and calculation of additional child tax credit

The child tax credit is generally a nonrefundable tax credit taken against income tax liability. The credit is allowable against both the regular tax and the alternative minimum tax.[76]

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[70] Sec. 24(a), (h)(2). For taxable years beginning after December 31, 2025, the amount of the credit is $1,000 for each qualifying child.

[71] Sec. 24(b), (h)(3). For taxable years beginning after December 31, 2025, the modified AGI threshold amounts at which the credit begins to phase out are $75,000 for individuals who are not married, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate returns.

[72] Sec. 24(b)(1).

[73] Sec. 24(h)(7). For taxable years beginning after December 31, 2025, the child tax credit may be claimed if the TIN of the qualifying child, rather than the SSN of the child, appears on the return. Sec. 24(e)(1).

[74] See sec. 205(c)(2)(B)(i)(I) (or that portion of subclause (III) that relates to subclause (I)) of the Social Security Act.

[75] Sec. 24(e)(2).

[76] Sec. 26(a).

In some circumstances, all or a portion of the otherwise allowable credit is treated as a refundable credit (the "additional child tax credit").[77] The credit is treated as refundable in an amount equal to 15 percent of earned income in excess of $2,500 (the "earned income formula").[78] Earned income generally has the same definition as for purposes of the EITC and is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings.[79] For purposes of the additional child tax credit, only items taken into account in computing taxable income are treated as earned income.[80] However, combat pay that is excluded from gross income under section 112 is also taken into account.

A taxpayer with three or more qualifying children may determine the additional child tax credit using the "alternative formula," if this results in a larger additional child tax credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer's Social Security taxes exceed the taxpayer's EITC.[81]

The maximum amount of the additional child tax credit is $1,400 per qualifying child.[82] This amount is indexed for inflation, although the amount may not exceed the $2,000 amount of the nonrefundable child tax credit.[83]

Withholding

Chapter 24 of the Code provides rules for employers to deduct and withhold amounts from employee wages for the payment of income tax. Under rules determined by the Secretary, an employee may be entitled to a withholding allowance that reduces the amount of income tax withholding. A taxpayer's withholding allowances, pursuant to Section 3402(f)(1)(C), take into

[77] Sec. 24(d).

[78] Sec. 24(d)(1)(B)(i), (h)(6). For taxable years beginning after December 31, 2025, the earned income threshold for the refundable child tax credit is $3,000.

[79] Sec. 32(c)(2).

[80] Sec. 24(d)(1)(B)(i). For example, some ministers' parsonage allowances are considered self-employment income, see section 1402(a)(8), and thus are considered earned income for purposes of computing the EITC, but they are excluded from gross income for income tax purposes and thus are not considered earned income for purposes of the additional child tax credit.

[81] Sec. 24(d)(1)(B)(ii).

[82] Sec. 24(h)(5). For taxable years beginning after December 31, 2025, there is no separately stated maximum amount of the additional child tax credit; however, the refundable credit may not exceed the total amount of the credit of $1,000 for taxable years beginning after December 31, 2025.

[83] The maximum amount remains $1,400 for taxable years beginning in 2021. Rev. Proc. 2020-45, 2020-46 I.R.B. 1016.

account the number of children for whom it is reasonably expected that the taxpayer is entitled to a child tax credit.[84]

Credit for other dependents

An individual is allowed a $500 nonrefundable credit for each dependent of the taxpayer as defined in section 152, other than a qualifying child as defined for purposes of the child tax credit.[85]

Application of the child tax credit in the territories of the United States

The three mirror Code territories (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) have, under their mirror Codes, a child tax credit identical to that in the U.S. Code. A resident of one of these territories claims the child tax credit on the income tax return filed with the territory's revenue authority. The non-mirror Code territories (Puerto Rico and American Samoa) do not have child tax credits under their internal revenue laws.

Residents of the territories with three or more qualifying children, under the alternative formula, receive the additional child tax credit under the U.S. Code. The U.S. Treasury makes payments to each territory other than Puerto Rico to cover the cost of this credit. Residents of Puerto Rico claim the additional child tax credit under the alternative formula by filing a Form 1040-SS or Form 1040-PR with the IRS.

Description of Proposal

Temporary increase in credit amount and qualifying child age limit

Under the proposal, the child tax credit is increased from $2,000 to $3,000 for 2021.[86] In the case of a qualifying child who has not attained the age of 6 as of the close of the calendar year, the credit is increased to $3,600.[87] In addition, the term "qualifying child" is broadened to include a qualifying child who has not attained the age of 18 (instead of 17).[88]

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[84] Sec. 3402(f)(1)(C).

[85] An individual who is a qualifying child for purposes of the dependent rules under section 152, but not a qualifying child for purposes of the child tax credit (*e.g.*, a child who is age 17 or 18, or a full-time student under age 24) is eligible to be a qualifying dependent for purposes of the $500 nonrefundable credit for other dependents. For taxable years beginning after December 31, 2025, there is no tax credit for other dependents.

[86] Proposed sec. 24(i)(3). The proposal applies for taxable years beginning in 2021.

[87] *Ibid.*

[88] Proposed sec. 24(i)(2). Thus, for 2021, taxpayers may not claim a $500 credit for other dependents with respect to these taxpayers. Sec. 24(h); Prop. Sec. 24(i)(2)(B).

Finally, the child tax credit amount is subject to a second phaseout, which applies in addition to the phaseout under present law.[89] The second phaseout applies to taxpayers with income above an applicable threshold amount. The applicable threshold amounts are lower than those under the present-law child tax credit phaseout: $150,000 for taxpayers filing jointly (as compared to $400,000 for the present-law phaseout), $150,000 for surviving spouses (as compared to $200,000), $112,500 for head of household taxpayers (as compared to $200,000), and $75,000 for all other taxpayers (as compared to $200,000). The amount of child tax credit is reduced by $50 for each $1,000 (or fraction thereof) of modified AGI over the applicable threshold amount. However, the additional phaseout is limited so that it only applies to the temporary increased child tax credit for 2021 ($1,600 per child under age 6 and $1,000 per child age 6 and older); it does not reduce the child tax credit amount provided to a taxpayer under present law.[90]

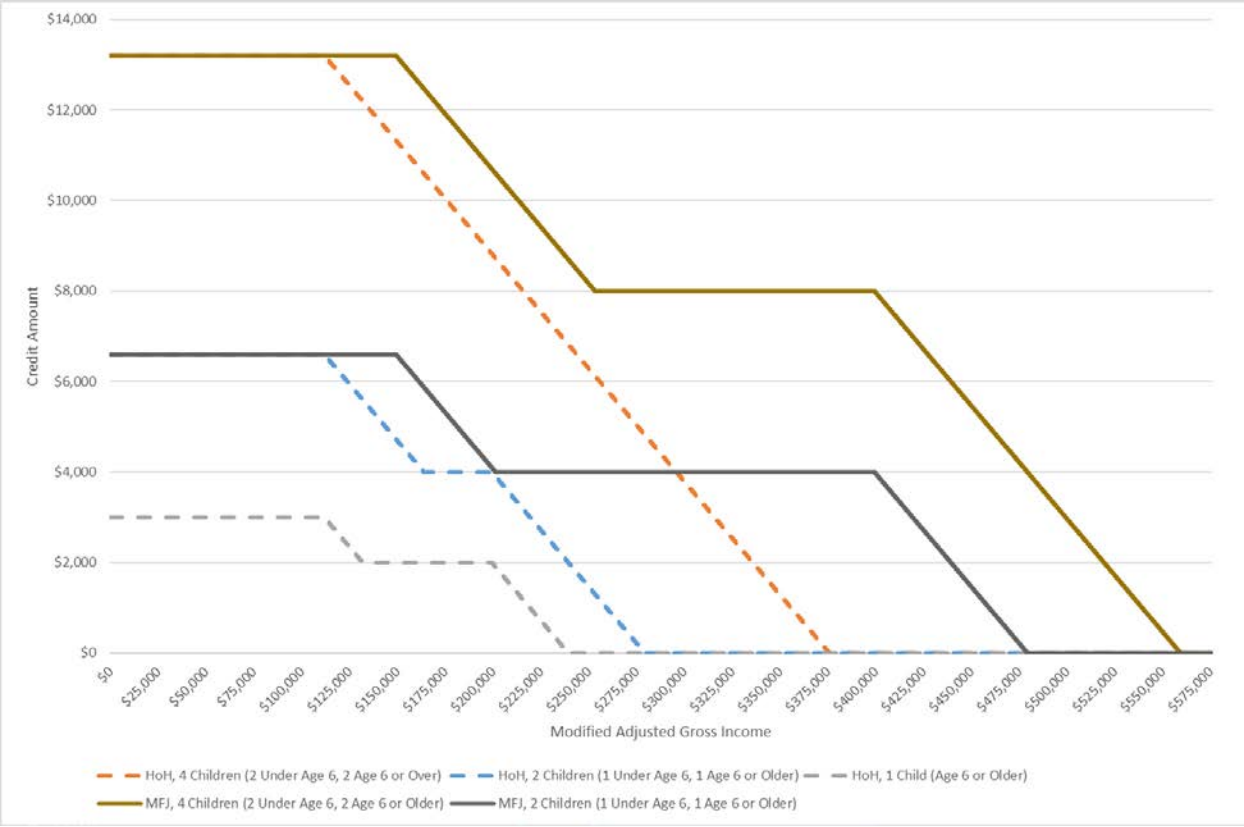
Figure 2 illustrates the proposed child tax credit by modified AGI for selected combinations of filing status and number of qualifying children.

[89] Proposed sec. 24(i)(4).

[90] Under the proposal, the reduction in credit due to the additional phaseout is limited to the lesser of (1) the applicable credit increase amount or (2) five percent of the applicable phaseout threshold range. Proposed sec. 24(i)(4)(C). The applicable credit increase amount is the difference between (1) the aggregate child tax credit allowable under the proposal and (2) the aggregate child tax credit allowable under the proposal if the credit amount was not increased to $3,000 or $3,600 (from $2,000), both determined without application of any phaseout. The applicable phaseout threshold range is the difference between (1) the threshold amount for the taxpayer under present law and the (2) applicable threshold amount for the taxpayer under the proposal, or $250,000 for taxpayers filing jointly, $87,500 for heads of households, $50,000 for surviving spouses, and $125,000 for all other taxpayers.

For example, a head of household with one child age 7 and modified AGI of $140,000 would qualify for a $2,000 child tax credit in 2021 under present law. Under the proposal, the base child tax credit amount for such child would increase to $3,000, but this amount would be reduced by the new phaseout. The reduction in credit would be $50 for each $1,000 (or fraction thereof) that modified AGI exceeds $112,500 or $1,400 ($50 * 28). However, the reduction is limited by the lesser of (1) the applicable credit increase amount of $1,000 ($3,000 – $2,000) or (2) five percent of the applicable phaseout threshold range or $4,375 (.05 * $87,500). Thus, under the proposal, the reduction is limited to $1,000 (not $1,400), and the child tax credit for this taxpayer is $2,000. How the credit amount varies across a range of modified AGI for a such a head of household (with a child age 6 or older) is also illustrated in Figure 2.

Figure 2.−Proposed Child Tax Credit for 2021 by Modified AGI for Selected Taxpayers



Temporary full refundability

For 2021, the child tax credit is made fully refundable for taxpayers with a principal place of abode in the United States for more than one half of the taxable year.[91] Thus, the child tax credit is generally refundable up to $3,000 (or $3,600) per qualifying child, without regard to the earned income formula or the alternative formula. In the case of a joint return, at least one spouse must satisfy the principal place of abode requirement. Principal place of abode is determined as provided in section 32.[92]

The AGI limitation on the credit still applies (regardless of refundability), and the $500 credit for dependents other than qualified children remains nonrefundable.

[91] Proposed sec. 24(i)(1). For purposes of the principal place of abode rule, the United States includes the States and the District of Columbia. Sec. 7701(a)(9).

[92] Thus, a member of the Armed Forces of the United States stationed outside the United States while serving on extended active duty is treated as having a principal place of abode in the United States.

Temporary advance payments of the child tax credit

In general

The proposal creates a new section 7527A, under which the Secretary is directed to establish a program to make monthly advance payments of the child tax credit to eligible taxpayers.[93] Each advance payment is 1/12 of an advance annual amount for the calendar year. However, if the Secretary determines that it is not administratively feasible to make monthly advance payments, the Secretary may make advance payments on the basis of a longer interval and adjust the amount of advance payments to take into account the changed interval.[94]

A taxpayer may receive an advance payment in the form of a direct deposit to his or her bank account or a debit card issued by the Secretary.[95]

Monthly advance payments are only to be made for months between July 1, 2021 and December 31, 2021.[96]

Annual advance amount

A taxpayer's annual advace amount for a calendar year is the taxpayer's child tax credit for the taxable year beginning in such calendar year, but calculated based on a reference taxable year ("reference year").[97] For purposes of this calculation, (1) the taxpayer's principal place of abode is determined based on the reference year;[98] (2) the taxpayer's modified AGI for the reference year is used to determine any phaseout of credit; and (3) the taxpayer is treated as having only the number of qualifying children the taxpayer had in the reference year.[99] For purposes of this calculation, the age of any qualifying children and their status as qualifying children is determined by taking into account the passage of time. Thus, for example, a qualifying child who was 17 in the reference year would not be a qualifying child for purposes of the calculation. In addition, a qualifying child is not taken into account for the annual advance amount if the child is deceased as of the beginning of the calendar year for which the credit is

[93] Proposed sec. 7527A(a).

[94] Proposed. sec. 7527A(e). For example, if the Secretary determines that it is administratively feasible to only make payments every two months, each payment would equal 1/6 of the advance annual amount.

[95] Proposed. sec. 7527A(f). The advance payments generally must comply with the electronic payment requirements of 31 U.S.C. sec. 3332.

[96] Proposed. sec. 7527A(g).

[97] Proposed sec. 7527A(b).

[98] If the information on the taxpayer's tax return for the reference year is insufficient to determine the taxpayer's principal place of abode, the Secretary may make that determination based on other sources. Proposed. sec. 7527A(b)(4).

[99] Proposed sec. 7527A(b)(1).

determined.[100] Thus, for 2021, a child that is known to the Secretary as being deceased as of January 1, 2021 is not taken into account for the advance amount for taxable year 2021.

The reference year is the taxpayer's taxable year beginning in the previous calendar year or, if the taxpayer did not file a tax return for that year, the taxpayer's taxable year beginning in the second previous calendar year.[101] The Secretary may modify the advance annual amount for a calendar year to take into account a tax return filed by the taxpayer, including by treating the taxable year of the return as the new reference year.[102] The Secretary may also modify the advance annual amount to take into account any other information provided to the Secretary by the taxpayer that allows the Secretary to more closely determine the taxpayer's child tax credit for the taxable year.[103] Finally, if the Secretary does modify the advance annual amount, the Secretary may increase or decrease subsequent advance payments in the calendar year in order to account for excessive or deficient prior advance payments based on the pre-modified advance annual amount.[104]

The Secretary is directed to create an online portal to allow taxpayers to provide information regarding (1) a change in the number of the taxpayer's qualifying children, including by reason of the birth of a qualifying child; (2) a change in the taxpayer's marital status; (3) a significant change in the taxpayer's income; and (4) any other factors that the Secretary may provide. [105] A taxpayer may also use the online portal to elect out of advance payments.[106]

Withholding and administrative provisions

The Secretary must take the receipt of advance payments of the child tax credit into account in determining the rules regarding withholding allowances.

The Secretary must provide notice to the taxpayer of the aggregate amount of advance payments made to the taxpayer during the calendar year and other information as the Secretary determines appropriate by no later than January 31 of the calendar year following the year in which any such payments were made.[107]

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[100] Proposed sec. 7527A(b)(5).

[101] Proposed sec. 7527A(b)(2).

[102] Proposed sec. 7527A(b)(3)(A).

[103] *Ibid.*

[104] Proposed sec. 7527A(b)(3)(B).

[105] Proposed sec. 7527A(c)(2).

[106] Proposed sec. 7527A(c)(1).

[107] Proposed sec. 7527A(d).

Any advance payment is not subject to reduction or offset by other assessed Federal taxes that would otherwise be subject to levy or collection, by other taxes, or by non-tax debts owed to the Federal government or State governments.[108]

Reconciliation

The amount of the child tax credit allowed for any taxable year is reduced by the aggregate advance payments made during the taxable year.[109] A failure to reduce the credit is treated as a mathematical or clerical error.

If the taxpayer receives advance payments in excess of the taxpayer's allowable child tax credit during a taxable year, the taxpayer's tax liability for the taxable year is increased by the excess amount.[110] This increase in tax liability is not considered to be part of a taxpayer's regular tax liability.[111] However, for taxpayers that have modified AGI below certain thresholds, the excess amount may be reduced by a safe harbor amount, limiting the increase in tax liability and allowing the taxpayer to retain a portion of the excess amount. The safe harbor amount is $2,000 for each child incorrectly taken into account in determining the advance payment amount, subject to a phaseout based on taxpayer modified AGI.[112]

Regulatory authority

The Secretary is directed to issue regulations or other guidance the Secretary determines is necessary or appropriate to carry out the advance payment program, the temporary changes to the child tax credit, and the reconciliation of the child tax credit and advance payments.[113] This includes regulations or other guidance that provide for the application of these rules in cases where the filing status of the taxpayer changes between taxable years.

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[108] Proposed sec. 7527A(f)(4).

[109] Proposed sec. 24(j)(1).

[110] Proposed sec. 24(j)(2).

[111] See sec. 26(b). Because of this, the taxpayer may not use nonrefundable tax credits to offset the increase. Sec. 26(a).

[112] The safe harbor amount is $2,000 multiplied by the difference in number of qualifying children used to determine the advance amount and number of qualifying children used to determine the credit for the taxable year. The full safe harbor amount is allowed to taxpayers with modified AGI of up to $60,000 for married taxpayers filing jointly and surviving spouses, $50,000 for heads of households, and $40,000 for all other taxpayers. The safe harbor amount is reduced ratably over these same sized intervals for each filing status, respectively. Thus, the safe harbor is $0 as modified AGI equals or exceeds $120,000 for married taxpayers filing jointly and surviving spouses, $100,000 for heads of households, and $80,000 for all other taxpayers.

[113] Proposed sec. 7527A(h).

Application of the child tax credit in the territories of the United States

For 2021, the child tax credit is made fully refundable for taxpayers who are bona fide residents of Puerto Rico for the taxable year, claimed by filing a tax return with the IRS.[114] Thus, for bona fide residents of Puerto Rico, the child tax credit is generally refundable up to $3,000 (or $3,600) per qualifying child, without regard to the earned income formula or alternative formula, but subject to the modified AGI phaseouts.

The child tax credit advance payment program does not apply to the territories.[115]

Additional rules for taxpayers in Puerto Rico, American Samoa, and the mirror Code territories are provided by section 9612 of the bill (described in the following section).

Effective Date

The proposal applies to taxable years beginning after December 31, 2020.

[114] Proposed sec. 24(i)(2).

[115] *Ibid.*

B. Application of Child Tax Credit in Possessions

Present Law

The present law rules for the child tax credit in the territories of the United States are described in the previous section.

Description of Proposal

Under the proposal, the Secretary must make payments to each territory that relate to the cost or approximate cost of that territory's child tax credit, or make payments of the credit directly to territory residents.

Mirror Code territories

The proposal directs the Secretary to makes payments to each of Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands in an amount equal to the loss in revenue by reason of the application of the child tax credit to the territory's mirror Code for the taxable year.[116] This amount is determined by the Secretary based on information provided by the government of the territory. Because of their mirror Codes, the changes to the child tax credit made by section 9611 of the bill (described in the preceding section) apply to these territories for 2021.

No child tax credit under the Internal Revenue Code is permitted for any resident of a mirror Code territory with respect to whom a child tax credit is allowed against income taxes of the territory.

Puerto Rico

For 2021, bona fide residents of Puerto Rico may claim a fully refundable child tax credit by filing a tax return with the IRS.[117]

For taxable years beginning after 2021, bona fide residents of Puerto Rico may claim an additional child tax credit up to the maximum amount[118] from the U.S. Treasury under the alternative formula, but determined without regard to the three-child limitation, by filing a return with the IRS.[119]

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[116] Proposed sec. 24(k)(1).

[117] Sec. 9611 of the bill (described in the preceding section).

[118] This amount is currently $1,400 for taxable years beginning in 2021.

[119] Proposed sec. 24(k)(2).

American Samoa

The proposal directs the Secretary to make payments to American Samoa in an amount estimated by the Secretary as being equal to the aggregate benefits that would have been allowed to residents of American Samoa under the child tax credit if a mirror Code tax system had been in effect in American Samoa in that taxable year.[120] These amounts include, for 2021, amounts resulting from changes made by section 9611 of the bill (described in the preceding section).

The proposal prohibits the Secretary from making these payments unless American Samoa has a plan approved by the Secretary to promptly distribute the payments to its residents. For years with respect to which American Samoa has an approved plan, no child tax credit under the Internal Revenue Code is permitted for any person who is eligible for a payment under the plan. If American Samoa does not have a plan in place for a taxable year, a bona fide resident of American Samoa may claim a child tax credit by filing a return with the IRS under rules similar to those for Puerto Rico, described above.

Effective Date

The proposal applies to taxable years beginning after December 31, 2020.

[120] Proposed sec. 24(k)(3).

PART III—EARNED INCOME TAX CREDIT

A. Strengthening the Earned Income Tax Credit for Individuals with No Qualifying Children

Present law

In general

Low- and moderate-income workers may be eligible for the refundable earned income tax credit ("EITC"). The amount of the EITC is based on the presence and number of qualifying children in the worker's family, filing status, AGI, and earned income.[121]

The EITC generally equals a specified percentage of earned income.[122] Earned income for this purpose cannot exceed a maximum dollar amount, known as the earned income amount. The maximum EITC amount applies over a certain income range and then diminishes to zero over a specified phaseout range. For a taxpayer with earned income (or AGI, if greater) in excess of the beginning of the phaseout range, the maximum EITC amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For a taxpayer with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed. The specified percentage, maximum dollar amount, and phaseout rate and range vary with filing status and number of children. Four separate credit percentage schedules apply: one for taxpayers with no qualifying children, one for taxpayers with one qualifying child, one for taxpayers with two qualifying children, and one for taxpayers with three or more qualifying children.[123]

For an individual to be a qualifying child for purposes of the parent's (or parents') EITC, generally that individual must meet the relationship, age, and residency tests under section 152 (described above in the General Background section).[124]

The EITC may be claimed by a taxpayer if the taxpayer is a U.S. citizen or a resident alien.[125] An individual who is a nonresident alien for any portion of the taxable year is not eligible to claim the EITC unless an election is in effect for the year under section 6013(g) or (h) (relating to an individual who is married to a citizen or resident of the United States at the end of the year). In addition, individuals who claim the benefits of section 911 (relating to the income

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[121] Sec. 32.

[122] Sec. 32(a), (b).

[123] Sec. 32(b). All income thresholds are indexed for inflation annually.

[124] Sec. 32(c)(3)(A). See section 152(c)(1) for the definition of qualifying child. For purposes of the EITC the support test in section 152(c)(1)(D) is disregarded. The residency test in section 152(c)(1)(B) is only satisfied if the principal place of abode is in the United States.

[125] Sec. 32(c)(1)(D).

exclusion election available to U.S. citizens or resident aliens living abroad) are not eligible to claim the EITC.[126]

To claim the EITC, the taxpayer must include the taxpayer's valid SSN and valid SSN for the qualifying child (and, if married, the spouse's SSN) on his or her tax return.[127] For these purposes, a valid SSN is an SSN issued to an individual, other than an SSN issued to an individual solely for the purpose of applying for or receiving Federally funded benefits, on or before the due date for filing the return for the year.[128]

EITC for taxpayers with no qualifying children

A taxpayer with no qualifying children may claim a credit if the taxpayer is age 25 or older and below age 65, has a principal place of abode in the United States for more than half of the taxable year, and cannot be claimed as a dependent on anyone else's return.[129] For purposes of the principal place of abode requirement, a member of the Armed Forces of the United States stationed outside the United States while serving on extended active duty is treated as having a principal place of abode in the United States.[130]

For 2021, the credit is 7.65 percent of earned income up to an earned income amount $7,100, resulting in a maximum credit of $543.[131] The maximum credit is available for a taxpayer with earned income between $7,100 and $8,880 ($14,820 if married filing jointly). The credit begins to phase out at a rate of 7.65 percent of earned income above $8,880 ($14,820 if married filing jointly) resulting in a $0 credit at $15,980 of earned income ($21,920 if married filing jointly). Table 1 shows these parameters for the childless EITC in comparison to the EITC for taxpayers with different numbers of qualifying children.

[126] Sec. 32(c)(1)(C).

[127] Sec. 32(c)(1)(E), (c)(3)(D), (m).

[128] Sec. 205(c)(2)(B)(i)(II) (and that portion of sec. 205(c)(2)(B)(i)(III) relating to it) of the Social Security Act.

[129] Sec. 32(c)(1)(A)(ii).

[130] Sec. 32(c)(4).

[131] The inflation adjusted amounts are provided in Revenue Procedure 2020-45, 2020-46 I.R.B. 1016.

Table 1.−2021 EITC Schedule[132]

	Credit percentage	Earned income amount	Maximum credit	Phaseout range (single, head of household)	Phaseout range (joint filers)	Phaseout percentage
Childless	7.65%	$7,100	$543	$8,880 - $15,980	$14,820 - $21,920	7.65%
1 qualifying child	34%	$10,640	$3,618	$19,520 - $42,158	$25,470 - $48,108	15.98%
2 qualifying children	40%	$14,950	$5,980	$19,520 - $47,915	$25,470 - $53,865	21.06%
3 or more qualifying children	45%	$14,950	$6,728	$19,520 - $51,464	$25,470 - $57,414	21.06%

Description of Proposal

For 2021, the proposal expands EITC eligibility and increases the amount of the credit for taxpayers with no qualifying children.[133]

Temporary changes to minimum and maximum age

For 2021, in the case of the credit for a taxpayer with no qualifying children, the minimum age is reduced from 25 to 19.[134] However, if the individual is a specified student (or, in the case of a married individual, if both the individual and the individual's spouse are specified students), the minimum age is reduced from 25 to 24.[135] A specified student means, with respect to a taxable year, an individual who is an eligible student during at least five calendar months during the year. An eligible student is defined in section 25A(b)(3) (relating to the American opportunity tax credit) as a student who, with respect to any academic period,

[132] *Ibid.*

[133] Proposed sec. 32(n). The proposal applies for taxable years beginning in 2021.

[134] Proposed sec. 32(n)(1)(A), (B)(i).

[135] Proposed sec. 32(n)(1)(A), (B)(ii). The proposal requires the Secretary to develop and implement procedures for confirming a taxpayer's status as a specified student using information returns made with respect to such taxpayer under section 6050S (returns relating to higher education tuition and related expenses).

meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 and is carrying at least half the normal full-time work load for the course of study the student is pursuing.

The proposal further reduces the minimum age to 18 for any qualified former foster youth or qualified homeless youth.[136] A qualified former foster youth is an individual who, at the age of 14 or older, was in foster care provided under the supervision or administration of an entity administering (or eligible to administer) a plan under part B[137] or part E[138] of Title IV of the Social Security Act. A qualified former foster youth must give the applicable entity consent to disclose to the Secretary information related to the taxpayer's status as a qualified former foster youth.

A qualified homeless youth is an individual who is certified by a local educational agency or a financial aid administrator during the year as being either (1) an unaccompanied youth who is a homeless child or youth or (2) unaccompanied, at risk of homelessness, and self-supporting.[139] A qualified homeless youth must give applicable educational agency or financial aid administrator consent to disclose to the Secretary information related to the taxpayer's status as a qualified homeless youth.

The proposal also temporarily removes the upper age limit on the credit for taxpayers with no qualifying children.[140] Therefore, taxpayers 65 and older without qualifying children may claim the credit in 2021.

Temporary changes to the credit percentage, earned income amount, and phaseout amount

For 2021, the proposal increases the amount of the credit for taxpayers with no qualifying children.[141] The proposal increases the credit percentage and phaseout percentage from 7.65 percent to 15.3 percent. In addition, the earned income amount is increased to $9,820, and the beginning of the phaseout range for non-joint filers is increased to $11,610 ($17,550 if married filing jointly). The maximum amount of the credit is $1,502. The proposed changes to the EITC for taxpayers with no qualifying children as compared to present law is shown in Figure 3.

[136] Proposed sec. 32(n)(1)(B)(iii), (D), (C).

[137] 42 U.S.C. sec. 621-628b.

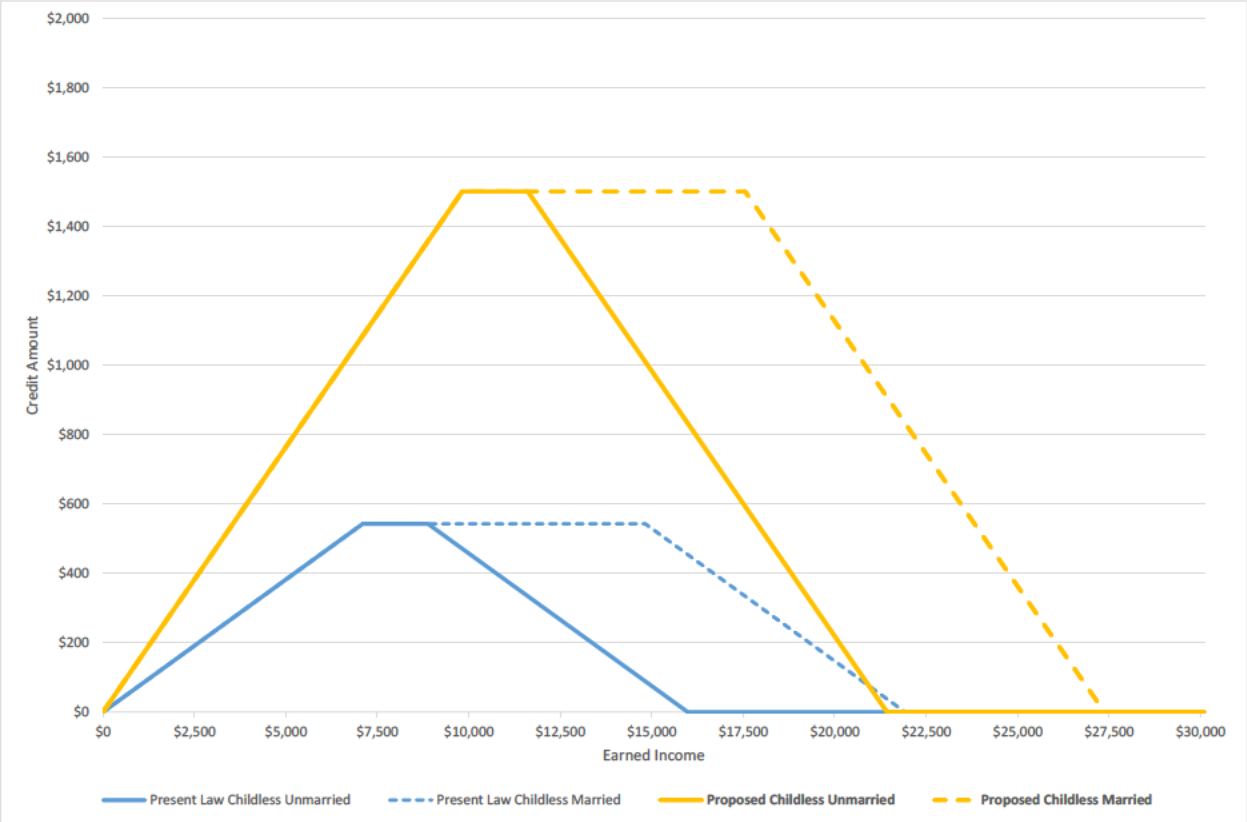
[138] 42 U.S.C. sec. 670-679c.

[139] See section 480(d)(1) of the Higher Education Act of 1965, 20 U.S. Code § 1087vv, for the meaning of terms used in this definition.

[140] Proposed sec. 32(n)(2).

[141] Proposed sec. 32(n)(3), (4).

Figure 3.–Proposed EITC for 2021



Effective Date

The proposal applies to taxable years beginning after December 31, 2020.

B. Taxpayer Eligible for Childless Earned Income Credit in Case of Qualifying Children Who Fail to Meet Certain Identification Requirements

Present Law

Any eligible taxpayer with at least one qualifying child who does not claim the EITC with respect to qualifying children due to failure to meet certain identification requirements with respect to such children (*i.e.*, providing the name, age and SSN of each of such children) may not claim the EITC for taxpayers without qualifying children. [142]

Description of Proposal

The proposal repeals the rule that an eligible taxpayer with at least one qualifying child who does not claim the EITC with respect to one or more qualifying children due to failure to meet the identification requirements—including the valid SSN requirement—with respect to such children may not claim the EITC for taxpayers with no qualifying children. Accordingly, such a taxpayer may claim the EITC for taxpayers with no qualifying children.

Effective Date

The proposal applies to taxable years beginning after December 31, 2020.

[142] Sec. 32(c)(1)(F).

C. Credit Allowed in the Case of Certain Separated Spouses

Present Law

An unmarried individual may claim the EITC if he or she files as a single filer or as a head of household. Married individuals generally may not claim the EITC unless they file jointly.[143] An exception to the joint return filing requirement applies to certain spouses who are separated.[144] Under this exception, a married taxpayer who is separated from his or her spouse for the last six months of the taxable year is not considered to be married (and, accordingly, may file a return as head of household and claim the EITC), provided that the taxpayer maintains a household that constitutes the principal place of abode for a dependent child (including a son, stepson, daughter, stepdaughter, adopted child, or a foster child) for over half the taxable year, and pays over half the cost of maintaining the household in which he or she resides with the child during the year.

Description of Proposal

The proposal changes the exception under which an otherwise married individual may claim the EITC on a separate return. Under the proposal, an otherwise married individual separated from the individual's spouse is treated as not married for purposes of the EITC if a joint return is not filed. The proposal applies only if the taxpayer lives with a qualifying child of the taxpayer for more than one-half of the taxable year and either (1) does not have the same principal place of abode as the individual's spouse during the last six months of the taxable year or (2) has a decree, instrument, or agreement (other than a decree of divorce) described in section 121(d)(3)(C)[145] with respect to the individual's spouse and is not a member of the same household with the individual's spouse by the end of the taxable year.

Effective Date

The proposal applies with respect to taxable years beginning after December 31, 2020.

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[143] Sec. 32(d).

[144] Sec. 7703(b).

[145] Instruments under this provision include (1) a decree of separate maintenance or a written instrument written to such a decree; (2) a written separation agreement; and (3) a decree not described in (1) requiring a spouse to make payments for the support or maintenance of the other spouse.

D. Modification of Disqualified Investment Income Test

Present Law

An individual is not allowed the EITC if the aggregate amount of certain items of the individual's investment income ("disqualified income") for the taxable year exceeds a maximum amount.[146] The maximum amount, which is indexed for inflation, is $3,650 for taxable years beginning in 2021.[147] Disqualified income is the sum of: (1) interest (both taxable and tax exempt); (2) dividends; (3) net rent and royalty income (if greater than zero); (4) capital gains net income; and (5) net passive income that is not self-employment income (if greater than zero).

Description of Proposal

The proposal raises the disqualified income maximum amount to $10,000 for taxable years beginning in 2021. The maximum amount remains indexed for inflation for taxable years beginning after 2021.

Effective Date

The proposal applies to taxable years beginning after December 31, 2020.

[146] Sec. 32(i).

[147] Sec. 32(i), (j). Rev. Proc. 2020-45, 2020-46 I.R.B. 1016.

E. Application of Earned Income Tax Credit in Possessions of the United States

Present Law

The three mirror Code territories (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) have, under their respective mirror Codes, EITCs identical to that in the U.S. Code.[148] Puerto Rico has an EITC under its internal tax laws.[149] American Samoa does not have an EITC under its internal tax laws.[150] Each territory that has an EITC bears the cost of the credit.

Description of Proposal

Under the proposal, the Secretary makes payments to the territories that relate to the cost to each territory of its EITC.

Puerto Rico

If Puerto Rico enacts changes to its EITC which increase the percentage of earned income allowed as a credit in a manner designed to substantially increase workforce participation, the proposal requires the Secretary to pay to Puerto Rico each calendar year, starting in 2021, a specified matching amount. The specified matching amount for a calendar year is the lesser of (1) the cost to Puerto Rico of the EITC for taxable years beginning in or with such calendar year over the base amount of such calendar year or (2) three times the base amount for such calendar year. The base amount is the greater of (1) the cost to Puerto Rico of the EITC for taxable years beginning in or with calendar year 2019 (rounded to the nearest multiple of $1 million) or (2) $200 million. The base amount is indexed for inflation for calendar years after 2021. For example, if Puerto Rico spends $210 million on the EITC in 2019 and projects spending $850 million on the EITC in 2021 (through an appropriate increase in the percentage of earned income allowed as a credit), the base amount is $210 million (the greater of $210 million and $200 million) and the specified matching amount is $630 million (the lesser of (1) $850 million – $210 million = $640 million and (2) 3*$210 million = $630 million). For each calendar year 2021 through 2025, the proposal also directs the Secretary to pay to Puerto Rico the lesser of (1) Puerto Rico's expenditures for education efforts with respect to taxpayers and tax return preparers regarding the EITC or (2) $1 million.

Under the proposal, the Secretary determines the cost of the EITC for Puerto Rico based on the laws of Puerto Rico, but, for purposes of this determination, the cost does not include administrative costs. Puerto Rico must provide an annual report to the Secretary each year that

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[148] But see Northern Mariana Laws, Title 4, Division 1, Chapter 7, § 1709 (imposing an additional tax in the amount of any earned income tax credit); see also *Simpao v. Guam*, No. 04-00049 (D. Guam 2005) (holding that the mirror Code jurisdiction of Guam must either pay an earned income tax credit to its residents or change its tax code to a non-Mirror code).

[149] Sección 1052.01 del Código de Rentas Internas de Puerto Rico de 2011.

[150] Am. Samoa Code Ann. sec. 11.0530.

includes an estimate of the costs of its EITC for that year and a statement of the costs in the preceding year. The Secretary must make the payment described above after it receives the annual report and within a reasonable period of time before Puerto Rico's individual income tax filing due date. The proposal requires the Secretary to make an adjustment to a payment as soon as practicable after it determines that an estimate was inaccurate.

Mirror Code territories

The proposal requires the Secretary to make payments to Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands each calendar year starting in 2021. The amount of the required annual payment to each territory is 75 percent of the cost to that territory of its EITC in that year. For each calendar year 2021 through 2025, the proposal also directs the Secretary to pay to each territory an amount equal to the lesser of (1) the territory's expenditures for education efforts with respect to taxpayers and tax return preparers regarding the EITC or (2) $50,000. The Secretary determines the cost of the credit and provides payments with respect to each possession under rules similar to the rules described above for Puerto Rico. The territories must provide annual reports to the Secretary that include an estimate of the costs of their EITC for the current year and a statement of the costs in the preceding year.

American Samoa

The proposal requires the Secretary to make a payment to American Samoa in each calendar year during which American Samoa has a refundable EITC designed to substantially increase workforce participation. The amount of the annual payment is the lesser of (1) 75 percent of the cost to American Samoa of such credit each year or (2) $12 million, indexed for inflation. For each calendar year 2021 through 2025, the proposal also directs the Secretary to pay the lesser of (1) American Samoa's expenditures in that year for education efforts with respect to taxpayers and tax return preparers regarding the EITC or (2) $50,000. The Secretary must determine the cost of the credit and must provide payments to American Samoa under rules similar to the rules described above for Puerto Rico. American Samoa must provide a report to the Secretary each year that includes an estimate of the costs of its EITC for that year and a statement of the costs in the preceding year.

Effective Date

The proposal is effective on the date of enactment of the bill.

F. Temporary Special Rule for Determining Earned Income for Purposes of the Earned Income Tax Credit

Present Law

Eligible taxpayers may claim an EITC and CTC. The amount of the EITC is based on the taxpayer's earned income.[151] The amount of the additional child tax credit, the refundable component of the CTC, is generally based on the taxpayer's earned income.[152]

In the CAA, Congress enacted a provision that allows a taxpayer to elect to calculate the taxpayer's EITC and additional child tax credit for taxable years beginning in 2020[153] using 2019 rather than 2020 earned income, if the taxpayer's earned income in 2020 is less than in 2019.[154]

Description of Proposal

The proposal permits a taxpayer to elect to calculate the taxpayer's EITC for taxable years beginning in 2021 using 2019 rather than 2020 earned income, if the taxpayer's earned income in 2021 is less than in 2019.[155]

For purposes of the proposal, in the case of a joint return the earned income which is attributable to the taxpayer for 2019 is the sum of the earned income which is attributable to each spouse for 2019.

For administrative purposes, the incorrect use on a return of earned income pursuant to an election under this proposal is treated as a mathematical or clerical error. An election under the proposal is disregarded for purposes of calculating gross income in the election year.

The proposal directs the Secretary to pay to the mirror Code territories (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) an amount equal

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[151] Sec. 32.

[152] Sec. 24(d).

[153] The provision applies for taxable years beginning in 2021.

[154] Pub. L. No. 116-260, sec. 211. In addition, Congress has at times, in response to natural disasters, allowed certain taxpayers whose principal place of abode was in the disaster zone or disaster area to elect to calculate their EITC and additional child tax credit for the taxable year on the basis of their earned income from the prior taxable year. See, e.g., Pub. L. No. 116-94, sec. 204(c), December 20, 2019 (certain disasters occurring in 2018 and 2019); Pub. L. No. 115-123, sec. 20104(c), February 9, 2018 (certain California wildfires); Pub. L. No. 115-64, sec. 504(c), September 29, 2017 (hurricanes Harvey, Irma, Maria), former sec. 1400S(d) (hurricanes Katrina, Rita, and Wilma), repealed by Pub. L. No. 115-141, March 23, 2018.

[155] The proposal does not allow taxpayers to make an election with respect to the additional child tax credit. However, section 9611 of the bill, discussed above, makes the child tax credit fully refundable for 2021, without regard to earned income.

to the loss in revenue by reason of the application of the proposal. This amount is determined by the Secretary based on information provided by the government of the territory.

The proposal directs the Secretary to pay to the non-mirror Code territories (Puerto Rico and American Samoa) an amount estimated by the Secretary as being equal to the aggregate benefits that would have been provided to the residents of the territory from the proposal if a mirror Code tax system had been in effect in the territory. The proposal prohibits the Secretary from making these payments unless the territory has a plan approved by the Secretary to promptly distribute the payments to its residents.

Effective Date

The proposal is effective on the date of enactment of the bill.

PART IV—DEPENDENT CARE ASSISTANCE

A. Refundability and Enhancement of Child and Dependent Care Tax Credit

Present Law

A taxpayer who maintains a household that includes one or more qualifying individuals may claim a nonrefundable credit against income tax liability for up to 35 percent of a limited amount of employment-related child and dependent care expenses.[156] For this purpose, employment-related child and dependent care expenses are expenses for household services and expenses for the care of a qualifying individual.[157] These expenses must be incurred to enable the taxpayer to be gainfully employed.

A taxpayer's employment-related child and dependent care expenses for which the credit is allowed are limited to $3,000 if the taxpayer has one qualifying individual or $6,000 if the taxpayer has two or more qualifying individuals.[158] Thus, the maximum credit is $1,050 if there is one qualifying individual and $2,100 if there are two or more qualifying individuals. Employment-related child and dependent care expenses generally cannot exceed the taxpayer's earned income.[159]

The applicable dollar limit is reduced by any amount excluded from income under an employer-provided dependent care assistance program under section 129. The 35-percent credit rate is reduced, but not below 20 percent, by one percentage point for each $2,000 (or fraction thereof) of AGI above $15,000.[160] Thus, for taxpayers with AGI above $43,000, the credit rate is 20 percent. The phaseout threshold and the amount of expenses eligible for the credit are not indexed for inflation.

Generally, a qualifying individual is (1) a dependent of the taxpayer under section 152 who is under the age of 13, or (2) a dependent or spouse of the taxpayer if the dependent or spouse is physically or mentally incapable of caring for himself or herself and shares the same principal place of abode with the taxpayer for over one half the year.[161] Married taxpayers must file a joint return in order to claim the credit.

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[156] Sec. 21.

[157] Sec. 21(b)(2). Expenses do not include amounts paid for a camp where a qualifying individual stays overnight.

[158] Sec. 21(c).

[159] Sec. 21(d). Earned income has the same definition as for purposes of the EITC. Treas. Reg. sec. 1.21-2(b)(3).

[160] Sec. 21(a).

[161] Sec. 21(b)(1).

Description of Proposal

The proposal temporarily expands the child and dependent care tax credit for 2021.[162] First, the proposal makes the credit refundable for a taxpayer who has a principal place of abode in the United States for more than one half of the taxable year.[163] In the case of a joint return, refundability is allowed if at least one spouse satisfies the principal place of abode requirement. Principal place of abode is determined as provided in section 32.[164]

In addition, the proposal increases the maximum credit rate to 50 percent and increases the amount at which the maximum credit rate begins to phase down to $125,000 (from $15,000).[165] The limitation on employment-related child and dependent care expenses is increased to $8,000 (from $3,000) in the case of one qualifying individual and to $16,000 (from $6,000) if there are two or more qualifying individuals.[166] Thus, the maximum credit is $4,000 if there is one qualifying individual and $8,000 if there are two or more qualifying individuals.

The proposal applies a two-part phaseout to the 50-percent credit rate.[167] Under the first part, the 50-percent credit rate is reduced, but not below 20 percent, by one percentage point for each $2,000 (or fraction thereof) of AGI above $125,000. Under the second part, the 20-percent credit rate is reduced, but not below zero, by one percentage point for each $2,000 (or fraction thereof) of AGI above $400,000. Thus, for taxpayers with AGI between $183,000 and $400,000, the credit rate is 20 percent and, for taxpayers with AGI above $438,000, the credit is fully phased out. Figure 4 illustrates the credit amount by AGI for a taxpayer with one qualifying individual and for a taxpayer with two or more qualifying individuals, in each case assuming that the taxpayer has the maximum amount of employment-related child and dependent care expenses ($8,000 and $16,000, respectively).[168]

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[162] Proposed sec. 21(g). The proposal applies for taxable years beginning in 2021.

[163] Proposed sec. 21(g)(1).

[164] Thus, a member of the Armed Forces of the United States stationed outside the United States while serving on extended active duty is treated as having a principal place of abode in the United States.

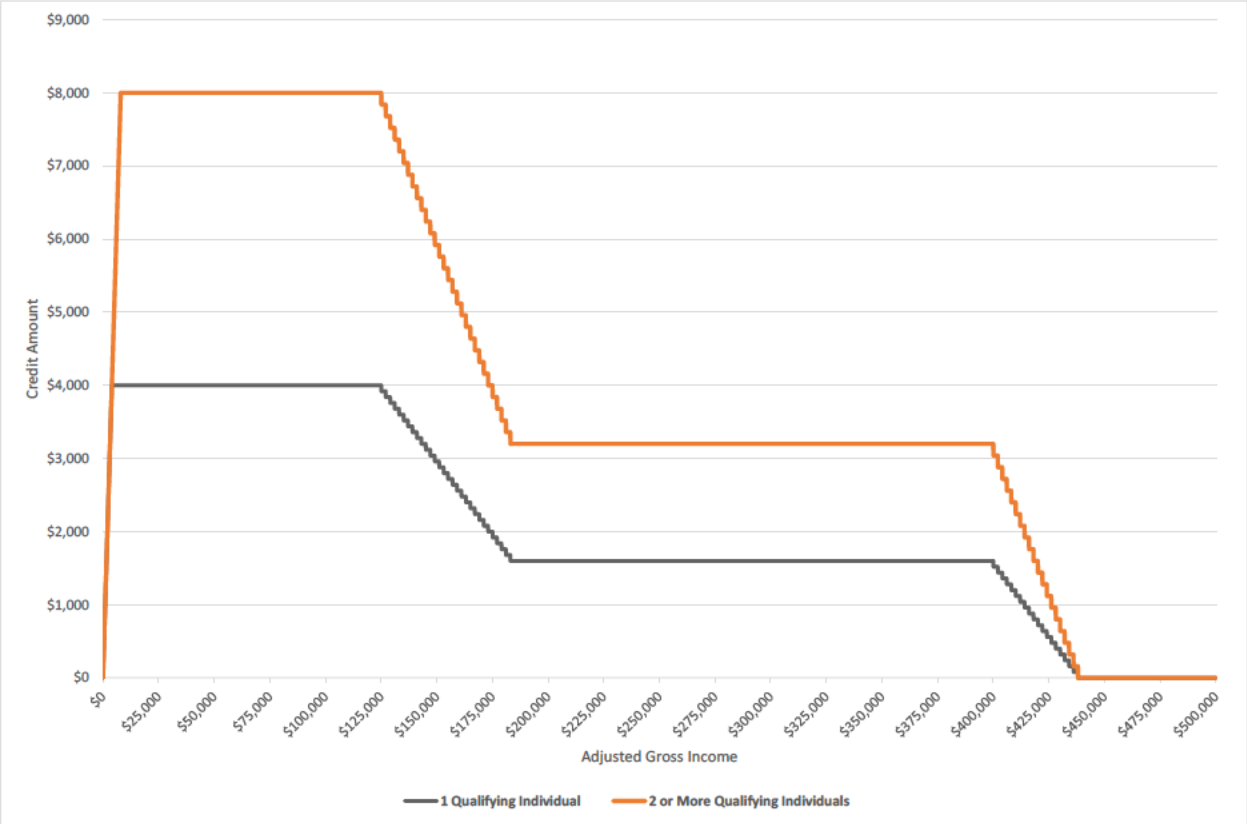
[165] Proposed sec. 21(g)(3).

[166] Proposed sec. 21(g)(2).

[167] Proposed sec. 21(g)(4).

[168] Figure assumes AGI and earned income are equal for these taxpayers.

Figure 4.–Proposed Child and Dependent Care Tax Credit for 2021 by AGI for Selected Taxpayers



Treatment of the U.S. territories

Under the proposal, the Secretary is directed to make payments for 2021[169] to each mirror Code territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) that relate to the cost to that territory of the child and dependent care tax credit. The Secretary is further directed to make similar payments for 2021 to each non-mirror Code territory (American Samoa and Puerto Rico).

The proposal directs the Secretary to pay to each mirror Code territory amounts equal to the aggregate amount of the credits allowable by reason of the application of the proposal. This amount is determined by the Secretary based on information provided by the government of the territory.[170]

The proposal directs the Secretary to pay to each non-mirror Code territories amounts estimated by the Secretary as being equal to the aggregate benefits that would have been provided to the residents of the territory from the proposal if a mirror Code tax system had been

[169] The proposal applies for taxable years beginning in 2021.

[170] Prop. Sec. 21(h)(1).

in effect in the territory.[171] The proposal prohibits the Secretary from making these payments unless the territory has a plan approved by the Secretary to promptly distribute the payments to its residents.

No credit against U.S. income taxes is permitted under the proposal for any person to whom a credit is allowed against territory income taxes as a result of the proposal (*i.e.*., under that territory's mirror Code).[172] Similarly, no credit against U.S. income taxes is permitted for any person who is eligible for a payment under a non-mirror Code territory's plan for distributing to its residents the payment described above from the Secretary.

Effective Date

The proposal applies to taxable years beginning after December 31, 2020.

[171] Prop. Sec. 21(h)(2).

[172] Prop. Sec. 21(h)(3).

B. Employer-Provided Dependent Care Assistance

Present Law

An annual exclusion[173] from the gross income of an employee is allowed for employer-provided dependent care assistance in an amount up to $5,000 ($2,500 in the case of a separate return by a married individual) if such assistance is provided pursuant to a "dependent care assistance program." Among other requirements, a dependent care assistance program[174] must be a separate written plan of an employer for the exclusive benefit of the employer's employees to provide such employees with dependent care assistance that does not discriminate in favor of highly compensated employees or their dependents as to contributions, benefits, and eligibility.[175]

The amount excludable for any taxable year cannot exceed the earned income of the employee or, if the employee is married, the lesser of the earned income of the employee or the earned income of the employee's spouse.[176]

Amounts attributable to dependent care assistance that are excludible from gross income are also excludible from wages for employment tax purposes.[177]

A dependent care assistance program may be structured to allow contributions on a pre-tax basis through a cafeteria plan.[178] A cafeteria plan is a written plan maintained by an employer whereby all participants are employees who may choose among two or more benefits including qualified benefits and cash.[179] Qualified benefits provided under a cafeteria plan include dependent care assistance.

Description of Proposal

The proposal temporarily increases, for any taxable year beginning in 2021, the amount of the exclusion for employer-provided dependent care assistance. The provision increases such

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[173] Sec. 129(a).

[174] Sec. 129(d).

[175] Sec. 129(d)(2) and (3). The exclusion applies if the contributions or benefits under the program do not discriminate in favor of highly compensated employees, within the meaning of section 414(q), or their dependents, and the program benefits employees under a classification established by the employer found not to be discriminatory in favor or such highly compensated employees or their dependents.

[176] Sec. 129(b). The provisions of section 21(d)(2) apply in determining the earned income of a spouse who is a student or incapable of caring for himself. Sec. 129(b)(2).

[177] Secs. 3401(b)(18), 3121(a)(18), 3306(b)(14).

[178] Sec. 125.

[179] Sec. 125(d).

amount from $5,000 to $10,500 (and half of such dollar amount in the case of a separate return by a married individual).

The proposal also provides that a plan that otherwise satisfies the requirements of a dependent care assistance program and cafeteria plan shall not fail to meet those requirements if the plan is amended to satisfy this proposal and the amendment is retroactive if the following are satisfied: (1) the amendment is adopted no later than the last day of the plan year in which the amendment is effective; and (2) the plan is operated consistently with the amendment terms beginning on the effective date of the amendment and ending on the date the amendment is adopted.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2020.

TITLE V—CREDITS FOR PAID SICK AND FAMILY LEAVE

A. Extension of Credits and Other Modifications

Present Law

The Families First Coronavirus Response Act ("FFCRA")[180] required certain employers with fewer than 500 employees to provide paid sick and expanded family and medical leave to employees unable to work or telework for specified reasons related to COVID-19. The paid sick leave requirements in the Emergency Paid Sick Leave Act,[181] and the expanded family and medical leave requirements in the Emergency Family and Medical Leave Expansion Act,[182] expired on December 31, 2020.

Paid sick leave and paid expanded family and medical leave: employees

An employer is allowed a credit against the Old-Age, Survivors and Disability Insurance ("OASDI") tax[183] or the equivalent amount of tax under the Railroad Retirement Tax Act ("RRTA") imposed on the employer for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages and qualified family leave wages paid by the employer with respect to that calendar quarter, subject to limitations.[184] Qualified sick leave wages are defined as wages[185] and compensation[186] paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act. Qualified sick leave wages also generally include wages and compensation that would have been required to be paid if the Emergency Paid Sick Leave Act had been effective until March 31, 2021.[187]

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[180] Pub. .L. No. 116-127, 134 Stat. 178 (March 18, 2020).

[181] Division E, FFCRA, Pub. .L. No. 116-127.

[182] Division C, FFCRA, Pub. .L. No. 116-127.

[183] The Federal Insurance Contributions Act ("FICA") imposes taxes on "wages," as defined in Section 3121(a), with respect to "employment," as defined in Section 3121(b). The term wages is defined for FICA purposes as all remuneration for employment, with certain specific exceptions. Employment is defined as any service, of whatever nature, performed by an employee for the person employing him, with certain specific exceptions. FICA taxes consist of the OASDI tax and the HI tax. HI tax includes an employer's share imposed on wages at a rate of 1.45 percent under Section 3111(b). The employee's share of HI tax is imposed on wages at a rate of 1.45 percent under Section 3101(b). Unlike OASDI, there is no contribution limit on wages subject to HI tax.

[184] IRS Notice 2020-21.

[185] Sec. 3121(a).

[186] Sec. 3231(e).

[187] Sec. 7001 of Pub. L. No. 116-127, as amended by the CAA, Pub. L. No. 116-260, sec. 286.

Qualified family leave wages are wages[188] and compensation[189] paid by an employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act.[190] Qualified family leave wages also generally include wages and compensation that would have been required to be paid if the Emergency Family and Medical Leave Expansion Act had been effective until March 31, 2021.[191] In addition to qualified sick leave wages and qualified family leave wages, the credit could be increased by certain health plan expenses of the employer.

Amount of credit for paid sick leave

Certain employers must provide an employee with up to 80 hours of paid sick time to the extent that (1) the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (3) the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; (4) the employee is caring for an individual who is subject to a quarantine or isolation order or has been advised by a health care provider to self-quarantine; (5) the employee is caring for the employee's son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID-19 precautions; or (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.[192]

The amount of qualified sick leave wages that may be taken into account for an employee for purposes of the credit is limited based on the circumstances under which qualified sick leave wages are paid. In the case of paid sick time qualifying under categories (1), (2), or (3) above, the amount of qualified sick leave wages taken into account for purposes of the credit may not exceed $511 for any day (or portion thereof) when the individual is paid such sick time. In the case of paid sick time qualifying under categories (4), (5), or (6) above, the amount of qualified sick leave wages taken into account may not exceed $200 for any day (or portion thereof) for which the individual is paid such sick time. In addition, the aggregate number of days that may be taken into account with respect to an individual under all six circumstances may not exceed the excess (if any) of 10 days over the aggregate number of days taken into account for all preceding calendar quarters.

Amount of credit for expanded family and medical leave

Certain employers must provide public health emergency leave to employees under the Family and Medical Leave Act of 1993 ("FMLA"), as amended by the Emergency Family and

[188] Sec. 3121(a).

[189] Sec. 3231(e).

[190] See IRS Notice 2020-54.

[191] Sec. 7001 of Pub. L. No. 116-127, as amended by the CAA, Pub. L. No. 116-260, sec. 286.

[192] Sec. 5102(a), Division E, FFCRA, Pub. L. No. 116-127.

Medical Leave Expansion Act.[193] This requirement generally applies when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency. An employer with employees who are health care providers or emergency responders may elect to exclude such employees from this requirement to provide paid family leave. A public health emergency for this purpose is an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

The first 10 days of public health emergency leave required under the Emergency Family and Medical Leave Expansion Act may consist of unpaid leave, after which paid leave is required for ten weeks until December 31, 2020. The amount of required paid leave is calculated based on: (a) an amount that is not less than two-thirds of an employee's regular rate of pay; and (b) the number of hours the employee would otherwise be normally scheduled to work. The paid leave mandated by the Emergency Family and Medical Leave Expansion Act does not exceed $200 per day and $10,000 in the aggregate.

Employers are allowed a credit against OASDI taxes or the equivalent amount of RRTA taxes in an amount equal to 100 percent of qualified family leave wages paid by the employer during the quarter. Consistent with the mandate, the maximum amount of the qualified family leave wages eligible for the credit is $200 for any day (or portion thereof) for which the employee is paid qualified family leave wages, and in the aggregate with respect to all quarters, $10,000.[194] Employers are not allowed the credit in respect of unpaid leave.

Additional rules

The credit allowed for paid sick or paid family leave is increased by the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages for which the credit is allowed. Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain a group health plan,[195] but only to the extent such amounts are excluded from the employees' income as coverage under an accident or health plan.[196] Qualified health plan expenses are allocated to qualified sick leave wages in such manner as the Secretary of Treasury (or the Secretary's delegate) may prescribe.[197] Except as otherwise provided by the Secretary, such allocations are treated as properly made if they are pro rata among covered

[193] Sec. 3102, Division C, FFCRA, Pub. L. No. 116-127.

[194] Sec. 287 of the CAA, Pub. L. No. 116-260, provides that self-employed individuals may make an election to use prior year net earnings from self-employment in determining the average daily self-employment income for purposes of credits for paid sick and family leave.

[195] Sec. 5000(b)(1).

[196] Sec. 106(a).

[197] See IRS FAQs, https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-amount-of-allocable-qualified-health-plan-expenses-faqs#determining-amount-allocable-qualified-health-plan-expenses (Jan 7, 2021).

employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

The credit allowed may not exceed the OASDI tax or equivalent amount of RRTA tax imposed on the employer, reduced by any credits allowed for the employment of qualified veterans[198] and research expenditures of qualified small businesses[199] for that calendar quarter on the wages paid with respect to all the employer's employees. However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.[200]

If a taxpayer claims a credit, the amount so claimed is included in gross income. Thus, the credit is not taken into account for purposes of determining any amount allowable as a payroll tax deduction or deduction for qualified sick leave wages or qualified family leave wages (or any amount capitalizable to basis).

Any qualified sick leave wages taken into account for purposes of a credit are not taken into account for purposes of determining the section 45S general business credit for employer paid family and medical leave. Thus, the employer may not claim a credit under section 45S with respect to the qualified sick leave wages or qualified family leave wages paid but may be allowed a credit under section 45S with respect to any additional wages paid.

An employer may elect not to claim a tax credit for a calendar quarter for qualified sick leave wages or qualified family leave wages. Further, the credit allowed does not apply to the government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of those entities. Employers in the U.S. territories may claim the credit by filing their quarterly Federal employment tax returns.

Any wages or compensation required to be paid to employees pursuant to the Emergency Paid Sick Leave Act or Emergency Family and Medical Leave Expansion Act before December 31, 2020, are not considered wages for purposes of OASDI tax or compensation for purposes of RRTA tax. In addition, or, in the case of wages or compensation paid after December, 31, 2020 and before April 1, 2021, any wages or compensation with respect to which a credit is allowed, are not considered wages for purposes of OASDI tax or compensation for purposes of RRTA tax. As a result, no taxes are collected on these amounts from employers or employees.[201]

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[198] Sec. 3111(e).

[199] Sec. 3111(f).

[200] The excess is treated as an overpayment and refunded under sections 6402(a) and 6413(b). In addition, any amount that is due to an employer is treated in the same manner as a refund due from a credit provision. 31 U.S.C. 1324. Thus, amounts are appropriated to the Secretary of Treasury for refunding such excess amounts.

[201] An amount equal to the reduction in revenues to the Treasury by reason of the FFCRA is appropriated to the OASDI Trust Funds and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974.[201] This amount is transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers that would have occurred to the OASDI Trust Funds or Social Security Equivalent Benefit Account had this provision not been enacted.

Paid sick leave and expanded family and medical leave: self-employed individuals

An eligible self-employed individual may claim an income tax credit for any taxable year for a qualified sick leave equivalent amount or qualified family leave equivalent amount. An eligible self-employed individual is defined as an individual who regularly carries on any trade or business[202] and who would be entitled to receive paid leave during the taxable year under the Emergency Paid Sick Leave Act or Emergency Family and Medical Leave Expansion Act, if the individual were an employee of an employer (other than himself or herself) that would be subject to the requirements of the Acts and as if the Acts were in effect through March 31, 2021.

The qualified sick leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days during the taxable year that the self-employed individual cannot perform services for which that individual would have been entitled to sick leave pursuant to the Emergency Paid Sick Leave Act[203] (if the individual were employed by an employer), multiplied by the lesser of two amounts: (1) $511 in the case of paid sick time described in categories (1), (2), or (3) above with respect to section 5102(a) of the Emergency Paid Sick Leave Act ($200 in the case of paid sick time described in categories (4), (5), or (6) above); or (2) 100 percent of the average daily self-employment income of the individual for the taxable year in the case of any day of paid sick time described in categories (1), (2), or (3) above (67 percent in the case of paid sick time described in categories (4), (5), or (6) above).

The number of days taken into account in determining the qualified sick leave equivalent amount may not exceed, with respect to any taxable year, 10 days, taking into account any days taken in all preceding taxable years. The individual's average daily self-employment income under the provision is an amount equal to the net earnings from self-employment for the taxable year divided by 260.

If an eligible self-employed individual receives qualified sick leave wages,[204] the individual's qualified sick leave equivalent amount determined under the provision is reduced (but not below zero) to the extent that the sum of the qualified sick leave equivalent amount and the qualified sick leave wages received exceeds $2,000 ($5,110 in the case of any day any portion of which is paid sick time described in category (1), (2), or (3) above.

The qualified family leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days (up to 50) during the taxable year that the self-employed individual cannot perform services for which that individual would be entitled to paid leave pursuant to the Emergency Family and Medical Leave Expansion Act[205] (if the individual were employed by an employer), multiplied by the lesser of two amounts: (1) 67 percent of the average daily self-employment income of the individual for the taxable year, or (2)

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[202] Within the meaning of sec. 1402.

[203] Division E and C, FFCRA, Pub. L. No. 116-127.

[204] As defined by sec. 7001(c) of FFCRA, Pub. L. No. 116-127.

[205] Division C, FFCRA, Pub. L. No. 116-127.

$200. The individual's average daily self-employment income under the provision is an amount equal to the individual's net earnings from self-employment for the year divided by 260.

The credit allowed for the qualified sick leave equivalent amount or qualified family leave equivalent amount is applied against federal income taxes and is a refundable credit.[206]

If an eligible self-employed individual receives qualified family leave wages,[207] the individual's qualified family leave equivalent amount determined under the provision is reduced (but not below zero) to the extent that the sum of the qualified family leave equivalent amount and the qualified family leave wages received exceeds $10,000.

Application of credit in certain territories

The Secretary of Treasury is directed to make payments to each territory with a mirror Code tax system that relate to the cost (if any) of each territory's credits for sick leave or expanded family and medical leave for certain self-employed individuals. The Secretary is further directed to make similar payments to each non-mirror Code territory.

With respect to mirror Code territories, the Secretary is required to make payments equal to the loss in revenue by reason of the application of the credit for sick leave or expanded family and medical leave for certain self-employed individuals to the territory's mirror Code. This amount is determined by the Secretary based on information provided by the governments of the respective territories.

With respect to Puerto Rico and American Samoa (non-mirror Code territories), the Secretary is directed to make payments in an amount estimated by the Secretary as being equal to the aggregate benefits that would have been provided to the residents of each territory from the credit for sick leave or expanded family and medical leave for certain self-employed individuals if a mirror Code tax system had been in effect in such territory. The Secretary must not make these payments unless the territory has a plan approved by the Secretary to promptly distribute the payments to its residents.

The Secretary of Treasury is directed to prescribe such regulations or other guidance as may be necessary to carry out the purposes of the provision, including (1) to effectuate the purposes of this Act, and (2) to minimize compliance and record-keeping burdens under the provision.

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[206] Any refund due to an individual is treated in the same manner as a refund due from a credit provision. 31 U.S.C. sec. 1324. Thus, amounts are appropriated to the Secretary (or the Secretary's delegate) for refunding such amounts.

[207] As defined by sec. 7003(c) of the FFCRA, Pub. L. No. 116-127.

Description of Proposal

Extension of credits

The proposal extends the credit for qualified sick leave wages, qualified sick leave equivalent amount, qualified family leave wages, and qualified family leave equivalent amount by two calendar quarters until October 1, 2021.

Increase in limitations on credits for paid family leave

The proposal increases the amount of qualified family leave wages that may be used for purposes of calculating a credit. The amount of qualified leave wages taken into account with respect to an individual may not exceed $200 for any day for which the individual is paid qualified family leave wages, or $12,000 (increased from $10,000 under present law) in the aggregate with respect to all calendar quarters.

As a conforming amendment, the proposal addresses the denial of double benefit for self-employed individuals. In the case of an individual who receives wages[208] or compensation[209] paid by an employer consistent with the terms of the Emergency Family and Medical Leave Expansion Act, the qualified family leave equivalent amount is reduced (but not below zero) to the extent the sum of the amount and qualified leave wages exceeds $12,000 (increased from $10,000 under present law).

The proposal also increases the qualified family leave equivalent amount for self-employed individuals. The term "qualified family leave equivalent amount" with respect to a self-employed individual is an amount equal to the product of: (1) the number of days not to exceed 60 (increased from 50 under present law) during the taxable year that the individual is unable to perform services in any trade or business referred to in section 1402 for a reason with respect to which such individual would be entitled to receive paid leave, multiplied by; (2) the lesser of 67 percent of the average daily self-employment income of the individual for the taxable year, or $200.

The proposal amends the definition of qualified family leave wages by adding that, in part, such wages are those which would be required to be paid pursuant to FMLA, as amended by the Emergency Family and Medical Leave Expansion Act, if it were applied by substituting September 30, 2021 for December 31, 2020 and if the maximum wages were applied by substituting $12,000 for $10,000. In addition, the proposal amends the definition of qualified family leave wages by providing that such wages include those which would be required to be paid for any reason described in the six categories previously outlined that apply for purposes of eligibility for paid family leave.[210]

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[208] Sec. 3121(a).

[209] Sec. 3231(e).

[210] Section 5102(a) of Division E, FFCRA, Pub. L. No. 116-127.

Paid leave credits allowed for COVID-19 vaccination

The proposal expands the definition of qualified sick leave wages and qualified family leave wages to include time the employee is unable to work (or telework) because the employee is obtaining immunization related to COVID-19 or is recovering from any injury, disability, illness, or condition related to such immunization.

Application of non-discrimination rules

The proposal adds a restriction that no credit is allowed for qualified sick leave wages or qualified family leave wages if, in the provision of qualified sick leave wages or qualified family leave wages, the employer discriminates in favor of highly compensated employees,[211] full-time employees, or employees on the basis of employment tenure with the employer.

Reset of limitation on paid sick leave

The proposal amends the overall limitation on the number of days that may be taken into account for purposes of the payroll credit for paid sick leave. For calendar quarters beginning after March 31, 2021, the aggregate number of days that may be taken into account for paid sick leave may not exceed the excess (if any) of 10 over the aggregate number of days so taken into account in the preceding calendar quarters in such calendar year (other than the first quarter of calendar year 2021). Before the second quarter of 2021 (starting April 1, 2021), the aggregate number of days taken into account for any calendar quarter may not exceed the excess (if any) of 10 over the aggregate number of days so taken into account for all preceding calendar quarters. The determination of the amount of paid sick time paid to an employee and remuneration counted as qualified sick leave wages are determined on a calendar year basis.[212] The same rule applies to paid sick leave for self-employed individuals and the number of days that may be take into account for purposes of calculating the qualified sick leave equivalent amount. The proposal also coordinates these changes with Divisions C and E of the FFCRA.

Credits allowed against employer Hospital Insurance ("HI") tax

The proposal replaces the credit against OASDI tax and the equivalent amount of RRTA tax with a credit against HI tax and the equivalent amount of RRTA tax.[213] The refundable credit against HI tax and the equivalent amount of RRTA tax applies to qualified sick leave

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[211] Sec. 414(q).

[212] Section 5102 of the FFCRA provides that the amount of paid sick time to which an employee is entitled shall be 80 hours for full-time employees. For part-time employees, the maximum amount of paid sick leave is number of hours equal to the number of hours that such employee works, on average, over a two-week period.

[213] The proposal does not include express language that "holds harmless" the Federal Hospital Insurance Trust Fund from any effects of the proposal. Under current law, amounts are appropriated and transferred to the trust fund include amounts equivalent to 100% of the taxes imposed by section 3111(b) with respect to applicable wages reported by the Secretary, determined by applying the rate to the reported wages. Sec. 1807 of the Social Security Act, 42 U.S.C. sec. 1395i. Because the proposal does not affect either the rate under section 3111(b) or applicable wages, but only provides a credit against the amount of tax, the proposal does not affect the trust fund, and no hold harmless language is needed.

wages and qualified family leave wages paid after March 31, 2021 and before October 1, 2021, with respect to which a credit is allowed. The credit for the qualified sick leave equivalent amount and qualified family leave equivalent amount is also extended to October 1, 2021.

Application of credits to certain governmental employers

The proposal provides that a credit is not allowed for paid sick leave or paid family leave for the U.S. government or any agency or instrumentality thereof with the exception of an organization described in section 501(c)(1) of the Code that is exempt from tax under section 501(a) of the Code. State governments and political subdivisions thereof are now eligible for the credit, whereas such entities were previously ineligible.

Gross up of credit in lieu of exclusion from tax

The proposal increases the credits for qualified sick leave wages and qualified family leave wages by the amount of the OASDI and HI taxes, and the equivalent portions of RRTA tax, respectively, on qualified sick leave wages and qualified family leave wages, for which a credit is allowed. The denial of a double benefit also applies to the increase in the amount of credits as described in the preceding sentence. Under this rule, the gross income of the employer, for purposes of chapter 1 of the Code, is increased by the amount of the credit. Any wages taken into account in determining the credits for paid sick or paid family leave shall not be taken into account for purposes of the determining the employer's general business credit for paid family leave.[214]

Effective Date

The proposal is generally effective for amounts paid after March 31, 2021. The proposal is effective for purposes of the paid sick leave credit for self-employed individuals for taxable years beginning after December 31, 2020.

[214] Sec. 45S.

PART VI—EMPLOYEE RETENTION CREDIT

A. Extension of the Employee Retention Credit

Present Law

In general

Federal employment taxes and OASDI and HI Trust Funds

Federal employment taxes are imposed on wages paid to employees with respect to employment and include taxes levied under the Federal Insurance Contributions Act ("FICA"), the Federal Unemployment Tax Act ("FUTA"), and Federal income tax.[215] In addition, tier 1 of the RRTA imposes a tax on compensation paid to railroad employees and representatives.[216]

FICA taxes are comprised of two components: OASDI taxes and HI taxes. With respect to OASDI taxes, the applicable rate is 12.4 percent with half of such rate (6.2 percent) imposed on the employee and the remainder (6.2 percent) imposed on the employer.[217] The tax is assessed on covered wages up to the OASDI wage base ($137,700 in 2020). Generally, the OASDI wage base rises based on increases in the national average wage index.[218]

The HI tax has two components: Medicare tax and Additional Medicare tax. Medicare tax is imposed on wages, as defined in section 3121(a), with respect to employment, as defined in section 3121(b), at a rate of 1.45 percent for the employer.[219] An equivalent 1.45 percent is withheld from employee wages.[220] Additional Medicare taxes are withheld from employee wages in excess of $200,000 at a rate of 0.9 percent.[221] There is no equivalent employer's share of Additional Medicare taxes. For purposes of this description, HI tax does not include Additional Medicare tax.

The employee portion of OASDI taxes must be withheld and remitted to the Federal government by the employer during the calendar quarter, as required by the applicable deposit rules.[222] The employer is liable for the employee portion of OASDI taxes, in addition to its own

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[215] Secs. 3101, 3111, 3301, and 3401.

[216] Sec. 3221.

[217] Sec. 3101.

[218] Sec. 230 of the Social Security Act (42 U.S.C. sec. 430).

[219] Sec. 3111(b)(1).

[220] Sec. 3101(b)(1).

[221] Sec. 3101(b)(2).

[222] Sec. 3102(a) and Treas. Reg. sec. 31.3121(a)-2. See also sec. 6302.

share, whether or not the employer withholds the amount from the employee's wages.[223] OASDI and HI taxes are generally allocated by statute among separate trust funds: the OASDI Trust Funds, Medicare's Hospital Insurance Trust Fund, and Supplementary Medical Insurance Trust Fund.[224]

Generally, the term "wages" for OASDI tax purposes means all remuneration for "employment," including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain exceptions.[225] The name given to the remuneration for employment is immaterial. OASDI wages includes salaries, vacation allowances, bonuses, deferred compensation, commissions, and fringe benefits. The term "employment" is generally defined for FICA tax purposes as any service, of whatever nature, performed by an employee for the person employing him or her, with certain specific exceptions.

Railroad retirement program

Railroad workers do not participate in the OASDI system. Compensation subject to RRTA tax is exempt from FICA taxes.[226] The RRTA imposes a tax on compensation paid by covered employers to employees in recognition for the performance of services.[227] The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers, with certain exceptions.[228] Employees whose compensation is subject to RRTA tax are generally eligible for railroad retirement benefits under a two-tier structure. Rail employees and employers pay tier 1 taxes at the same rate as other employment taxes.[229] In addition, rail employees and employers both pay tier 2 taxes, which are used to finance railroad retirement benefits above Social Security benefit levels.[230] Tier 2 benefits are similar to a private defined benefit pension.

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[223] Sec. 3102(b).

[224] Secs. 201 and 1817 of the Social Security Act, Pub. L. No. 74-271 as amended (42 U.S.C. secs. 401 and 1395i).

[225] Sec. 3121(a).

[226] Sec. 3121(b)(9).

[227] Secs. 3201 through 3233. Instead of FICA taxes, railroad employers and employees are subject, under the RRTA, to taxes equivalent to the OASDI and HI taxes under FICA. Under the RRTA, employers and employees are also subject to an additional tax, referred to as the "tier 2" tax, on compensation up to a certain amount.

[228] Sec. 3231(e).

[229] 7.65 percent, consisting of 6.2 percent for retirement on earnings up to $137,700 in 2020, and 1.45 percent for Medicare hospital insurance on all earnings. An additional 0.9 percent in Medicare taxes are withheld from employees on earnings above $200,000.

[230] In 2020, the tier 2 tax rate on earnings up to $102,300 is 4.9 percent for employees and 13.1 percent for employers.

Employment tax in the U.S. territories

Employers and employees in the U.S. territories are generally subject to FICA payroll tax obligations.[231] In contrast, employers and employees in the territories are generally not subject to withholding at the source for Federal income tax, although they are subject to withholding of local taxes.[232] These payroll obligations of the employers are generally applicable to Federal agencies with personnel in the territory. Employers in the territories file quarterly tax returns with the Federal government to report and pay FICA taxes for employees in the respective territories.

Employee retention credits against income taxes

Congress has at times enacted employee retention credits against employer income tax in response to natural disasters.[233] These enactments generally provide a credit of 40 percent of the wages (up to a maximum of $6,000 in wages per employee) paid by certain employers harmed by the applicable disaster to employees employed in the applicable disaster zone during the period when the employer's business was inoperable due to the applicable disaster. The credits are treated as a current year business credit under section 38(b) and therefore subject to the Federal income tax liability limitations of section 38(c). Rules similar to those in sections 51(i)(1), 52, and 280C(a) apply to the credits.[234]

Employee retention tax credit included in the CARES Act

In general

Section 2301 of the CARES Act, Public Law 116-136, allows an eligible employer to claim a credit against applicable employment taxes for each calendar quarter in an amount equal to 50 percent of the qualified wages with respect to each employee of such employer for such calendar quarter. Applicable employment taxes are OASDI tax[235] imposed on the employer and

[231] See sec. 3121(b) and (e) and Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Sec. 601(c). The U.S. territories referred to in this document are American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.

[232] Under section 3401(a)(8), most wages paid to U.S. persons for services performed in one of the territories are exempt from Federal income tax withholding if the payments are subject to withholding by the territory, or, in the case of Puerto Rico, the payee is a bona fide resident of the territory for the full year.

[233] See, *e.g.*, sec. 203 of Pub. L. No. 116-94, Div. Q (providing a credit in response to certain major disasters declared in 2018 and 2019); sec. 20103 of Pub. L. No. 115-123 (providing a credit in response to 2017 California wildfires); sec. 503 of Pub. L. No. 115-63, as amended by sec. 20201(b) of Pub. L. No. 115-123 (providing a credit in response to Hurricanes Harvey, Irma, and Maria); and former sec. 1400R (providing a credit in response to Hurricanes Katrina, Rita, and Wilma).

[234] For a more detailed description of the most recently enacted employee retention credit (related to certain major disasters declared in 2018 and 2019), see Joint Committee on Taxation, *Description of H.R. 3301, The Taxpayer Certainty and Disaster Tax Relief Act of 2019* (JCX-30-19), June 2019 pp. 80-81.

[235] Sec. 3111(a).

the equivalent rate for RRTA tax[236] imposed on the employer. The amount of qualified wages with respect to an employee which may be taken into account in calculating the credit for all calendar quarters may not exceed $10,000. Therefore, the maximum amount of credit per employee for all calendar quarters is $5,000. The credit applies only to wages paid after March 12, 2020 and before January 1, 2021.

The credit allowed may not exceed the applicable employment taxes imposed on the eligible employer for that calendar quarter on the wages paid with respect to all of the employer's employees, reduced by any credits allowed for the employment of qualified veterans,[237] for research expenditures of a qualified small business,[238] or for paid sick or family leave under sections 7001 and 7003 of the FFCRA.[239] However, if for any calendar quarter the amount of the credit exceeds the applicable employment taxes imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.[240]

For example, assume that, for a calendar quarter, an eligible employer had applicable employment taxes prior to any credits of $10,000 and (1) a credit for research expenditures of a qualified small business of $4,000, (2) a $3,000 credit for paid sick leave under section 7001 of the FFCRA, and (3) a $5,000 employee retention credit. The eligible employer's applicable employment taxes are reduced to $0 and it has a $2,000 refundable overpayment.[241] If, instead, the eligible employer had applicable employment taxes prior to any credits of $2,000, its applicable employment taxes are reduced to $0 and it has an $8,000 refundable overpayment.[242]

Definition of eligible employer

An eligible employer is any employer which was carrying on a trade or business during calendar year 2020 and which meets either of two tests.

Under the first test (the "governmental order test"), such employer is an eligible employer if it experiences a calendar quarter in which the operation of the trade or business is fully or

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[236] Sec. 3221(a).

[237] This credit is described in section 3111(e).

[238] This credit is described in section 3111(f).

[239] Pub. L. No. 116-127, as amended by the CAA, Pub. L. No. 116-260.

[240] The excess is treated as an overpayment and refunded under sections 6402(a) and 6413(b). For purposes of section 1324 of Title 31, United States Code, any amount due to an employer is treated in the same manner as a refund due from the credits against applicable employment taxes described above. Thus, pursuant to that section, amounts are appropriated to the Secretary for refunding such excess amounts.

[241] The tax is reduced by the $4,000 research expenditures credit, the $3,000 paid sick leave credit, and $3,000 of the $5,000 employee retention credit. The $2,000 excess employee retention credit is treated as refundable.

[242] The tax is reduced by the $2,000 research expenditures credit, the other $2,000 of which is not refundable. See sec. 3111(f). The $3,000 paid sick leave credit is treated as refundable, section 7001(b)(4) of the FFCRA, as is the $5,000 employee retention credit.

partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19.

For example, a restaurant in a State under a Statewide order that restaurants offer only take-out service meets the governmental order test, as does a concert venue in a State under a Statewide order limiting gatherings to no more than 10 people. Similarly, an accounting firm that is in a county where accounting firms are among businesses subject to a directive from public health authorities to cease all activities other than minimum basic operations and that closes its offices and does not require employees who cannot work from home (*e.g.*, custodial employees, mail room employees) to work meets this test. However, a grocery store in a State that generally imposes limitations on food service, gathering size, and travel outside the home, but exempts grocery stores (and travel to and from grocery stores) from any COVID-19 related restrictions (*e.g.*, because grocery stores are deemed an "essential business" that is excepted from restrictions) would not meet this test.

Under the second test (the "reduced gross receipts test"), such employer is an eligible employer if it experiences a significant decline in gross receipts. The employer is treated as experiencing a significant decline in gross receipts in the period (i) beginning with the first calendar quarter beginning after December 31, 2019, for which gross receipts (within the meaning of section 448(c)) for the calendar quarter are less than 50 percent of gross receipts for the same calendar quarter in the prior year, and (ii) ending with the quarter following the first calendar quarter beginning after a calendar quarter described in (i) in which gross receipts exceed 80 percent of gross receipts for the same calendar quarter for the prior year.

For example, if an employer had gross receipts of $100 in each calendar quarter of 2019 and then had gross receipts in the first, second, third, and fourth quarters of 2020 of $100, $40, $90, and $100, respectively, the period in which such employer is treated as meeting the significant decline in gross receipts test is the second and third quarters of 2020.

An organization described in section 501(c) may qualify as an eligible employer under either test.[243] The requirement that an eligible employer be carrying on a trade or business during calendar year 2020 and the governmental order test are to be applied as if they referred to all operations of such organization, and not merely those which are treated as a trade or business.

Definition of qualified wages

The definition of qualified wages depends on the average number of full-time and full-time-equivalent employees of the eligible employer during 2019.[244] All persons treated as a

[243] Section 206 of Division EE of the CAA clarifies this definition, as described below.

[244] The metric is the "average number of full-time employees (within the meaning of section 4980H of the Internal Revenue Code of 1986)." This language includes full-time equivalents as referred to in section 4980H(c)(2)(E), which reads as follows:

(E) Full-time equivalents treated as full-time employees. Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-

single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 are treated as one employer for purposes of the credit.

For an eligible employer that had more than 100 such employees in 2019, qualified wages are wages paid by the eligible employer with respect to which an employee is not providing services due to circumstances that cause the eligible employer to meet either the governmental order test or the reduced gross receipts test.

For example, if a restaurant that had an average of 150 full-time employees during 2019 meets the governmental order test, and the restaurant continues to pay kitchen employees' wages as if they were working 40 hours per week but only requires them to work 15 hours per week, the wages paid to the kitchen employees for the 25 hours per week with respect to which the kitchen employees are not providing services are qualified wages. However, if the same restaurant reduces kitchen employees' working hours from 40 hours per week to 15 hours per week and only pays wages for 15 hours per week, no wages paid to the kitchen employees are qualified wages.

As another example, if an accounting firm that had an average of 500 full-time employees during 2019 meets the governmental order test, and during the period in which the governmental order is in place the accounting firm closes its office and does not require custodial and mail room employees to work but continues to pay them their full salaries, wages paid to those custodial and mail room employees for the time they do not work are qualified wages. Similarly, if the accounting firm continues to pay administrative assistants their full salaries but only requires them to work two days per week on a rotating schedule reflecting reduced demand for assistance resulting from the office closure, the portion of an administrative assistant's salary attributable to days not worked are qualified wages.

Qualified wages paid to an employee by an eligible employer that had more than 100 full-time employees in 2019 cannot exceed the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period in which the eligible employer met either the governmental order test or the reduced gross receipts test.

For example, if an eligible employer subject to this rule paid an employee $15 per hour for all hours worked prior to meeting the governmental order test, but during the period when the eligible employer meets the governmental order test pays the same employee $10 per hour for hours when the employee is providing services and $20 per hour for hours when the employee is not providing services, only $15 per hour of wages paid when the employee is not providing services are qualified wages. As another example, if an eligible employer subject to this rule paid an employee $15 per hour for all hours worked prior to meeting the governmental order test, but during the period when the eligible employer meets the governmental order test pays the same employee $20 per hour (both for hours when the employee is providing services and for

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time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

hours when the employee is not providing services), only $15 per hour of wages paid when the employee is not providing services are qualified wages.

For an eligible employer that had an average of 100 or fewer full-time employees in 2019, qualified wages are wages paid to any employee either during the time period in which such eligible employer meets the governmental order test or during a quarter in which the eligible employer meets the reduced gross receipts test.

For example, if a restaurant that had an average of 45 full-time employees during 2019 meets the governmental order test, and the restaurant continues to pay kitchen employees' wages as if they were working 40 hours per week but only requires them to work 15 hours per week, all of such employees' wages paid during the period to which the governmental order applies are qualified wages. If the same restaurant responds to the governmental order by reducing the hours of kitchen employees who had previously worked 40 hours per week to 15 hours per week and only pays wages for 15 hours per week, such wages paid during the period to which the governmental order applies are qualified wages.

As another example, if a grocery store that had an average of 75 full-time employees during 2019 meets the reduced gross receipts test for the second and third calendar quarters of 2020, all wages paid by the grocery store during those quarters are qualified wages.

Qualified wages do not include any wages[245] or compensation[246] taken into account under sections 7001 or 7003 of the FFCRA. Qualified wages also include so much of the employer's qualified health plan expenses as are properly allocable to qualified wages under the credit. Qualified health plan expenses are defined as amounts paid or incurred by the employer to provide and maintain a group health plan,[247] but only to the extent such amounts are excluded from the employees' income as coverage under an accident or health plan.[248] Qualified health plan expenses are allocated to qualified wages in such manner as the Secretary (or the Secretary's delegate) may prescribe. Except as otherwise provided by the Secretary (or the Secretary's delegate), such allocations are treated as properly made if made pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).[249]

[245] Sec. 3121(a).

[246] Sec. 3231(e).

[247] Group health plan for this purpose is defined in section 5000(b)(1).

[248] For the exclusion, see section 106(a).

[249] Section 206 of Division EE of the CAA, Pub. L. No. 116-260, clarifies this definition, as described below.

Other rules, definitions, and guidance

No credit is available to any employer that receives a small business interruption loan (*i.e.*, a covered loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) as added by section 1102 of the CARES Act).

If a taxpayer claims the credit, rules similar to the rules of sections 51(i)(1) and 280C(a) apply. Thus, for example, an employee retention credit may not be generated by an individual employer hiring his or her children. In addition, the credit is taken into account for purposes of determining any amount allowable as an income tax deduction for qualified wages (or any amount capitalizable to basis) or for payroll taxes associated with such qualified wages. For example, assume a calendar year employer pays $2,500 of qualified wages for the second quarter of 2020. If the employer claimed no ERTC, the employer would be able to deduct $2,500 of wage expense (assuming such wages are not subject to capitalization) and $155 of OASDI tax liability, for a total income tax deduction of $2,655 for the quarter with respect to those wages. If the employer claims an ERTC of $1,250 for those wages, the ERTC would offset $155 of OASDI tax and $1,095 of wage expense, leaving $1,405 of qualified wages as deductible for income tax purposes.

Continuing the example above, assume that the employer delays the deposit of its $155 of OASDI tax liability until December 31, 2021, pursuant to section 2302 of the CARES Act, and thus does not have a current income tax deduction for such OASDI tax.[250] If the employer claims an ERTC of $1,250, the ERTC would offset $1,250 of wage expense, leaving $1,250 of qualified wages as deductible for income tax purposes.

An employer may elect, at such time and in such manner as provided by the Secretary (or the Secretary's delegate), to have the credit not apply for a calendar quarter. Further, the credit is not available to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of those entities. Employers in the U.S. territories may claim the credit by filing their quarterly Federal employment tax returns.

The credit is not available for wages paid to any employee for any period with respect to any employer if such employer is allowed a credit under section 51 (*i.e.*, the work opportunity tax credit) with respect to such employee for such period. Furthermore, any wages taken into account in determining the credit shall not be taken into account for purposes of determining the credit allowed under section 45S (*i.e.*, the employer credit for paid family and medical leave).

[250] In general, an employer's payroll tax liability is deductible when paid by the employer to the governmental authority. See sec. 461 and Treas. Reg. secs. 1.461-1 and 1.461-4(g). However, an accrual method employer who has adopted the recurring item exception method of accounting for its payroll taxes may generally deduct such taxes for which it has a fixed and determinable liability by the end of its taxable year if it pays the taxes by the earlier of the date the it files a timely income tax return (including extensions) for such taxable year or the 15th day of the ninth calendar month following the close of such taxable year (e.g., by September 15, 2021, for the 2020 calendar taxable year). See sec. 461(h), Treas. Reg. sec. 1.461-5, and Rev. Proc. 2008-25, 2008-1 C.B. 686. Thus, if the 2020 payroll taxes are not paid until December 31, 2021, they will not be deductible in 2020 by a calendar year employer, regardless of whether the employer uses the cash or accrual method of accounting.

Any credit allowed is treated as a credit described in section 3511(d)(2) (relating to third party payors).

The Secretary (or the Secretary's delegate) is directed to waive any penalty under section 6656 for failure to make a deposit of applicable employment taxes if the Secretary (or the Secretary's delegate) determines that such failure was due to the reasonable anticipation of the credit allowed.

The Secretary (or the Secretary's delegate) is required to provide such regulations or other guidance as may be necessary to carry out the purposes of the credit, including regulations or other guidance: (1) to allow the advance payment of the credit based on such information as the Secretary (or the Secretary's delegate) may require;[251] (2) to provide for the reconciliation of such advance payment with the amount advanced at the time of filing the return of tax for the applicable calendar quarter or taxable year; (3) to provide for recapture of the credit if it is allowed to a taxpayer which receives a small business interruption loan; (4) with respect to the application of the credit to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504), including regulations or guidance allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors; and (5) for application of the reduced gross receipts test to any employer which was not carrying on a trade or business for all or part of the same calendar quarter in the prior year.

Modifications in the Consolidated Appropriations Act, 2021

Sections 206, 207, and 303 of Division EE of the CAA modify the employee retention credit that was included in the CARES Act in the following ways.

Modifications that are effective as if included in the CARES Act

Section 206 of Division EE of the CAA clarifies that, in the case of an organization which is described in section 501(c) of the Code, any reference to gross receipts in the CARES

[251] For 2020, the IRS provided Form 7200, Advance Payment of Employer Credits Due to COVID-19, to allow taxpayers to request advance payment of the credit. The instructions to Form 7200 explain that:

> Eligible employers who pay . . . qualified wages eligible for the employee retention credit should retain an amount of the employment taxes equal to the amount of . . . their employee retention credit, rather than depositing these amounts with the IRS. The employment taxes that are available for the credit[] include withheld federal income tax, the employee share of social security and HI taxes, and the employer share of social security and HI taxes with respect to all employees. If there aren't sufficient employment taxes to cover the cost of . . . the employee retention credit, employers can file Form 7200 to request an advance payment from the IRS. Don't reduce your deposits and request advance credit payments for the same expected credit. You will need to reconcile your advance credit payments and reduced deposits on your employment tax return.

See Instructions to IRS Form 7200, revised March 2020, available at https://www.irs.gov/instructions/i7200.

Act employee retention credit (as modified by the Act) shall be treated as a reference to gross receipts within the meaning of section 6033 of the Code.

Section 206 of Division EE of the CAA also clarifies that health plan expenses paid to provide and maintain a group health plan[252] are treated as wages that are eligible for the credit, assuming other requirements are met. The amount of such expenses per employee and per period shall be the amount properly allocable to such employee and such period under rules prescribed by the Secretary. Except as otherwise provided by the Secretary, an allocation of such expenses is proper if made on the basis of being pro rata among periods of coverage.

Section 206 of Division EE of the CAA alters the interaction of the credit and the Paycheck Protection Program. First, it removes the rule in section 2301(j) of the CARES Act that provided that an employer that received a Paycheck Protection Program ("PPP") loan[253] was ineligible for the credit, as well as the instruction to the Secretary in section 2301(l)(3) of the CARES Act to provide for recapture of the credit in the event it was allowed to a taxpayer who received a PPP loan. As a result, taxpayers receiving a PPP loan may be eligible for the credit. Section 1106 of the CARES Act[254] is amended to provide that the definition of payroll costs that may give rise to loan forgiveness described in section 1106(b) of the CARES Act[255] shall not include qualified wages taken into account in determining the credit. An employer may elect not to take into account any amount of the employer's qualified wages for purposes of calculating the credit. However, such an election does not prevent payroll costs paid during the covered period from being treated as qualified wages of the eligible employer to the extent that a PPP loan is not forgiven by reason of a decision by the lender under section 1106(g) of the CARES Act[256] to deny forgiveness.

Finally, section 206 of Division EE of the CAA requires the Secretary to issue such forms, instructions, regulations, and guidance as are necessary to prevent the avoidance of the purposes of the limitations on the credit, including through the leaseback of employees.

The effective date of section 206 of Division EE of the CAA includes a special rule permitting any employer who has filed a return of tax with respect to applicable employment taxes before the date of enactment of the Act to elect to treat any applicable amount as an amount paid in the calendar quarter which includes the date of enactment of the Act (*i.e.*, the 4th quarter of calendar year 2020). An applicable amount is any amount of either group health plan expenses treated as wages by subsection (b) of section 206 of Division EE of the CAA or wages

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[252] As defined in section 5000(b)(1) of the Code.

[253] Referred to in the statute as a "small business interruption loan" and defined as a covered loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a), as added by section 1102 of the CARES Act).

[254] Section 304(b)(1) of Title III of Division N of the Act redesignates section 1106 of the CARES Act as section 7A of the Small Business Act (15 U.S.C. § 631 et seq.).

[255] Redesignated by the CAA as section 7A(b) of the Small Business Act.

[256] Redesignated by the CAA as section 7A(g) of the Small Business Act.

permitted to be treated as qualified wages as a result of subsection (c)(2) of such section (addressing coordination between the Paycheck Protection Program and the credit), provided such amount was paid in a calendar quarter beginning after December 31, 2019, and before October 1, 2020, and was not taken into account by the taxpayer in calculating the credit for such calendar quarter.

Modifications that are effective for calendar quarters beginning after December 31, 2020

Section 207 of Division EE of the CAA extends the credit to apply to wages paid before July 1, 2021, extending by two calendar quarters the end-date provided by section 2301(m) of the CARES Act.

Section 207 of Division EE of the CAA makes certain changes to the limitations on the credit:

First, the percentage of qualified wages used to calculate the credit is increased from 50 percent of such wages to 70 percent of such wages.

Second, the amount of qualified wages per employee that may be taken into account in calculating the credit is increased from $10,000 for all calendar quarters to $10,000 per calendar quarter.

Third, an employer may qualify as an eligible employer under the reduced gross receipts test with respect to a calendar quarter for which the gross receipts of the employer are less than 80 percent of the gross receipts of the same employer for the same calendar quarter in 2019. For employers not in existence at the beginning of the relevant calendar quarter in 2019, this rule is applied by reference to the same calendar quarter in 2020 rather than 2019. Additionally, employers may elect to compare the gross receipts of the immediately preceding calendar quarter to the gross receipts for the corresponding calendar quarter in 2019, rather than using the quarter for which the credit is claimed. For employers not in existence in 2019, the election permits the employer to compare the gross receipts of the immediately preceding calendar quarter to the corresponding calendar quarter in 2020.

Fourth, with regard to the definition of qualified wages, the average number of full-time and full-time-equivalent employees the eligible employer may have had during 2019 to claim credit for any wages paid to an employee — rather than merely wages with respect to which the employee is not providing services — is increased from 100 or fewer to 500 or fewer.

Finally, the rule that qualified wages paid to an employee by an eligible employer that had more than 500 full-time employees in 2019 cannot exceed the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period in which the eligible employer met either the governmental order test or the reduced gross receipts test is eliminated.

The rule prohibiting certain government employers from claiming the credit is modified. First, any organization described in section 501(c)(1) of the Code and exempt from tax under section 501(a) of the Code is excluded from the rule. Second, any entity that is a college or university and any entity the principal purpose or function of which is providing medical or

hospital care is excluded from the rule. As a result, such organizations and entities are not prevented from claiming the credit by reason of the general prohibition against certain government employers claiming the credit. With respect to any organization or entity meeting either exception, wages as defined in section 3121(a) of the Code shall be determined for purposes of the credit without regard to paragraphs (5) and (6) (relating to certain services performed in the employ of the United States or an instrumentality of the United States), (7) (relating to certain services performed in the employ of a State, any political subdivision thereof, or any instrumentality of one or more of the foregoing which is wholly owned thereby), (10) (relating to certain services performed in connection with a school, college, or university), and (13) (relating to certain services performed as a student nurse) of section 3121(b).

Section 2301(h) of the CARES Act is revised to provide that any wages taken into account in determining the credit shall not be taken into account as wages for purposes of sections 41 (providing a credit for increasing research activities), 45A (the Indian employment credit), 45P (providing an employer wage credit for employees who are active duty members of the uniformed services), 45S (providing an employer credit for paid family and medical leave), 51 (the work opportunity credit), and 1396 (the empowerment zone employment credit).

Under rules to be provided by the Secretary, small employers (*i.e.*, those for whom the average number of full-time and full-time-equivalent employees during 2019 was not greater than 500) are permitted to elect to receive an advance payment of the credit for any quarter in an amount not to exceed 70 percent of the average quarterly wages paid by the employer in calendar year 2019. An employer who employs seasonal workers[257] may elect a limitation equal to 70 percent of the wages for the calendar quarter in 2019 that corresponds to the calendar quarter to which the election relates, rather than 70 percent of average quarterly wages for 2019. For employers not in existence in 2019, the limitations under both the general rule and the election are calculated using 2020 numbers rather than 2020 numbers. The amount of the credit which would be allowed but for receipt of such an advance payment is reduced by the amount of the advance payment.[258] If the advance payments to a taxpayer for a calendar quarter exceed the credit allowed but for receipt of the advance payment, the tax imposed by chapters 21 (FICA) or 22 (RRTA) of the Code (whichever is applicable) are increased by the amount of the excess.

The grant of authority in section 2301(l) of the CARES Act is modified to require that any forms, instructions, regulations, or guidance issued with respect to application of the credit to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504 of the Code) require the customer to be responsible for the accounting of the credit and for any liability for improperly claimed credits. Such forms, etc., shall require the third party payor to accurate report the credit based on the information provided by the customer.

The Secretary is required to conduct a public awareness campaign, in coordination with the Administrator of the Small Business Administration, to provide information regarding the

[257] As defined in section 45R(d)(5)(B) of the Code.

[258] Any failure to so reduce the credit is treated as arising out of a mathematical or clerical error and any excess tax due as a result is assessed according to section 6213(b) of the Code.

availability of the credit. As part of the outreach, the Secretary is required to provide notice about the credit to all employers who reported 500 or fewer employees on their most recently filed employment tax return, and, within 30 days of the date of enactment of the Act, provide educational materials about the credit to all employers.

An election not to take into account any amount of the employer's qualified wages for purposes of calculating the credit does not prevent payroll costs paid during the covered period from being treated as qualified wages of the eligible employer to the extent that a Paycheck Protection Program second draw loan described in 15 U.S.C. section 636(a)(37) is not forgiven by reason of the application of paragraph (37)(J) of such section.

Finally, section 303 of Division EE of the CAA provides that the credit is reduced by any credit allowed for wages paid by certain tax-exempt organizations affected by qualified disasters in 2020.[259]

Description of Proposal

The proposal extends the credit by two calendar quarters to apply to wages paid before January 1, 2022.

The proposal replaces the credit against the employer's share of OASDI tax and the equivalent amount of RRTA tax with a credit against the employer's share of HI tax and the equivalent amount of RRTA tax. [260]

As revised by the proposal, the credit allowed may not exceed the applicable employment taxes imposed on the eligible employer for that calendar quarter on the wages paid with respect to all of the employer's employees, reduced by any credits allowed for paid sick or family leave under sections 7001 and 7003 of the FFCRA.[261] However, if for any calendar quarter the

[259] Section 303 of Division EE of the CAA, 2021 provides an employee retention credit for certain employers affected by qualified disasters in 2020, which includes a payroll tax credit for certain tax-exempt organizations (see section 303(d) of such Act).

[260] As a result, the credit is not reduced by any credits allowed for the employment of qualified veterans, for research expenditures of a qualified small business, or for wages paid by certain tax-exempt organizations affected by qualified disasters in 2020. See the discussion of changes made to the credits for paid sick or family leave under sections 7001 and 7003 of the FFCRA elsewhere in this document. Also, the proposal does not include express language that "holds harmless" the Federal Hospital Insurance Trust Fund from any effects of the proposal. Under current law, amounts appropriated and transferred to the trust fund include amounts equivalent to 100% of the taxes imposed by section 3111(b) with respect to applicable wages reported by the Secretary, determined by applying the rate to the reported wages. Sec. 1807 of the Social Security Act, 42 U.S.C. sec. 1395i. Because the proposal does not affect either the rate under section 3111(b) or applicable wages, but only provides a credit against the amount of tax, the proposal does not affect the trust fund, and no hold harmless language is needed.

[261] Under section 9647 of the bill, section 7001 and 7003 of the FFCRA are amended to be credits against the employer's share of HI tax and the equivalent amount of RRTA tax, for calendar quarters beginning after March 31, 2021. See the detailed discussion of "Credits Allowed Against Employer Hospital Insurance Tax" elsewhere in this document.

amount of the credit exceeds the applicable employment taxes imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.

Effective Date

The proposal is effective for calendar quarters beginning after June 30, 2021.

PART VII—PREMIUM ASSISTANCE CREDIT

A. Temporary Modifications to the Premium Assistance Credit

Present Law

In general

A refundable tax credit (the "premium assistance credit") is provided for eligible individuals and families to subsidize the purchase of "qualified health plans," [262] health insurance plans offered through an American Health Benefit Exchange ("Exchange") created by the Patient Protection and Affordable Care Act ("PPACA").[263] In general, the Treasury Department makes advance payments with respect to the premium assistance credit during the year directly to the insurer, as discussed below.[264] However, eligible individuals may choose to pay their total health insurance premiums without advance payments and to claim the credit for the taxable year on a Federal income tax return.

The premium assistance credit is generally available for individuals (single or joint filers) with household incomes between 100 percent and 400 percent of the Federal poverty level ("FPL") for the applicable family size.[265] Household income is defined as the sum of (1) the individual's modified AGI, plus (2) the aggregate modified AGI of all other individuals taken into account in determining the individual's family size (but only if the other individuals are required to file tax returns for the taxable year).[266] Modified AGI is defined as AGI increased by (1) any amount excluded from gross income for citizens or residents living abroad,[267] (2) any tax-exempt interest received or accrued during the tax year, and (3) any portion of the individual's Social Security benefits not included in gross income.[268] To be eligible for the

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[262] Sec. 36B. Qualified health plans generally must meet certain requirements. Secs. 1301 and 1302 of the PPACA, 42 U.S.C. secs. 18021 and 18022.

[263] Pub. L. No. 111-148, March 23, 2010. The PPACA was modified by the Health Care and Education Reconciliation Act of 2010 ("HCERA"), Pub. L. No. 111-152, Title I, sec. 1001, March 30, 2010. PPACA and HCERA are referred to collectively as the Affordable Care Act ("ACA").

[264] Sec. 1412 of the PPACA, 42 U.S.C sec. 18082.

[265] Sec. 36B(c)(1). Federal poverty level refers to the most recently published poverty guidelines determined by the Secretary of Health and Human Services ("HHS"). Levels for 2021 and previous years are available at https://aspe hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references.

Under sec. 36B(c)(1)(B), a taxpayer with household income less than 100 percent of FPL who is an alien lawfully present but is ineligible for Medicaid under title XIX of the Social Security Act by reason of such alien status may be treated as an applicable taxpayer with a household income equal to 100 percent of FPL.

[266] Sec. 36B(d)(2).

[267] Sec. 911.

[268] Under section 86, only a portion of an individual's Social Security benefits is included in gross income.

premium assistance credit, individuals who are married must file a joint return.[269] Individuals who are listed as dependents on a return are not eligible for the premium assistance credit.

An individual who is eligible for minimum essential coverage from a source other than the individual insurance market generally is not eligible for the premium assistance credit.[270] However, an individual who is offered minimum essential coverage under an employer-sponsored health plan may be eligible for the premium assistance credit if (1) the coverage is either unaffordable or does not provide minimum value, and (2) the individual declines the employer-offered coverage.[271] Thus, an individual who enrolls in an employer-sponsored health plan generally is ineligible for the premium assistance credit even if the coverage is considered unaffordable or does not provide minimum value. Coverage is considered unaffordable if an employee's share of the premium for self-only coverage under the plan exceeds 9.83 percent (for 2021)[272] of the employee's household income.[273] Coverage is considered to not provide minimum value if the plan's share of total allowed costs of plan benefits is less than 60 percent of such costs.

Amount of credit

The premium assistance credit amount is generally the lower of (1) the premium for the qualified health plan in which the individual or family enrolls, and (2) the premium for the second lowest cost silver plan in the rating area where the individual resides,[274] reduced by the

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[269] Sec. 36B(c)(1)(C).

[270] Sec. 36B(c)(2). Minimum essential coverage is defined in section 5000A(f).

[271] Sec. 36B(c)(2)(C).

[272] Rev. Proc. 2020-36, 2020-32 I.R.B. 244.

[273] Employees and their family members who are provided a qualified small employer health reimbursement arrangement ("QSEHRA") that constitutes affordable coverage are not eligible for the premium assistance credit. Sec. 36B(c)(4)(C). The affordability determination for QSEHRAs is similar to the affordability determination for an employer-sponsored health plan. Specifically, a QSEHRA is treated as constituting affordable coverage for a month if an employee's share of the premium for self-only coverage under the second lowest cost silver plan offered in the relevant individual health insurance market does not exceed 9.83 percent (for 2021) of the employee's household income. A QSEHRA is defined in section 9831(d)(2).

[274] A "silver plan" refers to the level of coverage provided by the health plan. PPACA sec. 1302(d), 42 U.S.C. sec. 18022. Most health plans sold through an Exchange are required to meet actuarial value ("AV") standards, among other requirements. AV is a summary measure of a plan's generosity, expressed as a percentage of medical expenses estimated to be paid by the insurer for a standard population and set of allowed charges. Silver-level plans are designed to provide benefits that are actuarially equivalent to 70 percent of the full AV of the benefits provided under the plan. The premium assistance credit looks to the second lowest cost plan of all of the silver plans available in the relevant rating area.

An individual's "rating area" refers to the geographical unit within the State where the individual resides. Insurers may vary individual market premiums based on rating areas, among other factors. See PPACA sec. 1201, 42 U.S.C. 300gg.

individual's or family's share of premiums.[275] As shown in Table 1 below, an individual's or a family's share of premiums is a certain percentage of household income. For 2021, the share of premiums is 2.07 percent of household income up to 133 percent of FPL and is determined on a sliding scale in a linear manner up to 9.83 percent as household income rises from 133 percent of FPL to 400 percent of FPL.

Table 1.−Household's Share of Premiums (for 2021)[276]

Household income (expressed as a percent of FPL)	Initial percentage of household income*	Final percentage of household income*
Less than 133%	2.07	2.07
133% up to 150%	3.10	4.14
150% up to 200%	4.14	6.52
200% up to 250%	6.52	8.33
250% up to 300%	8.33	9.83
300% up to and including 400%	9.83	9.83

* The initial percentage of household income corresponds to the bottom of the corresponding FPL range, and the final percentage of household income corresponds to the top of the corresponding FPL range.

Advance payments of the premium assistance credit

As part of the process of enrollment in a qualified health plan through an Exchange, an individual may apply and be approved for advance payments with respect to a premium assistance credit ("advance payments").[277] The individual must provide information on income, family size, changes in marital or family status or income, and citizenship or lawful presence

[275] Sec. 36B(b). The amount of the premium assistance credit is determined on a monthly basis, and the amount of the credit for a year is the sum of the monthly amounts.

[276] Rev. Proc. 2020-36, 2020-32 I.R.B. 244. The percentages are indexed to the excess of premium growth over income growth for the preceding calendar year. After 2018, if the aggregate amount of premium assistance credits (and cost-sharing reductions under section 1402 of PPACA) exceeds 0.504 percent of the gross domestic product for that year, the percentage of household income is also adjusted to reflect the excess (if any) of premium growth over the rate of growth in the Consumer Price Index for the preceding calendar year. Such an adjustment was not required for 2021.

[277] Secs. 1411 and 1412 of PPACA, 42 U.S.C. secs. 18081 and 18082. Under section 1402 of PPACA, 42 U.S.C sec. 18071, certain individuals eligible for advance premium assistance payments also are eligible for a reduction in their share of medical costs, such as deductibles and copays, under the plan, referred to as reduced cost-sharing. Eligibility for reduced cost-sharing is also determined as part of the Exchange enrollment process. HHS is responsible for rules relating to Exchanges and the eligibility determination process.

status.[278] Eligibility for advance payments is generally based on the individual's income for the taxable year ending two years prior to the enrollment period. The Exchange process is administered by HHS and includes a system through which information provided by the individual is verified using information from the IRS and certain other sources.[279] If an individual is approved for advance payments, the Secretary pays the advance amounts on a monthly basis directly to the issuer of the health plan in which the individual is enrolled. The individual then pays to the issuer of the plan the difference between the advance payment amount and the total premium charged for the plan.

An individual on whose behalf advance payments of the premium assistance credit for a taxable year are made is required to file an income tax return to reconcile the advance payments with the credit that the individual is allowed for the taxable year.[280]

If the advance payments of the premium assistance credit exceed the amount of credit that the individual is allowed, the excess ("excess advance payments") is treated as an additional tax liability on the individual's income tax return for the taxable year (is "recaptured"), subject to a limit on the amount of additional liability in some cases. For an individual with household income below 400 percent of FPL, recapture for a taxable year is limited to a specific dollar amount (the "applicable dollar amount") as shown in Table 2 below. One-half of the applicable dollar amount shown in Table 2 applies to an unmarried individual who is not a surviving spouse or filing as a head of household.

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[278] Under section 1312(f)(3) of PPACA, 42 U.S.C. sec. 18032(f)(3), an individual may not enroll in a qualified health plan through an Exchange if the individual is not a citizen or national of United States or an alien lawfully present in the United States. Thus, such an individual is not eligible for the premium assistance credit.

[279] Under section 6103, returns and return information are confidential and may not be disclosed, except as authorized by the Code, by IRS employees, other Federal employees, State employees, and certain others having access to such information. Under section 6103(l)(21), upon written request of the Secretary of HHS, the IRS is permitted to disclose certain return information for use in determining an individual's eligibility for advance premium assistance payments, reduced cost-sharing, or certain other State health subsidy programs, including a State Medicaid program under title XIX of the Social Security Act, 42 U.S.C. secs. 1396w-1 through 1396w-5, a State's Children's Health Insurance Program under title XXI of the Social Security Act, 42 U.S.C. secs. 1397aa though 1397mm, and a Basic Health Program under section 1331 of PPACA, 42 U.S.C. sec. 18051.

[280] Treas. Reg. sec. 1.6011-8. Under section 6055, health insurance issuers are required to report to the IRS and to the individual the months during a year for which the individual was covered by minimum essential coverage issued by the insurer. In Notices 2019-63 and 2020-76, however, the IRS announced that for 2019 and 2020 it will not assess penalties for the failure to provide the required statement to individuals if certain conditions are met, following the reduction of the individual shared responsibility payment in section 5000A to $0. 2019-51 I.R.B. 1390; 2020-47 I.R.B. 1058.

In addition, under section 36B(f)(3), an Exchange is required to report to the IRS and to the individual the months during a year for which the individual was covered by a qualified health plan purchased through the Exchange; the level of coverage; the name, address, and TIN of the primary insured and each individual covered by the policy; the total premiums paid by the individual; and, if applicable, advance premium assistance payments made on behalf of the individual.

Table 2.−Recapture Limits (for 2021)[281]

Household income (expressed as a percent of FPL)	Applicable dollar amount
Less than 200%	$650
At least 200% but less than 300%	$1,600
At least 300% but less than 400%	$2,700

If the advance payments of the premium assistance credit for a taxable year are less than the amount of the credit that the individual is allowed, the additional credit amount is allowed when the individual files an income tax return for the year.

Enrollment in a qualified health plan

Generally, an individual may enroll in a qualified health plan through an Exchange during an annual open enrollment period.[282] The 2021 open enrollment period in most States ended December 15, 2020. An Exchange must provide for special enrollment periods during which an individual may enroll in a qualified health plan or change enrollment in a qualified health plan if the individual experiences certain life events, including losing health coverage, getting married, or having a baby.[283] On January 28, 2021, the President issued an Executive Order ordering the Secretary of HHS to consider establishing a special enrollment period for the Federally Facilitated Marketplace in light of the exceptional circumstances caused by the on-going COVID-19 pandemic and the economic downturn.[284] In accordance with the Executive Order, HHS determined that it will provide a special enrollment period for the Federal Facilitated Marketplace from February 15, 2021 through May 15, 2021.[285] HHS strongly encouraged States operating their own marketplace platforms to establish similar enrollment opportunities.

[281] Rev. Proc. 2020-45, 2020-46 I.R.B. 1016. The applicable dollar amounts are indexed to reflect cost-of-living increases, with the amount of any increase rounded down to the next lowest multiple of $50.

[282] PPACA sec. 1311, 42 U.S.C. 13031.

[283] 45 CFR 155.420.

[284] Joseph R. Biden, "Executive Order on Strengthening Medicaid and the Affordable Care Act," January 28, 2021, available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicaid-and-the-affordable-care-act/. Pursuant to 45 C.F.R. 155.420(d)(9), an Exchange may allow a special enrollment period in the event of exceptional circumstances as determined by the Exchange in accordance with HHS guidelines.

[285] Centers for Medicare & Medicaid Services, "Fact Sheet: 2021 Special Enrollment Period in Response to the COVID-19 Emergency," January 28, 2021, available at https://www.cms.gov/newsroom/fact-sheets/2021-special-enrollment-period-response-covid-19-emergency.

Unemployment Compensation

Unemployment compensation benefits are includible in gross income.[286] Unemployment compensation is defined as any amount received under a law of the United States or of a State which is in the nature of unemployment compensation.[287] The CARES Act temporarily expanded states' ability to provide unemployment insurance for many workers impacted by the COVID-19 pandemic, including for workers who are not ordinarily eligible for unemployment benefits.[288] The CAA generally extended and reauthorized certain provisions of the CARES Act unemployment insurance expansion.[289]

Description of Proposal

Improving affordability by expanding premium assistance for consumers

For taxable years beginning in 2021 and 2022, the proposal reduces or eliminates an individual's or family's share of premiums used in determining the amount of the premium assistance credit. The proposal also makes the premium assistance credit available to taxpayers with incomes above the present law limitation of 400 percent of FPL for the applicable family size.

Table 3 below shows an individual's or family's modified share of premiums applicable for 2021 and 2022 under the proposal. The share of premiums is a certain percentage of household income, ranging from 0.0 percent of household income (up to 150 percent of FPL) up to 8.5 percent of household income, determined on a sliding scale in a linear manner.

Table 3.−Household's Share of Premiums (for 2021 and 2022)

Household income (expressed as a percent of FPL)	Initial percentage of household income	Final percentage of household income
Less than 150%	0.0	0.0
150% up to 200%	0.0	2.0
200% up to 250%	2.0	4.0
250% up to 300%	4.0	6.0

[286] Sec. 85.

[287] Sec. 85(b); see also Treas. Reg. sec. 1.85-1(b)(1).

[288] Pub. L. No. 116-136, Div. A, Title II, subtitle A.

[289] Pub. L. No. 116-260, Div. N, Title II, subtitle A.

Household income (expressed as a percent of FPL)	Initial percentage of household income	Final percentage of household income
300% up to 400%	6.0	8.5
400% and higher	8.5	8.5

Taxpayers may be able to take advantage of the COVID-19 related special enrollment period to receive the benefit of this temporary expansion.

Temporary modification of limitations on reconciliation of tax credits

For a taxable year beginning in 2020, the proposal removes the requirement that excess advance payments are treated as an additional tax liability on the individual's income tax return for the taxable year. Accordingly, under the proposal no excess advance payment is subject to recapture. The proposal applies to taxpayers who file a 2020 income tax return and reconcile any advance payment of the credit.[290]

Application of premium assistance credit in case of individuals receiving unemployment compensation during 2021

The proposal provides a special rule for the premium assistance credit in the case of a taxpayer who has received, or has been approved to receive, unemployment compensation for any week during calendar year 2021.[291] Under the rule, for a taxable year beginning in 2021, (i) such a taxpayer is treated as an applicable taxpayer, and (ii) the taxpayer's household income is not taken into account to the extent it exceeds 133 percent of FPL for a family of the size involved. Accordingly, under the proposal, a taxpayer receiving unemployment compensation during 2021 and whose household income exceeds 133 percent of FPL may receive a larger premium assistance credit and may by subject to lower recapture than under present law. In addition, a taxpayer receiving unemployment compensation during 2021 whose household income is less than 100 percent of FPL may be allowed a premium assistance credit.

This special rule does not affect the requirement that married couples must file a joint return to claim the premium assistance credit. The special rule also does not apply to determinations of household income for purposes of determining the affordability of employer-sponsored health plans and QSEHRAs.

The taxpayer must attest to receipt of or approval for unemployment compensation to receive the benefit of the special rule. The Secretary may prescribe documentation requirements to verify the taxpayer's receipt of or approval for unemployment compensation. These

[290] All taxpayers who receive the benefit of advance payments of the premium assistance credit are required to file an income tax return for the taxable year and reconcile the advance credit payments. Treas. Reg. sec. 1.6011-8. Advance payments of the premium assistance credit are reported on Form 8962, *Premium Tax Credit*, line 29, and on Form 1040, Schedule 2, *Additional Taxes*, line 2.

[291] Unemployment compensation is as defined in section 85(b).

requirements could include information available to the Secretary from third-party information reporting.[292]

Taxpayers may be able to take advantage of the COVID-19 related special enrollment period to receive the benefit of this special rule.

Effective Date

The proposals to temporarily expand the premium assistance credit and to provide a special rule for certain unemployed individuals apply to taxable years beginning after December 31, 2020.

The proposal to temporarily modify the recapture limitations applies to taxable years beginning after December 31, 2019.

[292] See sec. 6050B (returns relating to unemployment compensation).

PART VIII—MISCELLANEOUS PROVISIONS

A. Repeal of Worldwide Allocation of Interest Election

Present Law

For purposes of computing the section 904 foreign tax credit limitation, a taxpayer must determine the amount of its taxable income from foreign sources. As part of this determination, the taxpayer must allocate and apportion deductions between U.S.-source gross income and foreign-source gross income in each limitation category.

The current rules generally treat interest expense as being properly attributable to all business activities and property of a taxpayer, regardless of any specific purpose for incurring a specific obligation on which interest is paid. For purposes of allocating and apportioning interest expense, all members of an affiliated group of corporations generally are treated as a single corporation (the so-called "one-taxpayer rule") and the allocation and apportionment of such expense must be made on the basis of assets, rather than gross income.[293] An affiliated group in this context generally is defined by reference to the rules for determining whether corporations are eligible to file consolidated returns.[294] As with the rules for filing a consolidated return, the definition of affiliated group for interest expense allocation and apportionment purposes generally also excludes foreign corporations.[295] Thus, while debt generally is considered fungible among the assets of a group of domestic affiliated corporations, the same rules do not apply between the domestic and foreign members of a group.

For the first taxable year beginning after December 31, 2020,[296] section 864(f) provides that the common parent of a U.S. affiliated group may elect to allocate and apportion the interest

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[293] Sec. 864(e)(1), (e)(2).

[294] Sec. 864(e)(5). For consolidation purposes, the term affiliated group is one or more chains of includible corporations connected through stock ownership with a common parent corporation that is an includible corporation, but only if: (1) the common parent owns directly stock possessing at least 80 percent of the total voting power and at least 80 percent of the total value of the stock of at least one other includible corporation; and (2) stock meeting the same voting power and value standards with respect to each includible corporation (excluding the common parent) is directly owned by one or more other includible corporations. Generally, an includible corporation is any domestic corporation except certain corporations exempt from tax under section 501 (for example, corporations organized and operated exclusively for charitable or educational purposes), certain life insurance companies, corporations electing application of the possession tax credit, regulated investment companies, real estate investment trusts, and domestic international sales corporations. A foreign corporation generally is not an includible corporation. Sec. 1504.

[295] Secs. 864(e)(5), 1504(b)(3). An exception to this general rule excluding foreign corporations is that the affiliated group for interest allocation purposes includes a foreign corporation if more than 50 percent of its gross income for the taxable year is effectively connected with the conduct of a U.S. trade or business and at least 80 percent of the vote or value of all outstanding stock of the foreign corporation is owned directly or indirectly by members of the affiliated group (determined with regard to this sentence). Sec. 864(e)(5)(A).

[296] Section 864(f), added to the Code by section 401 of the American Jobs Creation Act, Pub. L. No. 108-357, in 2004, with delayed effective dates, most recently delayed until taxable years beginning in 2021. See Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, sec. 551(a).

expense of each member of its worldwide affiliated group[297] as if all domestic and foreign affiliates are a single corporation. The election is a one-time election, due with the filing of the first return beginning after December 31, 2020, in which a worldwide affiliated group exists and has at least one foreign corporation. It is irrevocable absent consent of the IRS. A result of this rule is that interest expense of foreign members of the worldwide affiliated group is taken into account in determining whether a portion of the interest expense of the domestic members of the group must be allocated to foreign-source income. An allocation to foreign-source income generally is required only if, in broad terms, the domestic members of the group are more highly leveraged than is the entire worldwide group.

Description of Proposal

The proposal repeals the provision permitting taxpayers to elect to allocate and apportion interest expense on a worldwide basis.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2020.

[297] As defined in subsection 864(f)(1)(C), a worldwide affiliated group includes eligible members determined without regard to the limitations of section 1504(b)(2) (insurance companies subject to tax under section 801) and controlled foreign corporations if the members of the group in aggregate meet ownership requirements of section 1504(a)(2).

B. Tax Treatment of Targeted EIDL Advances and Tax Treatment of Restaurant Revitalization Grants

Present Law

Tax treatment relating to amounts excluded from income

Exclusions from income

Gross income means all income from whatever source derived.[298] Specific exclusions from income apply to certain otherwise includable amounts and payments, however. For example, the forgiveness of a loan is generally treated as discharge of indebtedness income to the borrower,[299] but limited exclusions apply to income from a discharge of indebtedness that occurs in a Title 11 case (generally, a bankruptcy case), or that occurs when the taxpayer is insolvent to the extent of the insolvency amount, or arises from the discharge of qualified farm indebtedness.[300] Similarly, income exclusions apply to qualified disaster relief payments and qualified disaster mitigation payments.[301]

Effect of income exclusion on deductions, tax attributes, and basis

In general.–Several provisions limit deductions, tax attributes, or basis increases associated with excluded income. These provisions maintain accurate income measurement by preventing the reduction of taxable income for costs associated with untaxed income.

Limitations on deductions.–One such rule, section 265, disallows deductions that are allocable to a class of income wholly exempt from income tax.[302] Similarly, a pro rata limitation on interest deductions applies in the case of a financial institution with tax-exempt interest income.[303] An interest deduction limitation rule applies in the case of a life insurance contract, the death benefit under which is excludable from income by section 101(a).[304]

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[298] Sec. 61; *U.S. v. Kirby Lumber Co.*, 284 U.S. 1 (1931).

[299] Sec. 61(11).

[300] Sec. 108(a).

[301] Sec. 139.

[302] Sec. 265(a)(1). This rule applies with respect to exempt income other than interest; section 265 also disallows the deduction for interest expense on debt incurred or continued to purchase or carry obligations the interest income on which is wholly exempt from income tax (sec. 265(a)(2)), and disallows deductions otherwise allowable under section 212 for expenses for the production of interest income wholly exempt from income tax.

[303] The limitation ratio is (1) the average adjusted bases of certain types of tax-exempt obligations, to (2) average adjusted bases for all assets of the taxpayer (sec. 265(b)).

[304] Sec. 264(f). This pro rata interest deduction limitation permits no deduction for that portion of the taxpayer's interest expense determined by applying the ratio of (1) unborrowed policy cash values, to (2) the sum of

Reductions in tax attributes.–In the case of discharge of indebtedness income that is excluded from income,[305] rules for reduction of tax attributes apply.[306] The excluded amount is applied to reduce the tax attributes of the taxpayer in the order prescribed by statute: (1) net operating losses, (2) general business credit, (3) minimum tax credit, (4) capital loss carryovers, (5) basis of the taxpayer's property, (6) passive activity loss and credit carryovers, and (7) foreign tax credit carryovers.

Limitations on basis increases.–Limitations apply to otherwise allowable increases in the basis of property associated with excluded income. For example, in the case of qualified disaster mitigation payments that are excluded from income, no increase in the basis or adjusted basis of property is allowed for any amount so excluded.[307]

Circumstances in which limitations not imposed.–Limitations on deductions, tax attributes, or basis increases are not imposed in certain situations in which the policy of the exclusion may outweigh the income tax policy of accurate income measurement. For example, in the case of excludable parsonage and military housing allowances, no deduction is denied for mortgage interest or real property taxes on the taxpayer's home under the section 265 deduction limitation by reason of the receipt of the excludable amount.[308] As another example, the pro rata interest deduction limitation for financial institutions with exempt income generally does not apply in the case of tax-exempt obligations issued in 2009 or 2010.[309]

Tax treatment of partnerships.–A partnership generally is not subject to Federal income tax, but rather, income and gain of the partnership are generally taxed to partners. Items of partnership income (including tax exempt income), gain, loss, deduction, and credit pass through to partners.[310] Although loss (including capital loss) and deductions of the partnership pass through to partners, a partner is allowed a loss or deduction only to the extent of the adjusted

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all the taxpayer's average unborrowed policy cash values and average adjusted bases of all other assets (sec. 264(f)(1) and (2)).

[305] Sec. 108.

[306] Secs. 108(b) and 1017.

[307] Sec. 139(g)(3). See also section 139(h) (denial of double benefit rule). As another example, the basis of property is reduced to the extent of contributions to capital of a corporation excludable from gross income under section 118 (see sec. 362).

[308] Sec. 265(a)(6).

[309] Sec. 265(b)(7). This rule is subject to the proviso that the amount of such tax-exempt obligations does not exceed two percent of the taxpayer's average adjusted bases of tax-exempt obligations to which the interest limitation does apply. The years 2009 and 2010 followed the financial crisis of 2008.

[310] Secs. 701 and 702.

basis of the partnership interest at the end of the partnership year in which the loss occurs or the deduction arises.[311]

Tax exempt or excluded income items of the partnership can affect the partner's basis in the partnership interest. Adjustments are made to the basis of a partner's interest to account for the partner's distributive share of partnership items.[312] The basis in the partnership interest is increased by the partner's distributive share of partnership income, including income that is exempt from tax.[313] A partner's basis in the partnership interest generally is increased by an increase in the partner's share of partnership liabilities and is decreased by a decrease in the partner's share of liabilities.[314]

Tax treatment of S corporations.–Income of an S corporation is taxed to the S corporation shareholders. Each S corporation shareholder's pro rata share of S corporation income (including tax exempt income), gain, loss, deduction and credit is passed through to the shareholder.[315] The basis of an S corporation shareholder's stock is adjusted to account for the shareholder's pro rata share of S corporation income (including tax exempt income[316]), loss, deduction or credit. An S corporation shareholder's stock basis is not adjusted to take account of S corporation-level debt (unlike a partner's basis in its partnership interest).

Targeted EIDL advances that are not required to be repaid

The CARES Act[317] provides that an eligible entity that applies for a specified type of Small Business Act loan[318] may request an advance.[319] The advance generally may not exceed

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[311] Sec. 704(d). Other limitations may apply. See *e.g.*, secs. 465 and 469.

[312] The basis of a partner's interest that is acquired by contribution to the partnership is generally the amount of money and the adjusted basis of property contributed (sec. 722) and is adjusted under section 705. Section 705 provides that the basis of the partnership interest in increased by the sum of the partner's distributive share of taxable income, income exempt from tax, and the excess of depletion deductions over the basis of the depletable property. The basis of the partnership interest is decreased by distributions from the partnership and by the sum of the partner's distributive share of losses, expenditures that are not deductible in computing taxable income and not properly chargeable to capital account, and certain depletion deductions.

[313] Sec. 705(a)(1)(B).

[314] Sec. 752. An increase in a partner's share of partnership liabilities is treated as a contribution to the partnership (sec. 752(a)), and a decrease in a partner's share of partnership liabilities is treated as a distribution from the partnership (sec. 752(b)).

[315] Secs. 1363(a) and 1366.

[316] Secs. 1367(a)(1)(A) and 1366(a)(1)(A).

[317] Pub. L. No. 116-136.

[318] Economic Injury Disaster Loan ("EIDL"). This is a loan under section 7(b)(2) of the Small Business Act, 15 U.S.C. 636(b)(2).

[319] CARES Act sec. 1110(e).

$10,000. The applicant is not required to repay the advance, even if the loan for which the applicant applied is subsequently denied.[320]

The CAA[321] (amending the CARES Act) adds that an EIDL advance that is not repaid in whole or in part is not included in the income of the person that receives the advance, for Federal income tax purposes.[322] In the case of EIDL funding that is received relating to small business continuation, adaptation, and resiliency,[323] the funding is not included in the income of the person that receives the funding.[324]

Further, no deduction is denied, no tax attribute is reduced, and no basis increase is denied, by reason of the exclusion from income. As a result, otherwise deductible costs remain deductible even if the costs are paid with the excluded income or are associated with the excluded amount. Similarly, because section 108 does not apply, no tax attribute is reduced by reason of the exclusion.[325] Further, an otherwise allowable increase in the basis of property remains allowable even if the expenditure giving rise to the basis increase is paid with the excluded income or is associated with the excluded amount. For example, if a person engaged in a trade or business receives an EIDL advance or funding described in the provision and uses the proceeds to pay deductible wages of employees of the business, the section 162 deduction for the wages is not disallowed even though the advance or funding is excluded from the taxpayer's income.

If the person that receives the advance or funding is a partnership or S corporation, any amount excluded from income by reason of the provision is treated as tax exempt income for purposes of sections 705 (the determination of a partner's basis in the partnership interest) and 1366 (the passthrough of items to an S corporation shareholder). The provision also requires the Secretary of the Treasury (or the Secretary's delegate) to prescribe rules for determining a

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[320] CARES Act sec. 1110(e)(5).

[321] Pub. L. No. 116-260.

[322] Secs. 278(b) and (e)(1) of Division N of the CAA, effective for taxable years ending after the date of enactment of the CARES Act (March 27, 2020).

[323] This funding is provided in section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, which is in Division N of the CAA. The total amount of such funding that a covered entity may receive is $10,000, and if a covered entity received an EIDL grant (advance) under section 1110(e) of the CARES Act, the amount of the grant under section 331 of Division N is the difference between $10,000 and the amount of the previously received grant (Div. N, sec. 331(b)). A covered entity for this purpose is generally defined as an entity that is eligible for a specified type of Small Business Administration loan, applies for such a loan during the period January 31, 2020 and ending December 31, 2021, is located in a low-income community, has suffered an economic loss of greater than 30 percent, and employs no more than 300 employees (Div. N, sec. 331(a)(2)).

[324] Sec. 278(b) of Division N of the CAA.

[325] Because the exclusion from income is allowed under section 278(b) of Division N of the CAA, and not under section 108, the tax attribute reduction requirements that relate to the income exclusion under section 108 do not apply.

partner's distributive share of any amount treated as tax exempt income under the provision for purposes of the determination of a partner's basis in the partnership interest.

For example, assume that a business partnership has two partners (A and B). The partnership is engaged in a trade or business, receives an EIDL advance of $10,000 that is not repaid, and uses the proceeds to pay deductible wages of employees of the business. The deduction for the wages is not disallowed even though the advance is excluded from the taxpayer's income. A's and B's aggregate basis in the partnership is increased by $10,000. Treasury guidance will determine by how much each of A's and B's basis in the partnership, respectively, is increased.

Description of Proposal

Tax treatment relating to targeted EIDL advances

In connection with the appropriation of additional funds for targeted EIDL advances by another Committee, the proposal provides that for Federal income tax purposes the targeted EIDL advance is not included in the income of the person that receives the amount. No deduction is denied, no tax attribute is reduced, and no basis increase is denied, by reason of the exclusion from income. If the person that receives the advance is a partnership or S corporation, any amount excluded from income by reason of the proposal is treated as tax exempt income for purposes of the determination of the basis of a partner's interest in the partnership and the passthrough of items to an S corporation shareholder. The proposal requires the Secretary of the Treasury (or the Secretary's delegate) to prescribe rules for determining a partner's distributive share of any amount so treated as tax exempt income for purposes of determining the basis of a partner's interest in the partnership. Thus, the proposal gives Federal income tax treatment identical to such treatment for EIDL advances under the CAA.

Tax treatment relating to Restaurant Revitalization grants

In connection with the establishment of the Restaurant Revitalization Fund and the associated appropriation of funds by another Committee, the proposal provides that for Federal income tax purposes a Restaurant Revitalization grant is not included in the income of the person that receives the amount. No deduction is denied, no tax attribute is reduced, and no basis increase is denied, by reason of the exclusion from income. Except as otherwise provided by the Secretary of the Treasury (or the Secretary's delegate), if the person that receives the amount is a partnership or S corporation, any amount excluded from income by reason of the proposal is treated as tax exempt income for purposes of the determination of the basis of a partner's interest in the partnership and the passthrough of items to an S corporation shareholder. The proposal requires the Secretary of the Treasury (or the Secretary's delegate) to prescribe rules for determining a partner's distributive share of any amount so treated as tax exempt income for purposes of determining the basis of a partner's interest in the partnership.

COMMITTEE PRINT

Budget Reconciliation Legislative Recommendations Relating to Pensions

Subtitle H—Pensions

SEC. 9700. SHORT TITLE.

This subtitle may be cited as the ''Butch Lewis Emergency Pension Plan Relief Act of 2021''.

SEC. 9701. TEMPORARY DELAY OF DESIGNATION OF MULTIEMPLOYER PLANS AS IN ENDANGERED, CRITICAL, OR CRITICAL AND DECLINING STATUS.

(a) IN GENERAL.—Notwithstanding the actuarial certification under section 305(b)(3) of the Employee Retirement Income Security Act of 1974 and section 432(b)(3) of the Internal Revenue Code of 1986, if a plan sponsor of a multiemployer plan elects the application of this section, then, for purposes of section 305 of such Act and section 432 of such Code—

(1) the status of the plan for its first plan year beginning during the period beginning on March 1, 2020, and ending on February 28, 2021, or the next succeeding plan year (as designated by the plan sponsor in such election), shall be the same as the status of such plan under such sections for the plan year preceding such designated plan year, and

(2) in the case of a plan which was in endangered or critical status for the plan year preceding the designated plan year described in paragraph (1), the plan shall not be required to update its plan or schedules under section 305(c)(6) of such Act and section 432(c)(6) of such Code, or section 305(e)(3)(B) of such Act and section 432(e)(3)(B) of such Code, whichever is applicable, until the plan year following the designated plan year described in paragraph (1).

(b) EXCEPTION FOR PLANS BECOMING CRITICAL DURING ELECTION.—If—

(1) an election was made under subsection (a) with respect to a multiemployer plan, and

(2) such plan has, without regard to such election, been certified by the plan actuary under section 305(b)(3) of the Employee Retirement Income Security Act of 1974 and section 432(b)(3) of the Internal Revenue Code of 1986 to be in critical status for the designated plan year described in subsection (a)(1), then such plan shall be treated as a plan in critical status for such plan year for purposes of applying section 4971(g)(1)(A) of such Code, section 302(b)(3) of such Act (without regard to the second sentence thereof), and section 412(b)(3) of such

Code (without regard to the second sentence thereof).

(c) ELECTION AND NOTICE.—

(1) ELECTION.—An election under subsection (a)—

(A) shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate may prescribe and, once made, may be revoked only with the consent of the Secretary, and

(B) if made—

(i) before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act and section 432(b)(3) of such Code, shall be included with such annual certification, and

(ii) after such date, shall be submitted to the Secretary or the Secretary's delegate not later than 30 days after the date of the election.

(2) NOTICE TO PARTICIPANTS.—

(A) IN GENERAL.—Notwithstanding section 305(b)(3)(D) of the Employee Retirement Income Security Act of 1974 and section

432(b)(3)(D) of the Internal Revenue Code of 1986, if, by reason of an election made under subsection (a), the plan is in neither endangered nor critical status—

(i) the plan sponsor of a multiemployer plan shall not be required to provide notice under such sections, and

(ii) the plan sponsor shall provide to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor a notice of the election under subsection (a) and such other information as the Secretary of the Treasury (in consultation with the Secretary of Labor) may require—

(I) if the election is made before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act and section 432(b)(3) of such Code, not later than 30 days after the date of the certification, and

(II) if the election is made after such date, not later than 30 days after the date of the election.

(B) NOTICE OF ENDANGERED STATUS.—Notwithstanding section 305(b)(3)(D) of such Act and section 432(b)(3)(D) of such Code, if the plan is certified to be in critical status for any plan year but is in endangered status by reason of an election made under subsection (a), the notice provided under such sections shall be the notice which would have been provided if the plan had been certified to be in endangered status.

SEC. 9702. TEMPORARY EXTENSION OF THE FUNDING IMPROVEMENT AND REHABILITATION PERIODS FOR MULTIEMPLOYER PENSION PLANS IN CRITICAL AND ENDANGERED STATUS FOR 2020 OR 2021.

(a) IN GENERAL.—If the plan sponsor of a multiemployer plan which is in endangered or critical status for a plan year beginning in 2020 or 2021 (determined after application of section 9701) elects the application of this section, then, for purposes of section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986—

(1) except as provided in paragraph (2), the plan's funding improvement period or rehabilitation period, whichever is applicable, shall be 15 years rather than 10 years, and

(2) in the case of a plan in seriously endangered status, the plan's funding improvement period shall be 20 years rather than 15 years.

(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) ELECTION.—An election under this section shall be made at such time, and in such manner and form, as (in consultation with the Secretary of Labor) the Secretary of the Treasury or the Secretary's delegate may prescribe.

(2) DEFINITIONS.—Any term which is used in this section which is also used in section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such sections.

(c) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2019.

SEC. 9703. ADJUSTMENTS TO FUNDING STANDARD ACCOUNT RULES.

(a) ADJUSTMENTS.—

(1) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 304(b)(8) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1084(b)) is amended by adding at the end the following new subparagraph:

''(F) RELIEF FOR 2020 AND 2021.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met as of February 29, 2020, may elect to apply this paragraph (without regard to whether such plan previously elected the application of this paragraph)—

''(i) by substituting 'February 29, 2020' for 'August 31, 2008' each place it appears in subparagraphs (A)(i), (B)(i)(I), and (B)(i)(II),

''(ii) by inserting 'and other losses related to the virus SARS–CoV–2 or coronavirus disease 2019 (COVID–19) (including experience losses related to reductions in contributions, reductions in employment, and deviations from anticipated retirement rates, as determined by the plan sponsor)' after 'net investment losses' in subparagraph (A)(i), and

"(iii) by substituting 'this subparagraph or subparagraph (A)' for 'this subparagraph and subparagraph (A) both' in subparagraph (B)(iii).

The preceding sentence shall not apply to a plan to which special financial assistance is granted under section 4262. For purposes of the application of this subparagraph, the Secretary of the Treasury shall rely on the plan sponsor's calculations of plan losses unless such calculations are clearly erroneous.".

(2) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 431(b)(8) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(F) RELIEF FOR 2020 AND 2021.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met as of February 29, 2020, may elect to apply this paragraph (without regard to whether such plan previously elected the application of this paragraph)—

"(i) by substituting 'February 29, 2020' for 'August 31, 2008' each place it

appears in subparagraphs (A)(i), (B)(i)(I), and (B)(i)(II),

''(ii) by inserting 'and other losses related to the virus SARS–CoV–2 or coronavirus disease 2019 (COVID–19) (including experience losses related to reductions in contributions, reductions in employment, and deviations from anticipated retirement rates, as determined by the plan sponsor)' after 'net investment losses' in subparagraph (A)(i), and

''(iii) by substituting 'this subparagraph or subparagraph (A)' for 'this subparagraph and subparagraph (A) both' in subparagraph (B)(iii).

The preceding sentence shall not apply to a plan to which special financial assistance is granted under section 4262 of the Employee Retirement Income Security Act of 1974. For purposes of the application of this subparagraph, the Secretary shall rely on the plan sponsor's calculations of plan losses unless such calculations are clearly erroneous.''.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall take effect as of the first day of the first plan year ending on or after February 29, 2020, except that any election a plan makes pursuant to this section that affects the plan's funding standard account for the first plan year beginning after February 29, 2020, shall be disregarded for purposes of applying the provisions of section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 to such plan year.

(2) RESTRICTIONS ON BENEFIT INCREASES.—Notwithstanding paragraph (1), the restrictions on plan amendments increasing benefits in sections 304(b)(8)(D) of such Act and 431(b)(8)(D) of such Code, as applied by the amendments made by this section, shall take effect on the date of enactment of this Act.

SEC. 9704. SPECIAL FINANCIAL ASSISTANCE PROGRAM FOR FINANCIALLY TROUBLED MULTIEMPLOYER PLANS.

(a) APPROPRIATION.—Section 4005 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1305) is amended by adding at the end the following:

''(i)(1) An eighth fund shall be established for special financial assistance to multiemployer pension plans, as provided under section 4262, and to pay for necessary administrative and operating expenses of the corporation relating to such assistance.

''(2) There is appropriated from the general fund such amounts as are necessary for the costs of providing financial assistance under section 4262 and necessary administrative and operating expenses of the corporation. The eighth fund established under this subsection shall be credited with amounts from time to time as the Secretary of the Treasury, in conjunction with the Director of the Pension Benefit Guaranty Corporation, determines appropriate, from the general fund of the Treasury, but in no case shall such transfers occur after September 30, 2030.''.

(b) FINANCIAL ASSISTANCE AUTHORITY.—The Employee Retirement Income Security Act of 1974 is amended by inserting after section 4261 of such Act (29 U.S.C. 1431) the following:

''SEC. 4262. SPECIAL FINANCIAL ASSISTANCE BY THE CORPORATION.

''(a) SPECIAL FINANCIAL ASSISTANCE.—

''(1) IN GENERAL.—The corporation shall provide special financial assistance to an eligible multi-

employer plan under this section, upon the application of a plan sponsor of such a plan for such assistance.

''(2) INAPPLICABILITY OF CERTAIN REPAYMENT OBLIGATION.—A plan receiving financial assistance pursuant to this section shall not be subject to repayment obligations.

''(b) ELIGIBLE MULTIEMPLOYER PLANS.—

''(1) IN GENERAL.—For purposes of this section, a multiemployer plan is an eligible multiemployer plan if—

''(A) the plan is in critical and declining status (within the meaning of section 305(b)(6)) in any plan year beginning in 2020 through 2022;

''(B) a suspension of benefits has been approved with respect to the plan under section 305(e)(9) as of the date of the enactment of this section;

''(C) in any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status (within the meaning of section 305(b)(2)), has a modified funded percentage of less than 40 percent, and

has a ratio of active to inactive participants which is less than 2 to 3; or

''(D) the plan became insolvent for purposes of section 418E of the Internal Revenue Code of 1986 after December 16, 2014, and has remained so insolvent and has not been terminated as of the date of enactment of this section.

''(2) MODIFIED FUNDED PERCENTAGE.—For purposes of paragraph (1)(C), the term 'modified funded percentage' means the percentage equal to a fraction the numerator of which is current value of plan assets (as defined in section 3(26) of such Act) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D) of such Code and section 304(c)(6)(D) of such Act).

''(c) APPLICATIONS FOR SPECIAL FINANCIAL ASSISTANCE.—Within 120 days of the date of enactment of this section, the corporation shall issue regulations or guidance setting forth requirements for special financial assistance applications under this section. In such regulations or guidance, the corporation shall—

''(1) limit the materials required for a special financial assistance application to the minimum necessary to make a determination on the application;

''(2) specify effective dates for transfers of special financial assistance following approval of an application, based on the effective date of the supporting actuarial analysis and the date on which the application is submitted; and

''(3) provide for an alternate application for special financial assistance under this section, which may be used by a plan that has been approved for a partition under section 4233 before the date of enactment of this section.

''(d) TEMPORARY PRIORITY CONSIDERATION OF APPLICATIONS.—

''(1) IN GENERAL.—The corporation may specify in regulations or guidance under subsection (c) that, during a period no longer than the first 2 years following the date of enactment of this section, applications may not be filed by an eligible multiemployer plan unless—

''(A) the eligible multiemployer plan is insolvent or is likely to become insolvent within 5 years of the date of enactment of this section;

''(B) the corporation projects the eligible multiemployer plan to have a present value of financial assistance payments under section

4261 that exceeds $1,000,000,000 if the special financial assistance is not ordered;

''(C) the eligible multiemployer plan has implemented benefit suspensions under section 305(e)(9) as of the date of the enactment of this section; or

''(D) the corporation determines it appropriate based on other similar circumstances.

''(e) ACTUARIAL ASSUMPTIONS.—

''(1) ELIGIBILITY.—For purposes of determining eligibility for special financial assistance, the corporation shall accept assumptions incorporated in a multiemployer plan's determination that it is in critical status or critical and declining status (within the meaning of section 305(b)) for certifications of plan status completed before January 1, 2021, unless such assumptions are clearly erroneous. For certifications of plan status completed after December 31, 2020, a plan shall determine whether it is in critical or critical and declining status for purposes of eligibility for special financial assistance by using the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions (excluding the plan's interest rate) are unreasonable.

''(2) AMOUNT OF FINANCIAL ASSISTANCE.—In determining the amount of special financial assistance in its application, an eligible multiemployer plan shall—

''(A) use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate may not exceed the interest rate limit; and

''(B) for other assumptions, use the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

''(3) INTEREST RATE.—The interest rate limit for this purposes of this subsection is the rate specified in section 303(h)(2)(C)(iii) (disregarding modifications made under clause (iv) of such section) for the month in which the application for special financial assistance is filed by the eligible multiemployer plan or the 3 preceding months, with such specified rate increased by 200 basis points.

''(4) CHANGES IN ASSUMPTIONS.—If a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose in its applica-

tion to change such assumptions, provided that the plan discloses such changes in its application and describes why such assumptions are no longer reasonable. The corporation shall accept such changed assumptions unless it determines the changes are unreasonable, individually or in the aggregate. The plan may not propose a change to the interest rate otherwise required under this subsection for eligibility or financial assistance amount

''(f) APPLICATION DEADLINE.—Any application by a plan for special financial assistance under this section shall be submitted no later than December 31, 2025, and any revised application for special financial assistance shall be submitted no later than December 31, 2026.

''(g) DETERMINATIONS ON APPLICATIONS.—A plan's application for special financial assistance under this section that is timely filed in accordance with the regulations or guidance issued under subsection (c) shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is not eligible under this section. Such notice shall specify the reasons the plan is ineligible for special financial assistance, any proposed change or assumption is unreasonable, or information is needed to

complete the application. If a plan is denied assistance under this subsection, the plan may submit a revised application under this section. Any revised application for special financial assistance submitted by a plan shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the revised application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is not eligible under this section. Special financial assistance issued by the corporation shall be effective on a date determined by the corporation, but no later than 1 year after a plan's special financial assistance application is approved by the corporation or deemed approved. The corporation shall not pay any special financial assistance after September 30, 2030.

''(h) MANNER OF PAYMENT.—The payment made by the corporation to an eligible multiemployer plan under this section shall be made as a single, lump sum payment.

''(i) AMOUNT AND MANNER OF SPECIAL FINANCIAL ASSISTANCE.—

''(1) IN GENERAL.—Special financial assistance under this section shall be a transfer of funds in the amount necessary as demonstrated by the plan sponsor on the application for such special financial assistance, in accordance with the requirements de-

scribed in subsection (j). Special financial assistance shall be paid to such plan as soon as practicable upon approval of the application by the corporation.

''(2) NO CAP.—Special financial assistance granted by the corporation under this section shall not be capped by the guarantee under 4022A.

''(j) DETERMINATION OF AMOUNT OF SPECIAL FINANCIAL ASSISTANCE.—

''(1) IN GENERAL.—The amount of financial assistance provided to a multiemployer plan eligible for financial assistance under this section shall be such amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment under this section and ending on the last day of the plan year ending in 2051, with no reduction in a participant's or beneficiary's accrued benefit as of such date of enactment, except to the extent of a reduction in accordance with section 305(e)(8) adopted prior to the plan's application for special financial assistance under this section, and taking into account the reinstatement of benefits required under subsection (k).

''(2) PROJECTIONS.—The funding projections for purposes of this section shall be performed on a deterministic basis.

''(k) REINSTATEMENT OF BENEFIT SUSPENSIONS.—An eligible multiemployer plan that receives special financial assistance under this section shall—

''(1) reinstate any benefits that were suspended under section 305(e)(9) or section 4245(a), effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month; and

''(2) provide payments equal to the amount of benefits previously suspended under section 305(e)(9) or 4245(a) to any participants or beneficiaries in pay status as of the effective date of the special financial assistance, payable, as determined by the eligible multiemployer plan—

''(A) as a lump sum within 3 months of such effective date; or

''(B) in equal monthly installments over a period of 5 years, commencing within 3 months of such effective date, with no adjustment for interest.

''(l) WITHDRAWAL LIABILITY.—An employer's withdrawal liability for purposes of this title shall be calculated

without taking into account special financial assistance received under this section until the plan year beginning 15 calendar years after the effective date of the special financial assistance.

''(m) REQUIRED DISCLOSURE.—An eligible plan that receives special financial assistance under this section shall provide each employer that has an obligation to contribute to such plan, and each labor organization representing participants employed by such employer, with an estimate of the employer's share of the plan's unfunded vested benefits as of the end of each plan year ending after the date of enactment of this section, as determined after taking into account any special financial assistance received under this section. Such disclosure shall include a statement that, due to the special financial assistance provided under this section, the plan will have sufficient resources to pay 100 percent of the plan's benefit obligations until the last day of the plan year ending 2051.

''(n) RESTRICTIONS ON THE USE OF SPECIAL FINANCIAL ASSISTANCE.—Special financial assistance received under this section may be used by an eligible multiemployer plan to make benefit payments and pay plan expenses. Special financial assistance and any earnings on such assistance shall be segregated from other plan assets. Special financial assistance shall be invested by plans in

investment-grade bonds or other investments as permitted by the corporation.

''(o) CONDITIONS ON PLANS RECEIVING SPECIAL FINANCIAL ASSISTANCE.—

''(1) IN GENERAL.—The corporation may impose, by regulation, reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions to, and allocation of expenses to, other benefit plans, and withdrawal liability.

''(2) LIMITATION.—The corporation shall not impose conditions on an eligible multiemployer plan as a condition of, or following receipt of, special financial assistance under this section relating to—

''(A) any prospective reduction in plan benefits (including benefits that may be adjusted pursuant to section 305(e)(8));

''(B) plan governance, including selection of, removal of, and terms of contracts with, trustees, actuaries, investment managers, and other service providers; or

''(C) any funding rules relating to the plan receiving special financial assistance under this section.

''(3) PAYMENT OF PREMIUMS.—An eligible multiemployer plan receiving special financial assistance under this section shall continue to pay all premiums due under section 4007 for participants and beneficiaries in the plan.

''(4) ASSISTANCE NOT CONSIDERED FOR CERTAIN PURPOSES.—An eligible multiemployer plan that receives special financial assistance shall be deemed to be in critical status within the meaning of section 305(b)(2) until the last plan year ending in 2051.

''(5) INSOLVENT PLANS.—An eligible multiemployer plan receiving special financial assistance under this section that subsequently becomes insolvent will be subject to the current rules and guarantee for insolvent plans.

''(6) INELIGIBILITY FOR OTHER ASSISTANCE.—An eligible multiemployer plan that receives special financial assistance under this section is not eligible to apply for a new suspension of benefits under section 305(e)(9)(G).''.

(c) PREMIUM RATE INCREASE.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended—

(1) in subparagraph (A)—

(A) in clause (vi)—

(i) by inserting ", and before January 1, 2031" after "December 31, 2014,"; and

(ii) by striking "or" at the end;

(B) in clause (vii)—

(i) by moving the margin 2 ems to the left; and

(ii) in subclause (II), by striking the period and inserting ", or"; and

(C) by adding at the end the following:

"(viii) in the case of a multiemployer plan, for plan years beginning after December 31, 2030, $52 for each individual who is a participant in such plan during the applicable plan year."; and

(2) by adding at the end the following:

"(N) For each plan year beginning in a calendar year after 2031, there shall be substituted for the dollar amount specified in clause (viii) of subparagraph (A) an amount equal to the greater of—

"(i) the product derived by multiplying such dollar amount by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

''(II) the national average wage index (as so defined) for 2029; and

''(ii) such dollar amount for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.''.

SEC. 9705. EXTENDED AMORTIZATION FOR SINGLE EMPLOYER PLANS.

(a) 15-YEAR AMORTIZATION UNDER THE INTERNAL REVENUE CODE OF 1986.—Section 430(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(8) 15-YEAR AMORTIZATION.—With respect to plan years beginning after December 31, 2019 (or, at the election of the plan sponsor, after December 31, 2018)—

''(A) the shortfall amortization bases for all plan years preceding the first plan year beginning after December 31, 2019 (or after De-

cember 31, 2018, whichever is elected), and all shortfall amortization installments determined with respect to such bases, shall be reduced to zero, and

''(B) subparagraphs (A) and (B) of paragraph (2) shall each be applied by substituting '15-plan-year period' for '7-plan-year period'.''.

(b) 15-YEAR AMORTIZATION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following new paragraph:

''(8) 15-YEAR AMORTIZATION.—With respect to plan years beginning after December 31, 2019 (or, at the election of the plan sponsor, after December 31, 2018)—

''(A) the shortfall amortization bases for all plan years preceding the first plan year beginning after December 31, 2019 (or after December 31, 2018, whichever is elected), and all shortfall amortization installments determined with respect to such bases, shall be reduced to zero, and

''(B) subparagraphs (A) and (B) of paragraph (2) shall each be applied by substituting '15-plan-year period' for '7-plan-year period'.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2018.

SEC. 9706. EXTENSION OF PENSION FUNDING STABILIZATION PERCENTAGES FOR SINGLE EMPLOYER PLANS.

(a) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—The table contained in subclause (II) of section 430(h)(2)(C)(iv) of the Internal Revenue Code of 1986 is amended to read as follows:

''If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
Any year in the period starting in 2012 and ending in 2019	90%	110%
Any year in the period starting in 2020 and ending in 2025	95%	105%
2026	90%	110%
2027	85%	115%
2028	80%	120%
2029	75%	125%
After 2029	70%	130%.''.

(2) FLOOR ON 25-YEAR AVERAGES.—Subclause (I) of section 430(h)(2)(C)(iv) of such Code is amended by adding at the end the following: ''Not-

withstanding anything in this subclause, if the average of the first, second, or third segment rate for any 25-year period is less than 5 percent, such average shall be deemed to be 5 percent.''.

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—The table contained in subclause (II) of section 303(h)(2)(C)(iv) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(h)(2)(C)(iv)(II)) is amended to read as follows:

''If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
Any year in the period starting in 2012 and ending in 2019	90%	110%
Any year in the period starting in 2020 and ending in 2025	95%	105%
2026	90%	110%
2027	85%	115%
2028	80%	120%
2029	75%	125%
After 2029	70%	130%.''.

(2) FLOOR ON 25-YEAR AVERAGES.—Subclause (I) of section 303(h)(2)(C)(iv) of such Act (29 U.S.C. 1083(h)(2)(C)(iv)(I)) is amended by adding at the end the following: ''Notwithstanding anything in this subclause, if the average of the first, second, or third segment rate for any 25-year period is less

than 5 percent, such average shall be deemed to be 5 percent.''.

(3) CONFORMING AMENDMENTS.—

(A) IN GENERAL.—Section 101(f)(2)(D) of such Act (29 U.S.C. 1021(f)(2)(D)) is amended—

(i) in clause (i) by striking ''and the Bipartisan Budget Act of 2015'' both places it appears and inserting '', the Bipartisan Budget Act of 2015, and the Butch Lewis Emergency Pension Plan Relief Act of 2021'', and

(ii) in clause (ii) by striking ''2023'' and inserting ''2029''.

(B) STATEMENTS.—The Secretary of Labor shall modify the statements required under subclauses (I) and (II) of section 101(f)(2)(D)(i) of such Act to conform to the amendments made by this section.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2019.

SEC. 9707. MODIFICATION OF SPECIAL RULES FOR MINIMUM FUNDING STANDARDS FOR COMMUNITY NEWSPAPER PLANS.

(a) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Subsection (m) of section 430 of the Internal Revenue Code of 1986 is amended to read as follows:

''(m) SPECIAL RULES FOR COMMUNITY NEWSPAPER PLANS.—

''(1) IN GENERAL.—An eligible newspaper plan sponsor of a plan under which no participant has had the participant's accrued benefit increased (whether because of service or compensation) after April 2, 2019, may elect to have the alternative standards described in paragraph (4) apply to such plan.

''(2) ELIGIBLE NEWSPAPER PLAN SPONSOR.—The term 'eligible newspaper plan sponsor' means the plan sponsor of—

''(A) any community newspaper plan, or

''(B) any other plan sponsored, as of April 2, 2019, by a member of the same controlled group of a plan sponsor of a community newspaper plan if such member is in the trade or business of publishing 1 or more newspapers.

''(3) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner

as prescribed by the Secretary. Such election, once made with respect to a plan year, shall apply to all subsequent plan years unless revoked with the consent of the Secretary.

''(4) ALTERNATIVE MINIMUM FUNDING STANDARDS.—The alternative standards described in this paragraph are the following:

''(A) INTEREST RATES.—

''(i) IN GENERAL.—Notwithstanding subsection (h)(2)(C) and except as provided in clause (ii), the first, second, and third segment rates in effect for any month for purposes of this section shall be 8 percent.

''(ii) NEW BENEFIT ACCRUALS.—Notwithstanding subsection (h)(2), for purposes of determining the funding target and normal cost of a plan for any plan year, the present value of any benefits accrued or earned under the plan for a plan year with respect to which an election under paragraph (1) is in effect shall be determined on the basis of the United States Treasury obligation yield curve for

the day that is the valuation date of such plan for such plan year.

''(iii) UNITED STATES TREASURY OBLIGATION YIELD CURVE.—For purposes of this subsection, the term 'United States Treasury obligation yield curve' means, with respect to any day, a yield curve which shall be prescribed by the Secretary for such day on interest-bearing obligations of the United States.

''(B) SHORTFALL AMORTIZATION BASE.—

''(i) PREVIOUS SHORTFALL AMORTIZATION BASES.—The shortfall amortization bases determined under subsection (c)(3) for all plan years preceding the first plan year to which the election under paragraph (1) applies (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero under rules similar to the rules of subsection (c)(6).

''(ii) NEW SHORTFALL AMORTIZATION BASE.—Notwithstanding subsection (c)(3), the shortfall amortization base for the first plan year to which the election under para-

graph (1) applies shall be the funding shortfall of such plan for such plan year (determined using the interest rates as modified under subparagraph (A)).

''(C) DETERMINATION OF SHORTFALL AMORTIZATION INSTALLMENTS.—

''(i) 30-YEAR PERIOD.—Subparagraphs (A) and (B) of subsection (c)(2) shall be applied by substituting '30-plan-year' for '7-plan-year' each place it appears.

''(ii) NO SPECIAL ELECTION.—The election under subparagraph (D) of subsection (c)(2) shall not apply to any plan year to which the election under paragraph (1) applies.

''(D) EXEMPTION FROM AT-RISK TREATMENT.—Subsection (i) shall not apply.

''(5) COMMUNITY NEWSPAPER PLAN.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'community newspaper plan' means any plan to which this section applies maintained as of December 31, 2018, by an employer which—

''(i) maintains the plan on behalf of participants and beneficiaries with respect to employment in the trade or business of publishing 1 or more newspapers which were published by the employer at any time during the 11-year period ending on the date of the enactment of this subsection,

''(ii)(I) is not a company the stock of which is publicly traded (on a stock exchange or in an over-the-counter market), and is not controlled, directly or indirectly, by such a company, or

''(II) is controlled, directly or indirectly, during the entire 30-year period ending on the date of the enactment of this subsection by individuals who are members of the same family, and does not publish or distribute a daily newspaper that is carrier-distributed in printed form in more than 5 States, and

''(iii) is controlled, directly or indirectly—

''(I) by 1 or more persons residing primarily in a State in which the

community newspaper has been published on newsprint or carrier-distributed,

''(II) during the entire 30-year period ending on the date of the enactment of this subsection by individuals who are members of the same family,

''(III) by 1 or more trusts, the sole trustees of which are persons described in subclause (I) or (II), or

''(IV) by a combination of persons described in subclause (I), (II), or (III).

''(B) NEWSPAPER.—The term 'newspaper' does not include any newspaper (determined without regard to this subparagraph) to which any of the following apply:

''(i) Is not in general circulation.

''(ii) Is published (on newsprint or electronically) less frequently than 3 times per week.

''(iii) Has not ever been regularly published on newsprint.

''(iv) Does not have a bona fide list of paid subscribers.

''(C) CONTROL.—A person shall be treated as controlled by another person if such other person possesses, directly or indirectly, the power to direct or cause the direction and management of such person (including the power to elect a majority of the members of the board of directors of such person) through the ownership of voting securities.

''(6) CONTROLLED GROUP.—For purposes of this subsection, the term 'controlled group' means all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 as of the date of the enactment of this subsection.''.

(b) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Subsection (m) of section 303 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(m)) is amended to read as follows:

''(m) SPECIAL RULES FOR COMMUNITY NEWSPAPER PLANS.—

''(1) IN GENERAL.—An eligible newspaper plan sponsor of a plan under which no participant has had the participant's accrued benefit increased (whether because of service or compensation) after

April 2, 2019, may elect to have the alternative standards described in paragraph (4) apply to such plan.

''(2) ELIGIBLE NEWSPAPER PLAN SPONSOR.—The term 'eligible newspaper plan sponsor' means the plan sponsor of—

''(A) any community newspaper plan, or

''(B) any other plan sponsored, as of April 2, 2019, by a member of the same controlled group of a plan sponsor of a community newspaper plan if such member is in the trade or business of publishing 1 or more newspapers.

''(3) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as prescribed by the Secretary of the Treasury. Such election, once made with respect to a plan year, shall apply to all subsequent plan years unless revoked with the consent of the Secretary of the Treasury.

''(4) ALTERNATIVE MINIMUM FUNDING STANDARDS.—The alternative standards described in this paragraph are the following:

''(A) INTEREST RATES.—

''(i) IN GENERAL.—Notwithstanding subsection (h)(2)(C) and except as provided in clause (ii), the first, second, and

third segment rates in effect for any month for purposes of this section shall be 8 percent.

''(ii) NEW BENEFIT ACCRUALS.—Notwithstanding subsection (h)(2), for purposes of determining the funding target and normal cost of a plan for any plan year, the present value of any benefits accrued or earned under the plan for a plan year with respect to which an election under paragraph (1) is in effect shall be determined on the basis of the United States Treasury obligation yield curve for the day that is the valuation date of such plan for such plan year.

''(iii) UNITED STATES TREASURY OBLIGATION YIELD CURVE.—For purposes of this subsection, the term 'United States Treasury obligation yield curve' means, with respect to any day, a yield curve which shall be prescribed by the Secretary of the Treasury for such day on interest-bearing obligations of the United States.

''(B) SHORTFALL AMORTIZATION BASE.—

''(i) PREVIOUS SHORTFALL AMORTIZATION BASES.—The shortfall amortization bases determined under subsection (c)(3) for all plan years preceding the first plan year to which the election under paragraph (1) applies (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero under rules similar to the rules of subsection (c)(6).

''(ii) NEW SHORTFALL AMORTIZATION BASE.—Notwithstanding subsection (c)(3), the shortfall amortization base for the first plan year to which the election under paragraph (1) applies shall be the funding shortfall of such plan for such plan year (determined using the interest rates as modified under subparagraph (A)).

''(C) DETERMINATION OF SHORTFALL AMORTIZATION INSTALLMENTS.—

''(i) 30-YEAR PERIOD.—Subparagraphs (A) and (B) of subsection (c)(2) shall be applied by substituting '30-plan-year' for '7-plan-year' each place it appears.

''(ii) NO SPECIAL ELECTION.—The election under subparagraph (D) of subsection (c)(2) shall not apply to any plan year to which the election under paragraph (1) applies.

''(D) EXEMPTION FROM AT-RISK TREATMENT.—Subsection (i) shall not apply.

''(5) COMMUNITY NEWSPAPER PLAN.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'community newspaper plan' means a plan to which this section applies maintained as of December 31, 2018, by an employer which—

''(i) maintains the plan on behalf of participants and beneficiaries with respect to employment in the trade or business of publishing 1 or more newspapers which were published by the employer at any time during the 11-year period ending on the date of the enactment of this subsection,

''(ii)(I) is not a company the stock of which is publicly traded (on a stock exchange or in an over-the-counter market),

and is not controlled, directly or indirectly, by such a company, or

''(II) is controlled, directly, or indirectly, during the entire 30-year period ending on the date of the enactment of this subsection by individuals who are members of the same family, and does not publish or distribute a daily newspaper that is carrier-distributed in printed form in more than 5 States, and

''(iii) is controlled, directly, or indirectly—

''(I) by 1 or more persons residing primarily in a State in which the community newspaper has been published on newsprint or carrier-distributed,

''(II) during the entire 30-year period ending on the date of the enactment of this subsection by individuals who are members of the same family,

''(III) by 1 or more trusts, the sole trustees of which are persons described in subclause (I) or (II), or

''(IV) by a combination of persons described in subclause (I), (II), or (III).

''(B) NEWSPAPER.—The term 'newspaper' does not include any newspaper (determined without regard to this subparagraph) to which any of the following apply:

''(i) Is not in general circulation.

''(ii) Is published (on newsprint or electronically) less frequently than 3 times per week.

''(iii) Has not ever been regularly published on newsprint.

''(iv) Does not have a bona fide list of paid subscribers.

''(C) CONTROL.—A person shall be treated as controlled by another person if such other person possesses, directly or indirectly, the power to direct or cause the direction and management of such person (including the power to elect a majority of the members of the board of directors of such person) through the ownership of voting securities.

''(6) CONTROLLED GROUP.—For purposes of this subsection, the term 'controlled group' means all

persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 as of the date of the enactment of this subsection.

''(7) EFFECT ON PREMIUM RATE CALCULATION.—Notwithstanding any other provision of law or any regulation issued by the Pension Benefit Guaranty Corporation, in the case of a plan for which an election is made to apply the alternative standards described in paragraph (3), the additional premium under section 4006(a)(3)(E) shall be determined as if such election had not been made.''.

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years ending after December 31, 2017.

SEC. 9708. COST OF LIVING ADJUSTMENT FREEZE.

(a) IN GENERAL.—Subsection (d) of section 415 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(5) FREEZE ON COST OF LIVING ADJUSTMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of calendar years beginning after December 31, 2030—

"(i) no adjustment shall be made under paragraph (1), and

"(ii) the dollar amounts as adjusted under such paragraph for calendar year 2030 shall apply.

"(B) EXCEPTION.—Subparagraph (A) shall not apply in the case of a plan maintained pursuant to 1 or more collective bargaining agreements.".

(b) COMPENSATION LIMIT.—Paragraph (17) of section 401(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(C) FREEZE ON COST OF LIVING ADJUSTMENTS.—

"(i) IN GENERAL.—Except as provided in clause (ii), in the case of calendar years beginning after December 31, 2030—

"(I) no adjustment shall be made under subparagraph (B), and

"(II) the dollar amount as adjusted under such subparagraph for calendar year 2030 shall apply.

"(ii) EXCEPTION.—Clause (i) shall not apply in the case of a plan maintained pursuant to 1 or more collective bargaining agreements.".

(c) CONFORMING AMENDMENTS.—

(1) Section 45A(c)(3) of the Internal Revenue Code of 1986 is amended by striking "415(d)" and inserting "415(d) (without regard to paragraph (5) thereof)".

(2) Section 402(g)(4) of such Code is amended by striking "415(d)" and inserting "415(d) (without regard to paragraph (5) thereof)".

(3) Section 404(l) of such Code is amended by striking "401(a)(17)(B)" and inserting "401(a)(17)(B) (without regard to section 401(a)(17)(C))".

(4) Section 408(k)(8) of such Code is amended—

(A) by striking "415(d)" and inserting "415(d) (without regard to paragraph (5) thereof)", and

(B) by striking "401(a)(17)(B)" and inserting "401(a)(17)(B) (without regard to section 401(a)(17)(C))".

(5) Section 408(p)(2)(E)(ii) of such Code is amended by striking ''415(d)'' and inserting ''415(d) (without regard to paragraph (5) thereof)''.

(6) Section 409(o)(2) of such Code is amended by striking ''415(d)'' and inserting ''415(d) (without regard to paragraph (5) thereof)''.

(7) Section 416(i)(1)(A) of such Code is amended by striking ''415(d)'' and inserting ''415(d) (without regard to paragraph (5) thereof)''.

(8) Section 457(e)(11)(B)(iii) of such Code is amended by striking ''415(d)'' and inserting ''415(d) (without regard to paragraph (5) thereof)''.

(9) Section 457(e)(15)(B) of such Code is amended by striking ''415(d)'' and inserting ''415(d) (without regard to paragraph (5) thereof)''.

(10) Section 505(b)(7) of such Code is amended by striking ''401(a)(17)(B)'' and inserting ''401(a)(17)(B) (without regard to section 401(a)(17)(C))''.

(11) Section 664(g)(7)(B) of such Code is amended by striking ''415(d)'' and inserting ''415(d) (without regard to paragraph (5) thereof)''.

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DESCRIPTION OF THE BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO PENSIONS

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 10, 2021

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

February 8, 2021
JCX-4-21

CONTENTS

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of the Budget Reconciliation Legislative Recommendations Relating to Pensions on February 10, 2021. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Budget Reconciliation Legislative Recommendations Relating to Pensions* (JCX-4-21), February 8, 2021. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (herein "Code"), unless otherwise stated.

BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO PENSIONS

SUBTITLE H—PENSIONS

A. Temporary Delay of Designation of Multiemployer Plans as in Endangered, Critical or Critical and Declining Status

Present Law

Multiemployer plans

A multiemployer plan is a plan to which more than one unrelated employer contributes, that is established pursuant to one or more collective bargaining agreements, and which meets such other requirements as specified by the Secretary of Labor.[2] Multiemployer plans are governed by a board of trustees consisting of an equal number of employer and employee representatives, referred to as the plan sponsor. In general, the level of contributions to a multiemployer plan is specified in the applicable collective bargaining agreements, and the level of plan benefits is established by the plan sponsor.

Like other private defined benefit plans,[3] multiemployer defined benefit plans are subject to minimum funding requirements under the Code and the Employee Retirement Income Security Act of 1974 ("ERISA").[4] An excise tax may be imposed on the employers maintaining the plan if the funding requirements are not met.[5] However, the excise tax does not apply for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status (as defined below).[6]

General funding requirements for multiemployer plans

Employer contributions to a defined benefit plan are generally subject to minimum funding requirements, the details of which depend on whether the plan is a single employer plan or a multiemployer plan. Unless a funding waiver is obtained, an employer may be subject to a two-tier excise tax if the funding requirements are not met.

In general, the annual deduction limit on employer contributions to a multiemployer defined benefit plan for a year is the excess of (1) 140 percent of the plan's current liability (the

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[2] Sec. 414(f) and ERISA section 2(37).

[3] Sec. 414(j).

[4] Secs. 412 and 431, and ERISA secs. 302 and 304. Additional rules apply to multiemployer plans that are insolvent under section 418E and ERISA section 4245. Certain changes were made to the funding requirements for multiemployer plans by the Pension Protection Act of 2006 ("PPA"), Pub. L. No. 109-280 and by the Multiemployer Pension Reform Act of 2014 ("MPRA"), Pub. L. No. 113-235, Division O.

[5] Sec. 4971.

[6] Sec. 4971(g)(1).

present value of all benefits earned under the plan), over (2) the value of plan assets. However, the deduction limit is never less than the amount of contributions required under the funding rules. If contributions exceed the amount deductible, the employers that contribute to the multiemployer plan are generally subject to an excise tax.

General funding requirements apply to all multiemployer plans. Additional funding requirements apply to plans in endangered or critical status, as defined below. An employer that withdraws from a multiemployer plan is generally liable to the plan for a portion of the plan's unfunded vested benefits, referred to as withdrawal liability. Various provisions limit the amount of an employer's withdrawal liability.

Under the general funding requirements, a multiemployer defined benefit plan maintains a funding standard account, to which charges (such as for benefit accruals and negative plan experience) and credits (such as for positive plan experience and contributions) are made. The minimum required contribution for a plan year is the amount, if any, needed to balance accumulated credits and accumulated charges to the funding standard account. If required contributions are not made, causing the funding standard account to have a negative balance, an accumulated funding deficiency results.

A multiemployer plan is required to use an acceptable actuarial cost method (referred to as the plan's funding method) to determine the elements included in its funding standard account for a year, including normal cost and supplemental cost. Normal cost generally represents the cost of future benefits allocated to the year under the plan's funding method. The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, future employee contributions, or plan assets. Supplemental costs may be attributable to past service liability or to worse than expected plan experience. Supplemental costs are amortized (that is, recognized for funding purposes) over a specified number of years (generally 15 years) by annual charges to the funding standard account over that period. Factors that result in a supplemental loss can alternatively result in a gain that is recognized by annual credits to the funding standard account over a 15-year amortization period (in addition to a credit for contributions made for the plan year).

Actuarial assumptions used under the multiemployer plan funding rules must be reasonable. The interest rate (which represents the expected return on plan assets over time) and mortality assumptions used in funding computations are subject to these general standards; the funding rules do not specify the interest rate or mortality tables that need to be used. For funding purposes, the actuarial value of plan assets may be used, rather than fair market value, subject to certain conditions.

Additional requirements relating to plans in endangered or critical status

In general

Additional funding-related requirements apply to a multiemployer defined benefit pension plan that is in endangered or critical status. In connection with the endangered and critical rules, not later than the 90th day of each plan year, the actuary for any multiemployer plan must certify to the Secretary and to the plan sponsor whether or not the plan is in

endangered or critical status for the plan year. In the case of a plan which is in a funding improvement period or rehabilitation period, the actuary must also certify whether or not the plan is making its scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan. If a plan is certified as being in endangered or critical status, notice of endangered or critical status must be provided within 30 days after the date of certification to plan participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation (PBGC), and the Secretary of Labor. Additional notice requirements apply in the case of a plan certified as being in critical status.

Failure of the plan's actuary to certify the status of the plan is treated as a failure to file the annual report (thus, an ERISA penalty of up to $1,100 per day applies).

Various requirements apply to a plan in endangered or critical status, including adoption of and compliance with (1) a funding improvement plan in the case of a multiemployer plan in endangered status, and (2) a rehabilitation plan in the case of a multiemployer plan in critical status. In addition, restrictions on certain plan amendments, benefit increases, and reductions in employer contributions apply during certain periods.

A multiemployer plan is generally in endangered status if the plan is not in critical status and, as of the beginning of the plan year, (1) the plan's funded percentage for the plan year is less than 80 percent, or (2) the plan has an accumulated funding deficiency for the plan year or is projected to have an accumulated funding deficiency in any of the six succeeding plan years (taking into account amortization extensions).[7] A plan's funded percentage is the percentage determined by dividing the value of plan assets by the accrued liability of the plan. A plan that meets the requirements of both (1) and (2) is treated as in seriously endangered status.

A multiemployer plan is in critical status for a plan year if, as of the beginning of the plan year, it meets any of the following definitions:

- The funded percentage of the plan is less than 65 percent and the sum of (1) the market value of plan assets, plus (2) the present value of reasonably anticipated employer and employee contributions for the current plan year and each of the six succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the six succeeding plan years (plus administrative expenses);
- The plan has an accumulated funding deficiency for the current plan year, not taking into account any amortization period extensions, or (2) the plan is projected to have an accumulated funding deficiency for any of the three succeeding plan years (four succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any amortization period extensions;
- The plan's normal cost for the current plan year, plus interest for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last day of the

[7] Sec. 432(b)(1) and ERISA sec. 305(b)(1).

preceding year, exceeds the present value of the reasonably anticipated employer contributions for the current plan year, (2) the present value of vested (that is, nonforfeitable) benefits of inactive participants is greater than the present value of vested benefits of active participants, and (3) the plan has an accumulated funding deficiency for the current plan year, or is projected to have an accumulated funding deficiency for any of the four succeeding plan years (not taking into account amortization period extensions); or

- The sum of (1) the fair market value of plan assets, plus (2) the present value of the reasonably anticipated employer contributions for the current plan year and each of the four succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the four succeeding plan years (plus administrative expenses).[8]

The first plan year for which the plan is in critical status is referred to as the "initial critical year," and governs the timing of certain requirements and periods.

In making the determinations and projections applicable in determining and certifying endangered or critical status (or neither), the plan actuary must follow certain statutory standards. The actuary's projections generally must be based on reasonable actuarial estimates, assumptions, and methods that offer the actuary's best estimate of anticipated experience under the plan.[9] In addition, the plan actuary must make projections for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of the year. The projected present value of liabilities as of the beginning of the year must be based on the most recent actuarial statement required with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year. Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, must be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

In the case of a multiemployer plan in critical status, additional required contributions (referred to as employer surcharges) apply until the adoption of a collective bargaining agreement that is consistent with the rehabilitation plan. In addition, employers are relieved of liability for minimum required contributions under the otherwise applicable funding rules (and the related excise tax), provided that a rehabilitation plan is adopted and followed.[10] Moreover,

[8] Sec. 432(b)(2) and ERISA sec. 305(b)(2).

[9] Under section 432(j)(8) and ERISA section 305(j)(8), for purposes of the endangered and critical rules, various actuarial computations are based upon the unit credit funding method, regardless of whether it is the funding method used in applying the general funding requirements to the plan.

[10] Sec. 4971(g)(1)(A).

subject to notice requirements, some benefits that would otherwise be protected from elimination or reduction may be eliminated or reduced in accordance with the rehabilitation plan.[11]

In the case of a failure to meet the requirements applicable to a multiemployer plan in endangered or critical status, the plan actuary, plan sponsor, or employers required to contribute to the plan may be subject to an excise tax under the Code or a civil penalty under ERISA.[12]

Description of Proposal

Under the proposal, the sponsor of a multiemployer defined benefit pension plan may elect for an applicable plan year to treat the plan's status for purposes of the additional funding rules applicable to multiemployer plans in endangered or critical status[13] the same as the plan's status for the preceding plan year. The applicable plan year is either the first plan year beginning during the period beginning on March 1, 2020 and ending on February 28, 2021, or the next succeeding plan year, as designated by the plan sponsor. Thus, for example, a calendar year plan that is not in critical or endangered status for 2020 may elect to retain its non-critical and non-endangered status for 2021, and a calendar year plan that was in either critical or endangered status for 2020 may elect to retain such status for 2021.

An election under the proposal may only be revoked with the consent of the Secretary of the Treasury and special notice provisions apply with respect to the election and the notification of participants, the bargaining parties, the PBGC, and the Secretary of Labor.

In the case of a plan that elects to retain its endangered or critical status, the plan is not required to update its funding improvement or rehabilitation plan and schedules (as applicable) until the plan year that follows the applicable plan year. If an election is made by a plan under the proposal and, without regard to the election, the plan is certified by the plan's actuary for the applicable plan year to be in critical status, the plan is treated as a plan in critical status for purposes of the special rules that relieve contributing employers from liability for minimum required contributions (that would apply under the otherwise applicable minimum funding rules) and the excise tax that applies in the case of a failure to make such contributions.

Effective Date

The proposal is effective on the date of enactment.

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[11] The rules for multiemployer plans in critical status include the elimination or reduction of "adjustable benefits," which include some benefits that would otherwise be protected from elimination or reduction under the anti-cutback rules under section 411(d)(6) and ERISA section 204(g).

[12] Sec. 4971(g) and ERISA sec. 502(c)(8). In addition, certain failures are treated as a failure to file an annual report with respect to the multiemployer plan, subject to a civil penalty under ERISA.

[13] For purposes of sec. 432 and sec. 305 of ERISA.

B. Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status for 2020 or 2021

Present Law

General funding requirements for multiemployer plans

General funding requirements apply to all multiemployer plans. For background relating to such requirements, see Present Law under section A. above.

Funding improvement and rehabilitation plans and periods

Under section 432, additional funding rules apply to a multiemployer defined benefit pension plan that is in endangered or critical status. These rules require the adoption of and compliance with (1) a funding improvement plan in the case of a multiemployer plan in endangered status, and (2) a rehabilitation plan in the case of a multiemployer plan in critical status.

The funding improvement period is the 10-year period beginning on the first day of the first plan year beginning after the earlier of (1) the second anniversary of the date of adoption of the funding improvement plan, or (2) the expiration of collective bargaining agreements that were in effect on the due date for the actuarial certification of endangered status for the initial determination year and covering, as of such date, at least 75 percent of the plan's active participants. The period ends if the plan is no longer in endangered status or if the plan enters critical status. Generally, in the case of a "seriously endangered plan," the funding improvement period is 15 years, rather than 10 years. The rehabilitation period is the 10-year period beginning on the first day of the first plan year following the earlier of (1) the second anniversary of the date of adoption of the rehabilitation plan or (2) the expiration of collective bargaining agreements that were in effect on the due date for the actuarial certification of critical status for the initial critical year and covering at least 75 percent of the active participants in the plan as of such due date. The rehabilitation period ends if the plan emerges from critical status.

Description of Proposal

Under the proposal, a plan sponsor of a multiemployer defined benefit pension plan that is in endangered or critical status for a plan year beginning in 2020 or 2021 may elect to extend the plan's otherwise applicable funding improvement or rehabilitation period by five years, from 10 to 15 years. If a multiemployer defined benefit pension plan is in seriously endangered status for a plan year beginning in 2020 or 2021, the plan sponsor may elect to extend the plan's otherwise applicable funding improvement period by five years from 15 to 20 years.

The election is to be made at such time, and in such manner and form, as the Secretary of the Treasury, or the Secretary's delegate, may prescribe in consultation with the Secretary of Labor.

Effective Date

The proposal is effective for plan years beginning after December 31, 2019.

C. Adjustments to Funding Standard Account Rules

Present Law

Defined benefit pension plans generally are subject to minimum funding rules under the Code that require the sponsoring employer to periodically make contributions to fund plan benefits. Similar rules apply to plans under ERISA.

The minimum funding rules for single employer and multiemployer plans are different.[14] A single employer plan is a plan that is not a multiemployer plan. A multiemployer plan is generally a plan to which more than one employer is required to contribute and which is maintained pursuant to a collective bargaining agreement.[15]

Funding standard account

A multiemployer defined benefit pension plan is required to maintain a special account called a "funding standard account" to which charges and credits (such as credits for plan contributions) are made for each plan year. If, as of the close of the plan year, charges to the funding standard account exceed credits to the account, the plan has an "accumulated funding deficiency" equal to the amount of such excess charges. For example, if the balance of charges to the funding standard account of a plan for a year would be $200,000 without any contributions, then a minimum contribution equal to that amount is required to meet the minimum funding standard for the year to prevent an accumulated funding deficiency. If credits to the funding standard account exceeds charges, a "credit balance" results. The amount of the credit balance, increased with interest, can be used to reduce future required contributions.

Amortization periods

A plan is required to use an acceptable actuarial cost method to determine the elements included in its funding standard account for a year. Generally, an acceptable actuarial cost method breaks up the cost of benefits under the plan into annual charges consisting of two elements for each plan year. These elements are referred to as the: (1) normal cost and (2) amortization of supplemental cost. The normal cost for a plan for a plan year generally represents the cost of future benefits allocated to the plan year under the funding method used by the plan for current employees. The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, future employee contributions, or plan assets, such as a net experience loss. Supplemental costs are amortized (i.e., recognized for funding purposes) over a specified number of years, depending on the source. The amortization

[14] The Pension Protection Act of 2006, Pub. L. No. 109-280, modified the minimum funding rules for multiemployer defined benefit pension plans. These modifications are generally effective for plan years beginning after 2007.

[15] Sec. 414(f) and sec. 3(37) of ERISA.

period applicable to a multiemployer plan for most credits and charges is 15 years.[16] Past service liability under the plan is amortized over 15 years;[17] past service liability due to plan amendments is amortized over 15 years; and experience gains and losses resulting from a change in actuarial assumptions are amortized over 15 years. Experience gains and losses and waived funding deficiencies are also amortized over 15 years.

The Secretary, upon receipt of an application, is required to grant an extension of the amortization period for up to five years with respect to any unfunded past service liability, investment loss, or experience loss.[18] There must be included with the application a certification by the plan's actuary that: (1) absent the extension, the plan would have an accumulated funding deficiency in the current plan year and any of the nine succeeding plan years; (2) the plan sponsor has adopted a plan to improve the plan's funding status; (3) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures; and (4) required notice has been provided. The Secretary may also grant an additional extension of such amortization periods for an additional five years, using the same standards for determining whether such an extension may be granted as under the pre-Pension Protection Act of 2006 ("PPA 2006")[19] minimum funding rules.[20]

Actuarial assumptions

In applying the funding rules, all costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods, each of which must be reasonable (taking into account the experience of the plan and reasonable expectations), or which, in the aggregate, result in a total plan contribution equivalent to a contribution that would be obtained if each assumption and method were reasonable. In addition, the assumptions are required to offer the actuary's best estimate of anticipated experience under the plan.

Valuation of plan assets

In determining the charges and credits to be made to the plan's funding standard account for a multiemployer plan, the value of plan assets may be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is

[16] Sec. 431(b)(2) and sec. 304(b)(2) of ERISA. Prior to the effective date of PPA, the amortization period was 30 years for past service liability, past service liability due to plan amendments, and losses and gains resulting from a change in actuarial assumptions.

[17] In the case of a plan in existence on January 1, 1974, past service liability under the plan on the first day on which the plan was first subject to ERISA was amortized over 40 years. In the case of a plan which was not in existence on January 1, 1974, past service liability under the plan on the first day on which the plan was first subject to ERISA was amortized over 30 years. Past service liability due to plan amendments was amortized over 30 years.

[18] Sec. 431(d)(1) and sec. 304(d)(1) of ERISA.

[19] Pub. L. No. 109-280.

[20] Sec. 431(d)(2) and sec. 304(d)(2) of ERISA.

permitted under regulations prescribed by the Secretary.[21] Thus, the actuarial value of a plan's assets under a reasonable actuarial valuation method may be used instead of fair market value. A reasonable actuarial valuation method generally may include a smoothing methodology that takes into account reasonable expected investment returns and average values of the plan assets, so long as the smoothing or averaging period does not exceed the five most recent plan years, including the current plan year. In addition, in order to be reasonable, any actuarial valuation method used by the plan is required to result in a value of plan assets that is not less than 80 percent of the current fair market value of the assets and not more than 120 percent of the current fair market value.[22] In determining plan funding under an acceptable actuarial cost method, a plan's actuary generally makes certain assumptions regarding the future experience of a plan.

The actuarial valuation method is considered to be part of the plan's funding method. The same method must be used each plan year. If the valuation method is changed, the change is only permitted to take effect if approved by the Secretary of the Treasury.[23]

Additional funding rules for plans in endangered or critical status

Under section 432,[24] additional funding rules apply to a multiemployer defined benefit pension plan that is in endangered or critical status. These rules require the adoption of and compliance with: (1) a funding improvement plan in the case of a multiemployer plan in endangered status; and (2) a rehabilitation plan in the case of a multiemployer plan in critical status. In the case of a plan in critical status, additional required contributions and benefit reductions apply and employers are relieved of liability for minimum required contributions under the otherwise applicable funding rules, provided that a rehabilitation plan is adopted and followed.

Failure to comply with minimum funding rules

In the event of a failure to comply with the minimum funding rules, the Code imposes a two-level excise tax on the plan sponsor.[25] The initial tax is five percent of the plan's accumulated funding deficiency for multiemployer plans. An additional tax is imposed if the failure is not corrected before the date that a notice of deficiency with respect to the initial five percent tax is mailed to the employer by the IRS or the date of assessment of the initial tax. The additional tax is equal to 100 percent of the unpaid contribution or the accumulated funding deficiency, whichever is applicable. Before issuing a notice of deficiency with respect to the

[21] Sec. 431(c)(2) and sec. 304(c)(2) of ERISA.

[22] Treas. Reg. sec. 1.412(c)(2)-1(b). Rev. Proc. 2000-40, 2000-2 CB 357, generally indicates that only an averaging period that does not exceed five years will be approved by the IRS. The revenue procedure also indicates that for a funding valuation method to be approved, the asset value determined under the method must be adjusted to be no greater than 120 percent and no less than 80 percent of the fair market value.

[23] Sec. 412(d)(1) and sec. 302(d)(1) of ERISA.

[24] Parallel rules apply under ERISA.

[25] Sec. 4971. Special rules apply under section 4971 for multiemployer plans in endangered or critical status.

excise tax, the Secretary must notify the Secretary of Labor and provide the Secretary of Labor with a reasonable opportunity to require the employer responsible for contributing to, or under, the plan to correct the deficiency or comment on the imposition of the tax.

Description of Proposal

Special funding relief rules

A plan sponsor of a multiemployer plan that meets a solvency test (described below) is permitted to use either one or both of two special funding relief rules which apply generally for the first two plan years ending after February 29, 2020. The special relief is not available to a plan to which special financial assistance is granted.[26]

Amortization of net investment losses

The first special funding relief rule allows the plan sponsor to treat the portion of its experience loss attributable to the net investment losses (if any), as well as any other losses related to the virus SARS-CoV-2 or coronavirus disease 2019 ("COVID-19")(including experience losses related to reductions in contributions, reductions in employment, and deviations from anticipated retirement rates, as determined by the plan sponsor), incurred in either or both of the first two plan years ending after February 29, 2020, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period beginning with the plan year in which such portion is first recognized in the actuarial value of assets and ending with the last plan year in the 30-plan-year period beginning with the plan year in which the net investment loss was incurred. If this treatment is used for a plan year, the plan sponsor is not eligible for an extension of this amortization period for this separate item, and if an extension was granted before electing this treatment of net investment losses, such extension must not result in such amortization period exceeding 30 years.

A plan sponsor is required to determine its net investment losses in the manner described by the Secretary, on the basis of the difference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement). The determination as to whether an arrangement is a criminally fraudulent investment arrangement is made under rules substantially similar to the rules prescribed by the Secretary for purposes of section 165.

Expanded smoothing period and asset valuation corridor

Under the other special funding relief rule, a multiemployer plan may change its asset valuation method in a manner which spreads the difference between the expected returns and actual returns for either or both of the first two plan years ending after February 29, 2020 over a period of not more than 10 years. However, as under present law, spreading the difference between expected and actual returns under a plan's asset valuation method is only permitted if it

[26] Pursuant to section 4262 of ERISA, as added by Part D of this proposal.

does not result in a value of plan assets, when compared to the current fair market value of the plan assets, to be at any time outside an asset valuation corridor.

Under this special funding relief rule, the asset valuation corridor is expanded so that, for either or both of the first two plan years beginning after February 29, 2020, the plan's asset value must be adjusted under the valuation method being used so the value of plan assets is not less than 80 percent of the current fair market value of the assets and not more than 130 percent of the current fair market value (rather than 120 percent). This expanded valuation corridor is available whether or not the plan sponsor increases the period for spreading the difference between expected and actual returns under its asset valuation method.

If a plan sponsor uses either or both of the options (extending the spreading period and the expanded asset valuation corridor) under this special relief rule for one or both of these plan years, the Secretary shall not treat the asset valuation method of the plan as unreasonable solely because of such change and the change will be deemed to be approved by the Secretary.

Amortization of reduction in unfunded accrued liability

To the extent a plan sponsor uses both of the two special funding relief rules for any plan year, the plan is required to treat any resulting reduction in the plan's unfunded accrued liability as a separate experience amortization base. This separate experience amortization base is amortized in annual installments (until fully amortized) over a period of 30 plan years (rather than the otherwise applicable amortization period).

Solvency test

The solvency test is satisfied only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under the special funding relief rule elected.

Benefit restriction

If a plan sponsor of a multiemployer plan uses one, or both, of the special funding relief rules under this provision, then, in addition to any other applicable restrictions on benefit increases, the following limit also applies. A plan amendment increasing benefits may not go into effect during either of the two plan years immediately following any plan year to which such election first applies unless one of the following conditions is satisfied: either (1) the plan actuary certifies that such increase is paid for out of additional contributions not allocated to the plan immediately before the election was made, and the plan's funded percentage and projected credit balances for such two plan years are reasonably expected to be generally at the same levels as such percentage and balances would have been if the benefit increase had not been adopted, or (2) the amendment is required to maintain the plan's status as a qualified retirement plan under the applicable provisions of the Code or to comply with other applicable law.

Reporting

A plan sponsor of a multiemployer plan that uses one or both of these special funding relief rules must give notice to participants and beneficiaries of its use of the relief and must inform the PBGC of its use of the relief in such form and manner as the Director of the PBGC may prescribe.

Effective Date

The proposal takes effect as of the first day of the first plan year ending on or after February 29, 2020. However, if a plan sponsor uses either (or both) of the special funding relief provisions and such use affects the plan's funding standard account for the first plan year beginning after February 29, 2020, the use of the rule is disregarded for purposes of applying the provisions for additional funding rules for multiemployer plans in endangered or critical status to such plan year. The restriction on plan amendments increasing benefits is effective on the date of enactment of this proposal.

D. Special Financial Assistance Program for Financially Troubled Multiemployer Plans

Present Law

Multiemployer plans

A multiemployer plan is a plan to which more than one unrelated employer contributes, that is established pursuant to one or more collective bargaining agreements, and which meets such other requirements as specified by the Secretary of Labor.[27] Multiemployer plans are governed by a board of trustees consisting of an equal number of employer and employee representatives, referred to as the plan sponsor. In general, the level of contributions to a multiemployer plan is specified in the applicable collective bargaining agreements, and the level of plan benefits is established by the plan sponsor.

Like other private defined benefit plans,[28] multiemployer defined benefit plans are subject to minimum funding requirements under the Code and the Employee Retirement Income Security Act of 1974 ("ERISA").[29] An excise tax may be imposed on the employers maintaining the plan if the funding requirements are not met.[30] However, the excise tax does not apply for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status (as defined below).[31]

General funding requirements for multiemployer plans

Employer contributions to a defined benefit plan are generally subject to minimum funding requirements, the details of which depend on whether the plan is a single employer plan or a multiemployer plan. Unless a funding waiver is obtained, an employer may be subject to a two-tier excise tax if the funding requirements are not met.

In general, the annual deduction limit on employer contributions to a multiemployer defined benefit plan for a year is the excess of (1) 140 percent of the plan's current liability (the present value of all benefits earned under the plan), over (2) the value of plan assets. However, the deduction limit is never less than the amount of contributions required under the funding

[27] Sec. 414(f) and ERISA section 2(37).

[28] Sec. 414(j).

[29] Secs. 412 and 431, and ERISA secs. 302 and 304. Additional rules apply to multiemployer plans that are insolvent under section 418E and ERISA section 4245. Certain changes were made to the funding requirements for multiemployer plans by the Pension Protection Act of 2006 ("PPA"), Pub. L. No. 109-280 and by the Multiemployer Pension Reform Act of 2014 ("MPRA"), Pub. L. No. 113-235, Division O.

[30] Sec. 4971.

[31] Sec. 4971(g)(1).

rules. If contributions exceed the amount deductible, the employers that contribute to the multiemployer plan are generally subject to an excise tax.

General funding requirements apply to all multiemployer plans. Additional funding requirements apply to plans in endangered or critical status, as defined below. An employer that withdraws from a multiemployer plan is generally liable to the plan for a portion of the plan's unfunded vested benefits, referred to as withdrawal liability. Various provisions limit the amount of an employer's withdrawal liability.

Under the general funding requirements, a multiemployer defined benefit plan maintains a funding standard account, to which charges (such as for benefit accruals and negative plan experience) and credits (such as for positive plan experience and contributions) are made. The minimum required contribution for a plan year is the amount, if any, needed to balance accumulated credits and accumulated charges to the funding standard account. If required contributions are not made, causing the funding standard account to have a negative balance, an accumulated funding deficiency results.

A multiemployer plan is required to use an acceptable actuarial cost method (referred to as the plan's funding method) to determine the elements included in its funding standard account for a year, including normal cost and supplemental cost. Normal cost generally represents the cost of future benefits allocated to the year under the plan's funding method. The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, future employee contributions, or plan assets. Supplemental costs may be attributable to past service liability or to worse than expected plan experience. Supplemental costs are amortized (that is, recognized for funding purposes) over a specified number of years (generally 15 years) by annual charges to the funding standard account over that period. Factors that result in a supplemental loss can alternatively result in a gain that is recognized by annual credits to the funding standard account over a 15-year amortization period (in addition to a credit for contributions made for the plan year).

Actuarial assumptions used under the multiemployer plan funding rules must be reasonable. The interest rate (which represents the expected return on plan assets over time) and mortality assumptions used in funding computations are subject to these general standards; the funding rules do not specify the interest rate or mortality tables that need to be used. For funding purposes, the actuarial value of plan assets may be used, rather than fair market value, subject to certain conditions.

Additional requirements relating to plans in endangered or critical status

In general

Additional funding-related requirements apply to a multiemployer defined benefit pension plan that is in endangered or critical status. In connection with the endangered and critical rules, not later than the 90th day of each plan year, the actuary for any multiemployer plan must certify to the Secretary and to the plan sponsor whether or not the plan is in endangered or critical status for the plan year. In the case of a plan which is in a funding improvement period or rehabilitation period, the actuary must also certify whether or not the plan

is making its scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan. If a plan is certified as being in endangered or critical status, notice of endangered or critical status must be provided within 30 days after the date of certification to plan participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation (PBGC), and the Secretary of Labor. Additional notice requirements apply in the case of a plan certified as being in critical status.

Failure of the plan's actuary to certify the status of the plan is treated as a failure to file the annual report (thus, an ERISA penalty of up to $1,100 per day applies).

Various requirements apply to a plan in endangered or critical status, including adoption of and compliance with (1) a funding improvement plan in the case of a multiemployer plan in endangered status, and (2) a rehabilitation plan in the case of a multiemployer plan in critical status. In addition, restrictions on certain plan amendments, benefit increases, and reductions in employer contributions apply during certain periods.

A multiemployer plan is generally in endangered status if the plan is not in critical status and, as of the beginning of the plan year, (1) the plan's funded percentage for the plan year is less than 80 percent, or (2) the plan has an accumulated funding deficiency for the plan year or is projected to have an accumulated funding deficiency in any of the six succeeding plan years (taking into account amortization extensions).[32] A plan's funded percentage is the percentage determined by dividing the value of plan assets by the accrued liability of the plan. A plan that meets the requirements of both (1) and (2) is treated as in seriously endangered status.

A multiemployer plan is in critical status for a plan year if, as of the beginning of the plan year, it meets any of the following definitions:

- The funded percentage of the plan is less than 65 percent and the sum of (1) the market value of plan assets, plus (2) the present value of reasonably anticipated employer and employee contributions for the current plan year and each of the six succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the six succeeding plan years (plus administrative expenses);
- The plan has an accumulated funding deficiency for the current plan year, not taking into account any amortization period extensions, or (2) the plan is projected to have an accumulated funding deficiency for any of the three succeeding plan years (four succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any amortization period extensions;
- The plan's normal cost for the current plan year, plus interest for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last day of the preceding year, exceeds the present value of the reasonably anticipated employer contributions for the current plan year, (2) the present value of vested (that is,

[32] Sec. 432(b)(1) and ERISA sec. 305(b)(1).

nonforfeitable) benefits of inactive participants is greater than the present value of vested benefits of active participants, and (3) the plan has an accumulated funding deficiency for the current plan year, or is projected to have an accumulated funding deficiency for any of the four succeeding plan years (not taking into account amortization period extensions); or

- The sum of (1) the market value of plan assets, plus (2) the present value of the reasonably anticipated employer contributions for the current plan year and each of the four succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the four succeeding plan years (plus administrative expenses).[33]

The first plan year for which the plan is in critical status is referred to as the "initial critical year," and governs the timing of certain requirements and periods.

In making the determinations and projections applicable in determining and certifying endangered or critical status (or neither), the plan actuary must follow certain statutory standards. The actuary's projections generally must be based on reasonable actuarial estimates, assumptions, and methods that offer the actuary's best estimate of anticipated experience under the plan.[34] In addition, the plan actuary must make projections for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of the year. The projected present value of liabilities as of the beginning of the year must be based on the most recent actuarial statement required with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year. Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, must be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

In the case of a multiemployer plan in critical status, additional required contributions (referred to as employer surcharges) apply until the adoption of a collective bargaining agreement that is consistent with the rehabilitation plan. In addition, employers are relieved of liability for minimum required contributions under the otherwise applicable funding rules (and the related excise tax), provided that a rehabilitation plan is adopted and followed.[35] Moreover,

[33] Sec. 432(b)(2) and ERISA sec. 305(b)(2).

[34] Under section 432(j)(8) and ERISA section 305(j)(8), for purposes of the endangered and critical rules, various actuarial computations are based upon the unit credit funding method, regardless of whether it is the funding method used in applying the general funding requirements to the plan.

[35] Sec. 4971(g)(1)(A).

subject to notice requirements, some benefits that would otherwise be protected from elimination or reduction may be eliminated or reduced in accordance with the rehabilitation plan.[36]

In the case of a failure to meet the requirements applicable to a multiemployer plan in endangered or critical status, the plan actuary, plan sponsor, or employers required to contribute to the plan may be subject to an excise tax under the Code or a civil penalty under ERISA.[37]

Anti-cutback exceptions for multiemployer plans

Under the anti-cutback rules, generally applicable to defined benefit plans, a plan amendment generally may not reduce accrued benefits or reduce or eliminate an optional form of benefit, early retirement benefit, or retirement-type subsidy with respect to accrued benefits. Amendments are generally permitted only to reduce future rates of accrual, eliminate optional forms of benefit, or eliminate or reduce early retirement benefits or retirement-type subsidies only with respect to future accruals; and, in those cases, notice must be provided.

In the case of a multiemployer defined benefit plan that is in critical status[38] or critical and declining status,[39] or is insolvent,[40] subject to notice and other procedural requirements, certain plan benefits that would otherwise be protected under the anti-cutback rules are required or permitted to be reduced or eliminated.

In the case of a multiemployer plan in critical status, payments in excess of a single life annuity (plus any social security supplement, if applicable) may not be made to a participant or beneficiary who begins receiving benefits after notice that the plan is in critical status is provided and payments may not be made for the purchase of an irrevocable commitment from an insurer to pay benefits. In addition, the plan sponsor may reduce certain benefits ("adjustable benefits") that the plan sponsor deems appropriate, but not for a participant or beneficiary who began to receive benefits before receiving notice that the plan is in critical status. Adjustable benefits generally include disability benefits not in pay status, early retirement benefits or retirement-type subsidies, and most benefit payment options, but not the amount of an accrued benefit payable at normal retirement age.

In general, a multiemployer plan is insolvent when its available resources in a plan year are not sufficient to pay the plan benefits for that plan year. In that case, benefits must be reduced to the level that can be covered by the plan's assets, but not below the level of benefits

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[36] The rules for multiemployer plans in critical status include the elimination or reduction of "adjustable benefits," which include some benefits that would otherwise be protected from elimination or reduction under the anti-cutback rules under section 411(d)(6) and ERISA section 204(g).

[37] Sec. 4971(g) and ERISA sec. 502(c)(8). In addition, certain failures are treated as a failure to file an annual report with respect to the multiemployer plan, subject to a civil penalty under ERISA.

[38] Sec. 432(b)(2) and sec. 305(b)(2) of ERISA.

[39] Sec. 432(b)(6) and sec. 305(b)(6) of ERISA.

[40] Sec. 418E of ERISA and sec. 4245 of ERISA.

that are eligible for guarantee under the PBGC's multiemployer plan program. If plan assets are insufficient to pay benefits at the guarantee level, the PBGC provides financial assistance to the plan in the form of loans.

Suspension of benefits in multiemployer plans that are in critical and declining status

A multiemployer plan is in critical and declining status[41] if the plan (1) is in critical status and (2) is projected to become insolvent[42] during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if either the ratio of inactive plan participants to active plan participants is more than two to one or the plan's funded percentage is less than 80 percent). In that case, subject to certain conditions, limitations, and procedural requirements, including the appointment of a retiree representative in some cases and approval by the Secretary of the Treasury, previously earned benefits may be reduced (referred to as benefit suspensions), including benefits of some participants and beneficiaries in pay status.

Benefit suspensions are permitted only if the plan actuary certifies that, taking the benefit suspensions into account, the plan is projected to avoid insolvency, and the plan sponsor determines that, despite all reasonable measures to avoid insolvency, the plan is projected to become insolvent unless benefits are suspended.

The plan sponsor generally determines the amount of the benefit suspensions and how the suspensions apply to plan participants and beneficiaries. However, benefits cannot be reduced below 110 percent of the monthly PBGC guarantee level; disability benefits cannot be suspended; benefit reductions for a participant or beneficiary between the ages of 75 and 80 are limited; benefit reductions are not permitted for a participant or beneficiary age 80 or over; and benefit suspensions in the aggregate must be at the level reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

Partition

On application by the plan sponsor of an eligible multiemployer plan for a partition of the plan, the PBGC may order a partition of the plan. Not later than 30 days after submitting an application to the PBGC for partition of a plan, the plan sponsor must notify the participants and beneficiaries of the application, in the form and manner prescribed by PBGC regulations.

For purposes of the provision, a multiemployer plan is an eligible multiemployer plan if--

- the plan is in critical and declining status (as described above),
- the PBGC determines, after consultation with the Participant and Plan Sponsor Advocate,[43] that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including

[41] Sec. 432(b)(6) and sec. 305(b)(6) of ERISA.

[42] As defined in sec. 418E and sec. 4245 of ERISA.

[43] Established under section 4004 of ERISA.

maximum benefit suspensions permitted in the case of a critical and declining plan, if applicable,

- the PBGC reasonably expects that a partition of the plan will reduce the PBGC's expected long-term loss with respect to the plan and is necessary for the plan to remain solvent,
- the PBGC certifies to Congress that the PBGC's ability to meet existing financial assistance obligations to other plans (including any liabilities associated with multiemployer plans that are insolvent or that are projected to become insolvent within 10 years) will not be impaired by the partition, and
- the cost to the PBGC arising from the proposed partition is paid exclusively from the fund for basic benefits guaranteed for multiemployer plans.[44]

The PBGC must make a determination regarding a partition application not later than 270 days after the application is filed (or, if later, the date the application is completed) in accordance with PBGC regulations. Not later than 14 days after a partition order, the PBGC must provide notice thereof to the House Committees on Education and the Workforce and on Ways and Means and the Senate Committees on Finance and on Health, Education, Labor, and Pensions, as well as to any affected participants or beneficiaries.

The plan sponsor and the plan administrator of the eligible multiemployer plan (the "original" plan) before the partition are the plan sponsor and plan administrator of the plan created by the partition order (the "new" plan). For purposes of determining benefits eligible for guarantee by the PBGC, the new plan is a successor plan with respect to the original plan.

The PBGC's partition order is to provide for a transfer to the new plan the minimum amount of the original plan's liabilities necessary for the original plan to remain solvent. The provision does not provide for the transfer to the new plan of any assets of the original plan.

It is expected that the liabilities transferred to the new plan will be liabilities attributable to benefits of specific participants and beneficiaries (or a specific group or groups of participants and beneficiaries) as requested by the plan sponsor of the original plan and approved by the PBGC, up to the PBGC guarantee level applicable to each participant or beneficiary. Thus, benefits for such participants and beneficiaries up to the guarantee level will be paid by the new plan. For each month after the effective date of the partition that such a participant or beneficiary is in pay status, the original plan will pay a monthly benefit to the participant or beneficiary in the amount by which (1) the monthly benefit that would be paid to the participant or beneficiary under the terms of the original plan if the partition had not occurred (taking into account any benefit suspensions and any plan amendments after the effective date of the partition) exceeds (2) the amount of the participant's or beneficiary's benefit up to the PBGC guarantee level.

[44] Thus, other Federal funds, including funds from the PBGC single employer plan program, may not be used for this purpose.

During the 10-year period following the effective date of the partition, the original plan must pay the PBGC premiums due for each year with respect to participants whose benefits were transferred to the new plan. The original plan must pay an additional amount to the PBGC if it provides a benefit improvement (as defined under the rules for plans in critical and declining status, described above) that takes effect after the effective date of the partition. Specifically, for each year during the 10-year period following the effective date of the partition, the original plan must pay the PBGC an annual amount equal to the lesser of (1) the total value of the increase in benefit payments for the year that is attributable to the benefit improvement, or (2) the total benefit payments from the new plan for the year. This payment must be made to the PBGC at the time of, and in addition to, any other PBGC premium due from the original plan.

If an employer withdraws from the original plan within 10 years after the date of the partition order, the employer's withdrawal liability will be determined by reference to both the original plan and the new plan. If the withdrawal occurs more than 10 years after the date of the partition order, withdrawal liability will be determined only by reference to the original plan and not with respect to the new plan

Withdrawal liability

An employer that withdraws from a multiemployer plan in a complete or partial withdrawal is generally liable to the plan in the amount determined to be the employer's withdrawal liability.[45] In general, a "complete withdrawal" means the employer has permanently ceased operations under the plan or has permanently ceased to have an obligation to contribute. A "partial withdrawal" generally occurs on the last day of a plan year if, for such plan year, there is a 70-percent contribution decline or there is a partial cessation of the employer's contribution obligation.

When an employer withdraws from a multiemployer plan, the plan sponsor is required to determine the amount of the employer's withdrawal liability, notify the employer of the amount of the withdrawal liability, and collect the amount of the withdrawal liability from the employer. In order to determine an employer's withdrawal liability, a portion of the plan's unfunded vested benefits is first allocated to the employer, generally in proportion to the employer's share of plan contributions for a previous period.[46] The amount of unfunded vested benefits allocable to the employer is then subject to various reductions and adjustments. An employer's withdrawal liability is generally payable, with interest, in level annual installments. However, the amount of the annual installments is limited, based on the amount of the employer's previous contributions to the plan, and the period over which installments are paid is limited to 20 years. An employer's withdrawal liability is the amount determined after application of these limits. In addition, the plan sponsor and the employer may agree to settle an employer's withdrawal liability obligation for a different amount.

[45] ERISA secs. 4201-4225.

[46] Under 29 C.F.R. sec. 4211.2, for this purpose, unfunded vested benefits are the amount by which the value of vested benefits under the plan exceeds the value of plan assets.

If a multiemployer plan is in critical status, payments in excess of a single life annuity (plus any social security supplement, if applicable) may not be made and reductions in adjustable benefits are permitted. If a plan is in critical and declining status, benefit suspensions are permitted, including with respect to participants and beneficiaries in pay status. The elimination of any prohibited forms of distribution and reductions in adjustable benefits are disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability. In addition, suspensions of benefits made under a multiemployer plan in critical and declining status are disregarded in determining the plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability unless the withdrawal occurs more than 10 years after the effective date of the benefit suspension.

Multiemployer Plan Program of the Pension Benefit Guaranty Corporation

The PBGC, a corporation within DOL, provides an insurance program for benefits under most defined benefit plans maintained by private employers. The PBGC is administered by a director. Its board of directors consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce.

The PBGC is financed through the payment of premiums by covered defined benefit plans, assets from terminated single employer defined benefit plans trusteed by the PBGC, and investment income on PBGC assets. The PBGC insures pension benefits under separate programs for single employer and multiemployer defined benefit plans.

In the case of a multiemployer plan, flat-rate premiums apply at a rate of $31 per participant for 2021. The PBGC provides financial assistance to insolvent multiemployer plans in the amount needed to pay benefits at the guarantee limit, which is the sum of 100 percent of the first $11 of monthly benefits plus 75 percent of the next $33 of monthly benefits multiplied by the participant's years of service.

Termination of a multiemployer defined benefit pension plan can occur as a result of (1) the adoption of a plan amendment providing that participants receive no credit under the plan for any purpose for service with any employer after a date specified in the amendment (referred to as "freezing accruals"), (2) the adoption of a plan amendment causing the plan to become a defined contribution plan, or (3) the withdrawal of every employer from the plan or the cessation of the obligation of all employers to contribute to the plan (referred to as "mass withdrawal").[47]

If a terminated multiemployer plan becomes insolvent and plan assets are not sufficient to pay benefits at the level guaranteed by the PBGC, the PBGC will provide financial assistance as needed to pay benefits at the guarantee level, as described above.[48] If a multiemployer plan that

[47] ERISA sec. 4041A. Unlike the termination of a single employer plan (and except in the case of multiemployer plan terminations occurring before 1981), termination of a multiemployer plan does not of itself result in the end of the operation of the plan or in the PBGC's taking over the plan. Instead, the plan sponsor continues to administer the plan.

[48] ERISA secs. 4261 and 4281.

has not terminated becomes insolvent, similar rules apply, including the provision by the PBGC of financial assistance in an amount needed to provide benefits at the guarantee level.

Description of Proposal

Special financial assistance

The PBGC will provide financial assistance to an eligible multiemployer plan upon the application of the plan sponsor in accordance with the following requirements. A plan receiving such financial assistance will not be subject to repayment obligations.

Eligible multiemployer plan

A multiemployer defined benefit pension plan is eligible to apply for special financial assistance if:

- The plan is in critical and declining status[49] in any plan year beginning in 2020 through 2022;
- A suspension of benefits has been approved with respect to the plan as of the date of enactment;[50]
- In any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status,[51] has a modified funded percentage of less than 40 percent,[52] and has a ratio of active to inactive participants which is less than two to three; or
- The plan became insolvent[53] after December 16, 2014, has remained insolvent, and has not been terminated as of the date of enactment of this proposal;[54]

[49] Within the meaning of section 305(b)(6) of ERISA.

[50] Sec. 432(e)(9) and sec. 305(e)(9) of ERISA.

[51] Within the meaning of section 305(b)(2) of ERISA.

[52] As noted above, for determining critical status for purposes of section 432 and section 305 of ERISA, assets and liabilities are generally both determined at their actuarial value for purposes of calculating the funded percentage, but for purposes of determining which plans are eligible multiemployer plans, the modified funded percentage means the percentage equal to a fraction the numerator of which is the current value of plan assets as defined in ERISA section 3(26) (fair market value if available and otherwise the fair value as determined in good faith by a trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations of the Secretary, assuming an orderly liquidation at the time of such determination) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D) and section 304(c)(6)(D) of ERISA).

[53] For purposes of section 418E.

[54] Pursuant to section 4041A of ERISA.

Application for special financial assistance

The proposal requires the PBGC to, within 120 days of the date of enactment, issue regulations or guidance setting forth the requirements for special financial assistance applications that:

- Limit the materials required to be submitted for a special financial assistance application to the minimum necessary to make a determination on the application;
- Specify the effective dates for transfers of special financial assistance following approval of an application, based on the effective date of the supporting actuarial analysis and the date on which the application is submitted; and
- Provide for an alternate application for special financial assistance which may be used by a plan that has been approved for a partition[55] before the date of enactment.

Temporary priority consideration of applications

The PBGC may also provide in regulations or guidance that during a period no longer than the first two years following the date of enactment, applications may not be filed by an eligible multiemployer plan unless

- The plan is insolvent, or is likely to become insolvent within five years of the date of enactment;
- The PBGC projects the plan to have a present value of financial assistance payments[56] that exceeds $1,000,000,000 if the special financial assistance is not ordered;
- The plan has implemented benefit suspensions[57] as of the date of enactment; or
- The PBGC determines it appropriate based on other similar circumstances.

Actuarial assumptions

For purposes of determining eligibility for special financial assistance, the proposal requires PBGC to accept assumptions incorporated in the eligible multiemployer plan's determination that it is in critical status or critical and declining status for certifications completed before January 1, 2021, unless such assumptions are clearly erroneous. For certifications of plan status completed after December 31, 2020, a plan determines whether it is in critical or critical and declining status for purposes of eligibility for special financial assistance by using the assumptions that the plan used in its most recently completed certification of plan

[55] Sec. 4233 of ERISA.

[56] As defined in sec. 4261 of ERISA.

[57] As described in sec. 432(e)(9) and sec. 305(e)(9) of ERISA.

status before January 1, 2021, unless such assumptions (excluding the plan's interest rate) are unreasonable.

Assumptions used in determination of amount of financial assistance

In determining the amount of financial assistance, an eligible multiemployer plan in its application must use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate does not exceed the interest rate limit. The interest rate limit is the third segment rate[58] for the month in which the application for special financial assistance is filed by the eligible multiemployer plan ("specified rate") or the three preceding months, with such specified rate increased by 200 basis points. For other assumptions, the plan should use the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

If a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose to change such assumptions in its application, provided that the plan discloses such changes in its application and describes the reasons why such assumptions are no longer reasonable. The PBGC shall accept such changed assumptions unless it determines the changes are unreasonable individually or in the aggregate. The plan may not propose a change to the interest rate that is otherwise required to be used (as described above) for eligibility or determining the financial assistance amount.

Deadline for submitting application

Any application by a plan for special financial assistance must be submitted no later than December 31, 2025, and any revised application must be submitted no later than December 31, 2026.

Determinations on applications

A plan's application for special financial assistance that is timely filed in accordance with the regulations or guidance issued by the PBGC is deemed to be approved unless the corporation notifies the plan within 120 days of the filing of the application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is ineligible. Such notice must specify the reasons the plan is ineligible for special financial assistance, any proposed change or assumption is unreasonable, or information is needed to complete the application. If a plan is denied special financial assistance, the plan may submit a revised application. Any revised application for special financial assistance submitted by a plan is to be deemed approved unless the PBGC notifies the plan within 120 days of the filing of the revised application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is ineligible for such assistance.

[58] Sec. 303(h)(2)(C)(iii) of ERISA disregarding modifications made under clause (iv) of such section.

Amount and manner of payment of special financial assistance

Special financial assistance issued by the PBGC to an eligible multiemployer plan is effective on a date determined by the PBGC but no later than 1 year after a plan's special financial assistance application is approved, or deemed approved, by the PBGC. The special financial assistance must be paid by the PBGC to an eligible multiemployer plan as a single lump sum payment as soon as practicable upon approval of the application by the PBGC. The PBGC may not make any special financial assistance payments to an eligible multiemployer plan after September 30, 2030.

The special financial assistance to be transferred to the eligible multiemployer plan is the amount necessary as demonstrated by the plan sponsor in its application. Such amount is the amount needed by the eligible multiemployer plan to be able to pay all benefits due during the period beginning on the date of payment of the special financial assistance and ending on the last day of the plan year ending in 2051,[59] with no reduction in a participant's or beneficiary's accrued benefit as of the date of enactment of this proposal, except to the extent of benefit adjustments[60] adopted prior to the plan's application for special financial assistance, and taking into account the reinstatement of benefit suspensions (required as described below). The amount of special financial assistance is not capped by the PBGC multiemployer plan benefit guarantee.[61]

Reinstatement of suspended benefits

An eligible multiemployer plan that receives special financial assistance must reinstate any benefits that were suspended[62] effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month. The eligible multiemployer plan will provide payments to any participant or beneficiary in pay status as of the effective date of the special financial assistance, payable, as determined by the eligible multiemployer plan, either (1) as a lump sum within three months of the effective date of the special financial assistance; or (2) in equal monthly installments over a period of five years, commencing within three months of the effective date, with no adjustment for interest.

Restrictions on use of special financial assistance by eligible multiemployer plans

Special financial assistance received by an eligible multiemployer plan may be used by such plan to make benefit payments and pay plan expenses. Special financial assistance and any earnings must be segregated from other plan assets and are to be invested by plans in investment-grade bonds or other investments, as permitted by PBGC.

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[59] The funding projections will be performed on a deterministic basis.

[60] Made in accordance with section 305(e)(8) of ERISA.

[61] Sec. 4022A of ERISA.

[62] Sec. 305(e)(9) or sec. 4245(a) of ERISA.

PBGC may impose, by regulation, reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions to, and allocation of expenses to, other benefit plans, and withdrawal liability.

PBGC may not impose conditions on an eligible multiemployer plan as a condition of, or following the receipt of, special financial assistance, relating to:

- Any prospective reduction in plan benefits, including adjustable benefits;[63]
- Plan governance, including selection of, removal of, and terms of contracts with, trustees, actuaries, investment managers, and other service providers; or
- Any funding rules relating to the plan receiving special financial assistance.

Withdrawal liability

An employer's withdrawal liability is calculated without taking into account special financial assistance received under this proposal until the plan year beginning 15 calendar years after the effective date of the special financial assistance.

Required disclosure

An eligible multiemployer plan receiving special financial assistance must provide each employer that has an obligation to contribute to the plan, and each labor organization representing participants employed by such employer, with an estimate of the employer's share of the plan's unfunded vested benefits as of the end of each plan year ending after the date of enactment of the proposal (as determined after taking into account special financial assistance received). This disclosure must include a statement that, due to the special financial assistance, the plan will have sufficient resources to pay 100 percent of the plan's benefit obligations until the last day of the plan year ending in 2051.

Other conditions on plans receiving special financial assistance

An eligible multiemployer plan receiving financial assistance:

- That subsequently becomes insolvent,[64] will become subject to the current rules and guarantee for insolvent plans;
- Is not eligible to apply for a new suspension of benefits; and
- Is deemed to be in critical status until the last plan year ending in 2051.

[63] Sec. 305(e)(8) of ERISA.

[64] As described in sec. 418E and sec. 4245 of ERISA.

Appropriations

The proposal establishes an eighth fund for special financial assistance to multiemployer plans and to pay for PBGC's necessary administrative and operating expenses relating to such special financial assistance.

Amounts are appropriated from the General Fund of the Treasury to the eighth fund as are necessary to meet the costs of providing special financial assistance to eligible multiemployer plans and the necessary administrative and operating expenses of PBGC. The proposal requires such amounts to be credited to the eighth fund from time to time as the Secretary of the Treasury, in conjunction with the Director of the PBGC, determines appropriate but in no case may such transfers occur after September 30, 2030.

PBGC Premiums

An eligible multiemployer plan receiving special financial assistance will continue to pay all premiums due for the plan for participants and beneficiaries in the plan.

Premium rate increase

In the case of a multiemployer plan, for plan years beginning after December 31, 2030, the flat rate PBGC premium will increase to $52 for each individual who is a participant in such plan during the applicable year.

The premium will be adjusted for inflation for each plan year beginning in a calendar year after 2031. If the amount of the adjustment is not a multiple of $1, the amount will be rounded to the nearest multiple of $1.

Effective Date

The proposal shall be effective on the date of enactment.

E. Extended Amortization for Single Employer Plans

Present Law

Minimum funding rules

A defined benefit plan maintained by a single employer is subject to minimum funding rules that generally require the sponsoring employer to make a certain level of contribution for each plan year to fund plan benefits.[65] The minimum funding rules for single employer defined benefit plans were substantially revised by the Pension Protection Act of 2006 ("PPA").[66]

Minimum required contributions

In general

The minimum required contribution for a plan year for a single employer defined benefit plan generally depends on a comparison of the value of the plan's assets, reduced by any prefunding balance or funding standard carryover balance ("net value of plan assets"),[67] with the plan's funding target and target normal cost. The plan's funding target for a plan year is the present value of all benefits accrued or earned as of the beginning of the plan year. A plan's target normal cost for a plan year is generally the present value of benefits expected to accrue or to be earned during the plan year. In the case of a plan funded below a certain level, referred to as an "at-risk" plan, specified assumptions must be used in determining the plan's funding target and target normal cost.[68]

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[65] Secs. 412 and 430; secs. 302-303 of the Employee Retirement Income Security Act of 1974 ("ERISA"). For purposes of whether a plan is maintained by a single employer, certain related entities, such as the members of a controlled group, are treated as a single employer. Different funding rules apply to multiemployer and certain multiple-employer defined benefit plans, which are types of plans maintained by two or more unrelated employers. A number of exceptions to the minimum funding rules apply. For example, governmental plans (within the meaning of section 414(d)) and church plans (within the meaning of section 414(e)) are generally not subject to the minimum funding rules. Under section 4971, an excise tax applies if the minimum funding requirements are not satisfied.

[66] Pub. L. No. 109-280. The PPA minimum funding rules for single employer plans are generally effective for plan years beginning after December 31, 2007. Subsequent changes were made by the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), Pub. L. No. 110-458; the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 ("PRA 2010"), Pub. L. No. 111-192; and the Moving Ahead for Progress in the 21st Century Act, the Highway and Transportation Funding Act of 2014, and the Bipartisan Budget Act of 2015, discussed further herein.

[67] The value of plan assets is generally reduced by any prefunding balance or funding standard carryover balance in determining minimum required contributions. A prefunding balance results from plan contributions that exceed the minimum required contributions. A funding standard carryover balance results from a positive balance in the funding standard account that applied under the funding requirements in effect before PPA. Subject to certain conditions, a prefunding balance or funding standard carryover balance may be credited against the minimum required contribution for a year, reducing the amount that must be contributed.

[68] For an at-risk plan, the specified assumptions generally are as follows: All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the next 10 plan years must be assumed to retire at the earliest retirement date under the plan but not before the end

If the net value of plan assets is less than the plan's funding target, so that the plan has a funding shortfall (discussed further below), the minimum required contribution is the sum of the plan's target normal cost and the shortfall amortization charge for the plan year (determined as described below).[69] If the net value of plan assets is equal to or exceeds the plan's funding target, the minimum required contribution is the plan's target normal cost, reduced by the amount, if any, by which the net value of plan assets exceeds the plan's funding target.

Shortfall amortization charge

The shortfall amortization charge for a plan year is the sum of the annual shortfall amortization installments attributable to the shortfall bases for that plan year and the six previous plan years. Generally, if a plan has a funding shortfall for the plan year, a shortfall amortization base must be established for the plan year.[70] A plan's funding shortfall is the amount by which the plan's funding target exceeds the net value of plan assets. The shortfall amortization base for a plan year is: (1) the plan's funding shortfall, minus (2) the present value, determined using the segment interest rates (discussed below), of the aggregate total of the shortfall amortization installments that have been determined for the plan year and any succeeding plan year with respect to any shortfall amortization bases for the six previous plan years. The shortfall amortization base is amortized in level annual installments ("shortfall amortization installments")

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of the plan year for which the "at-risk funding target" and "at-risk normal cost" are being determined. Also, all employees must be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined as above) that would result in the highest present value of benefits. The at-risk funding target is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year using the actuarial assumptions set forth in the Code and regulations for single employer plans, with the addition of a loading factor which arises when the plan has been in at-risk status for at least two of the four preceding plan years. This loading factor is equal to the sum of (1) $700 multiplied by the number of participants in the plan and (2) four percent of the funding target (determined without regard to the definition of at-risk funding target). The at-risk normal cost for a plan year generally represents the excess of the sum of (1) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year using the at-risk assumptions described above plus (2) the amount of plan related expenses expected to be paid from plan assets during the plan year, over (3) the amount of mandatory employee contributions expected to be made during the plan year. In addition, where the plan has been in at-risk status for at least two of the four preceding plan years, a loading factor is added, which is equal to four percent of the target normal cost (the excess of the sum of (1) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year plus (2) the amount of plan-related expenses expected to be aid from plan assets during the plan year, over (3) the amount of mandatory employee contributions expected to be made during the plan year) with respect to the plan for the plan year.

[69] If the plan has obtained a waiver of the minimum required contribution (a funding waiver) within the past five years, the minimum required contribution also includes the related waiver amortization charge, that is, the annual installment needed to amortize the waived amount in level installments over the five years following the year of the waiver.

[70] If the value of plan assets, reduced only by any prefunding balance if the employer elects to apply the prefunding balance against the required contribution for the plan year, is at least equal to the plan's funding target, no shortfall amortization base is established for the year.

over a seven-year period beginning with the current plan year and using the segment interest rates (discussed below).[71]

The shortfall amortization base for a plan year may be positive or negative, depending on whether the present value of remaining installments with respect to amortization bases for previous years is more or less than the plan's funding shortfall. If the shortfall amortization base is positive (that is, the funding shortfall exceeds the present value of the remaining installments), the related shortfall amortization installments are positive. If the shortfall amortization base is negative, the related shortfall amortization installments are negative. The positive and negative shortfall amortization installments for a particular plan year are netted when adding them up in determining the shortfall amortization charge for the plan year, but the resulting shortfall amortization charge cannot be less than zero (that is, negative amortization installments may not offset normal cost).

If the net value of plan assets for a plan year is at least equal to the plan's funding target for the year, so the plan has no funding shortfall, any shortfall amortization bases and related shortfall amortization installments are eliminated.[72] As indicated above, if the net value of plan assets exceeds the plan's funding target, the excess is applied against target normal cost in determining the minimum required contribution.

Interest rate used to determine target normal cost and funding target

The minimum funding rules for single employer plans also specify the interest rates that must be used in determining the present value of benefits for purposes of a plan's target normal cost and funding target. Present value is generally determined using three interest rates ("segment" rates), each of which applies to benefit payments expected to be made from the plan during a certain period.[73]

The first segment rate applies to benefits reasonably determined to be payable during the five-year period beginning on the plan's annual valuation date;[74] the second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial five-year period; and the third segment rate applies to benefits reasonably determined to be payable after the end of the 15-year period. Under the funding rules as enacted in PPA ("PPA"

[71] Under PRA 2010, employers were permitted to elect to use one of two alternative extended amortization schedules for up to two "eligible" plan years during the period 2008-2011. The use of an extended amortization schedule has the effect of reducing the amount of the shortfall amortization installments attributable to the shortfall amortization base for the eligible plan year. However, the shortfall amortization installments attributable to an eligible plan year may be increased by an additional amount, an "installment acceleration amount," in the case of employee compensation exceeding $1 million, extraordinary dividends, or stock redemptions within a certain period of the eligible plan year.

[72] Any amortization base relating to a funding waiver for a previous year is also eliminated.

[73] Sec. 430(h)(2) and ERISA sec. 303(h)(2).

[74] Subject to an exception for small plans with no more than 100 participants, the annual valuation date for a plan must be the first day of the plan year.

rules), each segment rate is a single interest rate determined monthly by the Secretary of the Treasury, on the basis of a corporate bond yield curve, taking into account only the portion of the yield curve based on corporate bonds maturing during the particular segment rate period. The corporate bond yield curve used for this purpose reflects the average, for the 24-month period ending with the preceding month, of yields on investment grade corporate bonds with varying maturities and that are in the top three quality levels available.[75] The Internal Revenue Service ("IRS") publishes the segment rates each month.

Under the Moving Ahead for Progress in the 21st Century Act ("MAP–21"), the Highway and Transportation Funding Act of 2014 ("2014 Highway Act"), and the Bipartisan Budget Act of 2015 ("2015 Bipartisan Budget Act"),[76] for plan years beginning after December 31, 2011, a segment rate determined under the PPA rules is adjusted if it falls outside a specified percentage range of the average segment rates for a preceding period. In particular, if a segment rate determined under the PPA rules is less than the applicable minimum percentage in the specified range, the segment rate is adjusted upward to match the minimum percentage. If a segment rate determined under the PPA rules is more than the applicable maximum percentage in the specified range, the segment rate is adjusted downward to match the maximum percentage. For this purpose, an average segment rate is the average of the segment rates determined under the PPA rules for the 25-year period ending September 30 of the calendar year preceding the calendar year in which the plan year begins. The Secretary is to determine average segment rates on an annual basis and may prescribe equivalent rates for any years in the 25-year period for which segment rates determined under the PPA rules are not available. The Secretary is directed to publish the average segment rates each month.

The specified percentage range (that is, the range from the applicable minimum percentage to the applicable maximum percentage) for a plan year is determined by reference to the calendar year in which the plan year begins as follows:

- 90 percent to 110 percent for 2012 through 2020,
- 85 percent to 115 percent for 2021,
- 80 percent to 120 percent for 2022,
- 75 percent to 125 percent for 2023, and
- 70 percent to 130 percent for 2024 or later.

[75] Solely for purposes of determining minimum required contributions, in lieu of the segment rates, an employer may elect to use interest rates on a yield curve based on the yields on investment grade corporate bonds for the month preceding the month in which the plan year begins (that is, without regard to the 24-month averaging described above) ("monthly yield curve"). If an election to use a monthly yield curve is made, it cannot be revoked without IRS approval.

[76] Pub. L. Nos. 112-141, 113-159 and 114-74.

Annual funding notice

The plan administrator of a single employer defined benefit plan must provide an annual funding notice to each participant and beneficiary, each labor organization representing participants or beneficiaries, and the Pension Benefit Guaranty Corporation ("PBGC").[77] In addition to the information required to be provided in all funding notices, in the case of a single employer defined benefit plan, the notice must include (1) the plan's funding target attainment percentage for the plan year to which the notice relates and the two preceding plan years, (2) the value of the plan's assets and benefit liabilities (that is, the present value of benefits owed under the plan) for the plan year and the two preceding years, determined in the same manner as under the funding rules, and (3) the value of the plan's assets and benefit liabilities as of the last day of the plan year to which the notice relates, determined using the fair market value of plan assets (rather value determined under the funding rules) and, in computing benefit liabilities, the interest rates used in computing variable-rate PBGC premiums.[78]

Additional information must be included in a single employer plan's annual funding notice in the case of an applicable plan year. For this purpose, an applicable plan year is any plan year beginning after December 31, 2011, and before January 1, 2023, for which (1) the plan's funding target, determined using segment rates as adjusted to reflect average segment rates ("adjusted" segment rates), is less than 95 percent of the funding target determined without regard to adjusted segment rates, (2) the plan has a funding shortfall, determined without regard to adjusted segment rates, greater than $500,000, and (3) the plan had 50 or more participants on any day during the preceding plan year. Specifically, the notice must include (1) a statement that MAP-21, the 2014 Highway Act, and the 2015 Bipartisan Budget Act modified the method for determining the interest rates used to determine the actuarial value of benefits earned under the plan, providing for a 25-year average of interest rates to be taken into account in addition to a two-year average, (2) a statement that, as a result of MAP-21, the 2014 Highway Act, and the 2015 Bipartisan Budget Act, the plan sponsor may contribute less money to the plan when interest rates are at historical lows, and (3) a table showing, for the applicable plan year and each of the two preceding plan years, the plan's funding target attainment percentage, funding shortfall, and the employer's minimum required contribution, each determined both using adjusted segment rates and without regard to adjusted segment rates.

Description of Proposal

Under the proposal, with respect to plan years beginning after December 31, 2019, (or, at the election of the plan sponsor, after December 31, 2018) the shortfall amortization bases for all plan years preceding the first plan year beginning after December 31, 2019 (or after December

[77] ERISA sec. 101(f). Annual funding notice requirements, with some differences, apply also to multiemployer and multiple-employer plans.

[78] In applying the funding rules, the value of plan assets may be determined on the basis of average fair market values over a period of up to 24 months. PBGC variable-rate premiums are based on a plan's unfunded vested benefit liabilities, computed using the first, second and third segment rates as determined under the PPA rules (without the adjustments applicable for funding purposes), but based on a monthly corporate bond yield curve, rather than a yield curve reflecting average yields for a 24-month period.

31, 2018, whichever is elected), and all shortfall amortization installments determined with respect to such bases, are reduced to zero. In addition, the shortfall amortization installments of the plan for plan years beginning after December 31, 2019 (or, if elected, after December 31, 2018) are determined over a 15-year period, rather than a 7-year period.

Effective Date

The proposal is effective for plan years beginning after December 31, 2018.

F. Extension of Pension Funding Stabilization Percentages for Single Employer Plans

Present Law

Minimum funding rules

A defined benefit plan maintained by a single employer is subject to minimum funding rules that generally require the sponsoring employer to make a certain level of contribution for each plan year to fund plan benefits.[79] For background relating to these rules, see Present Law under section E. above.

Description of Proposal

The proposal revises the specified percentage ranges (that is, the range from the applicable minimum percentage to the applicable maximum percentage of average segment rates) for determining whether a segment rate must be adjusted upward or downward. Under the proposal, the specified percentage range for a plan year is determined by reference to the calendar year in which the plan year begins as follows:

- 90 percent to 110 percent for 2012 through 2019,
- 95 percent to 105 percent for 2020 through 2025,
- 90 percent to 110 percent for 2026,
- 85 percent to 115 percent for 2027,
- 80 percent to 120 percent for 2028,
- 75 percent to 125 percent for 2029, and
- 70 percent to 130 percent for 2030 or later.

The proposal further provides that if the average of the first, second or third segment rate for any 25-year period is less than five percent, such average shall be deemed to be five percent.

In addition, for purposes of the additional information that must be provided in a funding notice for an applicable plan year, an applicable plan year includes any plan year that begins after December 31, 2011, and before January 1, 2029, and that otherwise meets the definition of applicable plan year.

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[79] Secs. 412 and 430; secs. 302-303 of the Employee Retirement Income Security Act of 1974 ("ERISA"). For purposes of whether a plan is maintained by a single employer, certain related entities, such as the members of a controlled group, are treated as a single employer. Different funding rules apply to multiemployer and certain multiple-employer defined benefit plans, which are types of plans maintained by two or more unrelated employers. A number of exceptions to the minimum funding rules apply. For example, governmental plans (within the meaning of section 414(d)) and church plans (within the meaning of section 414(e)) are generally not subject to the minimum funding rules. Under section 4971, an excise tax applies if the minimum funding requirements are not satisfied.

Effective Date

The proposal applies to plan years beginning after December 31, 2019.

G. Modification of Special Rules for Minimum Funding Standards for Community Newspaper Plans

Present Law

Minimum funding rules

A defined benefit plan maintained by a single employer is subject to minimum funding rules that generally require the sponsoring employer to make a certain level of contribution for each plan year to fund plan benefits.[80] For background relating to these rules, see Present Law under section E. above.

Special rules for community newspaper plans

Special rules apply to community newspaper plans.[81] An employer maintaining a community newspaper plan (as defined below) under which no participant has had the participant's accrued benefit increased (whether because of service or compensation) after December 31, 2017, may elect to apply certain alternative funding rules to the plan and any other plan sponsored by any member of the controlled group.[82] An election to apply the alternative funding rules must be made at such time and in such manner as prescribed by the Secretary of the Treasury, and once made with respect to a plan year, applies to all subsequent years unless revoked with the consent of the Secretary of the Treasury.[83]

Under the alternative funding rules, an interest rate of eight percent is used to determine a plan's funding target and target normal cost, rather than the first, second, and third segment rates. However, if new benefits are accrued or earned under a plan for a plan year in which the election is in effect, the present value of such benefits must be determined on the basis of the U.S. Treasury obligation yield curve for the day that is the valuation date of such plan for such plan year. In addition, if the value of plan assets is less than the plan's funding target, such that the plan has a funding shortfall, the shortfall is required to be funded by contributions, with interest,

[80] Secs. 412 and 430; secs. 302-303 of the Employee Retirement Income Security Act of 1974 ("ERISA"). For purposes of whether a plan is maintained by a single employer, certain related entities, such as the members of a controlled group, are treated as a single employer. Different funding rules apply to multiemployer and certain multiple-employer defined benefit plans, which are types of plans maintained by two or more unrelated employers. A number of exceptions to the minimum funding rules apply. For example, governmental plans (within the meaning of section 414(d)) and church plans (within the meaning of section 414(e)) are generally not subject to the minimum funding rules. Under section 4971, an excise tax applies if the minimum funding requirements are not satisfied.

[81] Sec. 430(m).

[82] For this purpose, the controlled group means all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 as of the date of enactment of the Setting Every Community Up for Retirement Enhancement Act of 2019, Pub. L. No. 116-94, Div. O.

[83] The IRS has provided guidance on such elections in Notice 2020-60, 2020-36 I.R.B. 514, August 31, 2020.

over 30 years, rather than over seven years. The shortfall amortization bases determined[84] for all plan years preceding the first plan year to which the election applies (and all related shortfall amortization installments) are reduced to zero. Further, the assumptions applicable to an "at-risk" plan do not apply.

For purposes of these rules, a "community newspaper plan" is a plan[85] that is maintained by an employer that, as of December 31, 2017:

- publishes and distributes daily, either electronically or in printed form, one or more community newspapers (as defined below) in a single State;[86]
- is not a company the stock of which is publicly traded on a stock exchange or in an over-the-counter market, and is not controlled, directly or indirectly, by such a company;
- is controlled, directly or indirectly (a) by one or more persons residing primarily in the State in which the community newspaper is published; (b) for at least 30 years by individuals who are members of the same family; (c) by a trust created or organized in the State in which the community newspaper is published, the sole trustees of which are persons described in (a) or (b); (d) by an entity described in section 501(c)(3) and exempt from tax under section 501(a) that is organized and operated in the State in which the community newspaper is published, and the primary purpose of which is to benefit communities in the State; or (e) by a combination of persons described in (a), (c), or (d); and
- does not control, directly or indirectly, any newspaper in any other State.

A "community newspaper" means a newspaper that primarily serves a metropolitan statistical area, as determined by the Office of Management and Budget, with a population of not less than 100,000. A person (the "first" person) is treated as controlled by another person if the other person possesses, directly or indirectly, the power to direct or cause the direction and management of the first person (including the power to elect a majority of the members of the board of directors of the first person) through the ownership of voting securities.

Description of Proposal

The proposal modifies the eligibility rules that apply to the special rules for minimum funding standards for community newspaper plans. Under the proposal, an eligible newspaper plan sponsor of a plan under which no participant has had the participant's accrued benefit increased (whether because of service or compensation) after April 2, 2019, may elect to apply the alternative funding rules to the plan. An eligible newspaper plan sponsor is defined in the

[84] Under section 430(c)(3).

[85] The plan must also be a plan to which section 430(m) applies.

[86] Under ERISA, a community newspaper plan includes one that publishes and distributes daily, either electronically or in printed form, either a community newspaper or one or more community newspapers in the same State. Sec. 303(m)(4)(A)(i).

proposal as the plan sponsor of any community newspaper plan or any other plan sponsored, as of April 2, 2019, by a member of the same controlled group of a plan sponsor of a community newspaper plan if such member is in the trade or business of publishing one or more newspapers.

The proposal revises the definition of community newspaper plan to mean any plan maintained as of December 31, 2018 by an employer that:

- maintains the plan on behalf of participants and beneficiaries with respect to employment in the trade or business of publishing one or more newspapers which were published by the employer at any time during the 11-year period ending on the date of the enactment of this proposal;

- either (a) is not a company the stock of which is publicly traded (on a stock exchange or in an over-the-counter market), and is not controlled, directly or indirectly, by such a company, or (b) is controlled, directly or indirectly, during the entire 30-year period ending on the date of the enactment of this proposal by individuals who are members of the same family, and does not publish or distribute a daily newspaper that is carrier-distributed in printed form in more than five States; and

- is controlled, directly or indirectly (a) by one or more persons residing primarily in a State in which the community newspaper has been published on newsprint or carrier-distributed; (b) during the entire 30-year period ending on the date of the enactment of this proposal by individuals who are members of the same family; (c) by one or more trusts, the sole trustees of which are persons described in (a) or (b); or (d) by a combination of persons described in (a), (b), or (c).

The proposal removes the definition of "community newspaper" from the eligibility rules, but defines "newspaper" as not including any newspaper to which any of the following apply: (a) the newspaper is not in general circulation; (b) the newspaper is published (on newsprint or electronically) less frequently than three times per week; (c) the newspaper has not ever been regularly published on newsprint; and (d) the newspaper does not have a bona fide list of paid subscribers.

Effective Date

The proposal applies to plan years ending after December 31, 2017.

H. Cost of Living Adjustment Freeze

Present Law

The Code imposes limits relating to contributions and benefits under qualified plans. Under a defined contribution plan, annual additions to the plan with respect to each plan participant are limited to the lesser of (1) 100 percent of compensation or (2) $40,000.[87] The $40,000 amount is adjusted annually for cost-of-living increases in $1,000 increments.[88] For 2021, this amount is $58,000.

Under a defined benefit plan, the maximum annual benefit payable at retirement is generally the lesser of (1) $160,000,[89] or (2) 100 percent of the participant's high-three-year average compensation. The $160,000 dollar amount is adjusted annually for cost-of-living increases in $5,000 increments,[90] and is $230,000 for 2021. In the case of a participant who separated from service, the amount taken into account under clause (2) is also adjusted annually for cost-of-living increases.[91]

In addition, the annual compensation of each participant that may be taken into account for purposes of determining contributions and benefits under a plan, applying the deduction rules, and for nondiscrimination testing purposes is limited to $200,000, indexed for cost-of-living adjustments in $10,000 increments.[92] For 2021, the limit on annual compensation that may be taken into account is $290,000.

Description of Proposal

Under the proposal, the $40,000 amount applicable to the contribution limit for defined contribution plans and the $160,000 amount applicable to the maximum benefit under a defined benefit plan (as well as the amount taken into account in determining the defined benefit plan limitation in the case of participant who separated from service) are not adjusted for cost-of-living increases for calendar years after 2030. Similarly, the limit on annual compensation of a participant that may be taken into account under a plan is not adjusted for cost-of-living

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[87] Sec. 415(c). Annual additions are the sum of employer contributions, employee contributions, and forfeitures with respect to an individual under all defined contribution plans of the same employer. Sec. 415(c)(2); sec. 415(f).

[88] Secs. 415(d)(1)(C) and 415(d)(4)(B).

[89] Sec. 415(b)(1).

[90] Secs. 415(d)(1)(A) and 415(d)(4)(A).

[91] Sec. 415(d)(1)(B). For a participant who has separated from service before January 1, 2021, the limitation under a defined benefit plan is computed by multiplying the participant's compensation limitation, as adjusted through 2020, by 1.0122. Notice 2020-79, 2020-46 I.R.B. 1014, November 9, 2020.

[92] Sec. 401(a)(17).

increases for calendar years after 2030. Rather, the cost-of-living adjustments that apply to each of these amounts for calendar year 2030 apply for calendar years after 2030.

The modifications to the rules applicable to cost-of-living adjustments under this proposal do not apply to a plan maintained pursuant to one or more collective bargaining agreements.

Effective Date

The proposal is effective on the date of enactment.

COMMITTEE PRINT

Budget Reconciliation Legislative Recommendations Relating to Child Care for Workers

Subtitle I—Child Care for Workers

SEC. 9801. CHILD CARE ASSISTANCE PROGRAMS.

(a) APPROPRIATION.—

(1) IN GENERAL.—Section 418(a)(3) of the Social Security Act (42 U.S.C. 618(a)(3)) is amended to read as follows:

''(3) APPROPRIATION.—For grants under this section, there are appropriated $3,550,000,000 for each fiscal year, of which—

''(A) $3,375,000,000 shall be available for grants to States;

''(B) $100,000,000 shall be available for grants to Indian tribes and tribal organizations; and

''(C) $75,000,000 shall be available for grants to territories.''.

(2) CONFORMING AMENDMENT.—Section 418(a)(2)(A) of such Act (42 U.S.C. 618(a)(2)(A)) is amended by striking ''paragraph (3), and remaining after the reservation described in paragraph (4) and'' and inserting ''paragraph (3)(A),''.

(b) SUSPENSION OF STATE MATCH REQUIREMENT IN FISCAL YEARS 2021 AND 2022.—With respect to the amounts made available by section 418(a)(3)(A) of the Social Security Act for each of fiscal years 2021 and 2022, section 418(a)(2)(C) of such Act shall be applied and administered with respect to any State that is entitled to receive the entire amount that would be allotted to the State under section 418(a)(2)(B) of such Act for the fiscal year in the absence of this section, as if the Federal medical assistance percentage for the State for the fiscal year were 100 percent.

(c) FUNDING FOR THE TERRITORIES.—Section 418(a)(4) of such Act (42 U.S.C. 618(a)(4)) is amended to read as follows:

''(4) TERRITORIES.—

''(A) GRANTS.—The Secretary shall use the amounts made available by paragraph (3)(C) to make grants to the territories under this paragraph.

''(B) ALLOTMENTS.—The amount described in subparagraph (A) shall be allotted among the territories in proportion to the share of each territory of the total of the amounts payable to the territories under the Child Care

and Development Block Grant Act of 1990 for the then most recent fiscal year.

''(C) REDISTRIBUTION.—The 1st sentence of clause (i) and clause (ii) of paragraph (2)(D) shall apply with respect to the amounts allotted to the territories under this paragraph, except that the 2nd sentence of paragraph (2)(D) shall not apply and the amounts allotted to the territories that are available for redistribution for a fiscal year shall be redistributed to each territory that applies for the additional amounts, to the extent that the Secretary determines that the territory will be able to use the additional amounts to provide child care assistance, in an amount that bears the same ratio to the amount so available for redistribution as the amount allotted to the territory for the fiscal year bears to the total amount allotted to all the territories receiving redistributed funds under this paragraph for the fiscal year.

''(D) INAPPLICABILITY OF PAYMENT LIMITATION.— Section 1108(a) shall not apply with respect to any amount paid under this paragraph.

''(E) APPLICATION OF CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT OF 1990.—Subsection (c) shall apply with respect to any amount paid under this paragraph.

''(F) TERRITORY.—In this paragraph, the term 'territory' means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.''.

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JOINT COMMITTEE ON TAXATION
Februrary 8, 2021
JCX-5-21

ESTIMATED BUDGETARY EFFECTS OF THE REVENUE PROVISIONS OF THE BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS, SCHEDULED FOR MARKUP BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON FEBRUARY 10, 2021

Fiscal Years 2021 - 2031

[Millions of Dollars]

Provision	Effective	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
SUBTITLE F - PRESERVING HEALTH BENEFITS FOR WORKERS (SUNSET 9/30/21) [1][2]….	**cpo/a 4/1/21 & tyea DOE**	**-10,223**	**-3,146**	**116**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**-13,253**	**-13,253**
SUBTITLE G - PROMOTING ECONOMIC SECURITY														
I. Additional Recovery Rebates to Individuals - $1,400 for Singles/$2,800 for Married Filing Jointly (SSN Required for Each Taxpayer), and $1,400 Per Dependent (SSN Required for Each Dependent); Phaseout Ranges by AGI: $75,000–$100,000 for Single, $112,500–$150,000 for Head of Household, $150,000–$200,000 for Married Filing Jointly (Fully Phased Out at Larger Amounts); Payments to Certain Non-Filers (Sunset 12/31/21)….	**DOE**	**-404,937**	**-17,400**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**-422,337**	**-422,337**
II. Child Tax Credit - Improvements for 2021 (Sunset 12/31/21); and Application of Child Tax Credit in Possessions [3] ….	**tyba 12/31/20**	**-25,826**	**-79,248**	**-710**	**-721**	**-725**	**-721**	**-307**	**-311**	**-316**	**-320**	**-323**	**-107,952**	**-109,528**
III. Earned Income Tax Credit														
1. Strengthening the earned income tax credit for individuals with no qualifying children (sunset 12/31/21) [3].....	tyba 12/31/20	-521	-11,361	---	---	---	---	---	---	---	---	---	-11,882	-11,882
2. Taxpayer eligible for childless earned income credit in case of qualifying children who fail to meet certain identification requirements [3].....	tyba 12/31/20	[4]	-12	-2	-1	-1	-1	-2	-2	-2	-2	-2	-16	-26
3. Credit allowed in case of certain separated spouses [3].....	tyba 12/31/20	-1	-20	-21	-22	-23	-25	-25	-27	-28	-30	-31	-111	-252
4. Modification to disqualified investment income test [3].....	tyba 12/31/20	-102	-652	-198	-200	-225	-229	-238	-233	-231	-240	-251	-1,606	-2,798
5. Application of earned income tax credit in possessions of the United States [3].....	DOE	---	-712	-720	-736	-753	-770	-785	-801	-818	-836	-853	-3,690	-7,784
6. Temporary special rule for determining earned income for purposes of earned income tax credit (sunset 12/31/20) [3].	DOE	---	-3,185	---	---	---	---	---	---	---	---	---	-3,185	-3,185
Total of Earned Income Tax Credit….		**-624**	**-15,942**	**-941**	**-959**	**-1,002**	**-1,025**	**-1,050**	**-1,063**	**-1,079**	**-1,108**	**-1,137**	**-20,490**	**-25,927**

Provision	Effective	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
IV. Dependent Care Assistance														
1. Refundability and enhancement of child and dependent care tax credit (sunset 12/31/21) [3]	tyba 12/31/20	-2,127	-5,837	---	---	---	---	---	---	---	---	---	-7,964	-7,964
2. Increase in exclusion for employer-provided dependent care assistance (sunset 12/31/21) [5]	tyba 12/31/20	-78	-39	---	---	---	---	---	---	---	---	---	-117	-117
Total of Dependent Care Assistance		**-2,205**	**-5,876**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**-8,081**	**-8,081**
V. Extension and Modification of Credits for Paid Sick and Family Leave (sunset 9/30/21)	**apa 3/31/21**	**-4,054**	**-1,154**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**-5,208**	**-5,208**
VI. Extension and Modification of the Employee Retention Credit (sunset 12/31/21) [3]	**cqba 6/30/21**	**-2,791**	**-5,993**	---	---	---	---	---	---	---	---	---	**-8,784**	**-8,784**
VII. The Premium Tax Credit														
1. Improving affordability by expanding premium assistance for consumers (sunset 12/31/22) [3][6][2]	tyba 12/31/20	-4,137	-22,234	-7,964	-536	23	---	---	---	---	---	---	-34,848	-34,847
2. Temporary modification of limitations on reconciliation of tax credits for coverage under a qualified health plan with advance payments of such credit [7]	tyba 12/31/19	-4,696	-1,565	---	---	---	---	---	---	---	---	---	-6,261	-6,261
3. Application of premium tax credit in case of individuals receiving unemployment compensation during 2021 [3][2][8]	tyba 12/31/20	-2,624	-1,660	-232	---	---	---	---	---	---	---	---	-4,516	-4,516
Total of the Premium Tax Credit		**-11,457**	**-25,459**	**-8,196**	**-536**	**23**	**---**	**---**	**---**	**---**	**---**	**---**	**-45,625**	**-45,624**
VIII. Miscellaneous Provisions														
1. Repeal of worldwide interest allocation rules	tyba 12/31/20	335	1,277	2,023	2,284	2,383	2,334	2,358	2,385	2,343	2,283	2,327	8,302	22,331
2. Tax treatment of targeted economic injury disaster loan advances	---	*Estimate to Be Provided By The Congressional Budget Office*												
3. Tax treatment of restaurant revitalization grants	---	*Estimate to Be Provided By The Congressional Budget Office*												
Total of Miscellaneous Provisions		**335**	**1,277**	**2,023**	**2,284**	**2,383**	**2,334**	**2,358**	**2,385**	**2,343**	**2,283**	**2,327**	**8,302**	**22,331**
SUBTITLE H - PENSIONS														
A. Relief for Multiemployer Pension Plans [9]	various	*Estimate To Be Provided by the Congressional Budget Office*												
B. Relief for Single Employer Pension Plans														
1. Extended amortization for single employer plans [3][10]	pyba 12/31/18	361	508	826	1,191	2,335	1,678	2,819	3,234	3,477	3,346	3,068	6,899	22,841
2. Extension of pension funding stabilization percentages for single employer plans [3][10]	pyba 12/31/19	*Estimate Included In Item B.1. Above*												
3. Modification of special rules for minimum funding standards for community newspaper plans [3][9][11]	pyea 12/31/17	25	19	24	27	28	31	33	33	32	30	30	154	311

Provision	Effective	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
C. Reconciliation Offsets - Cost of Living Adjustment Freeze.	cyba 12/31/30	---	---	---	---	---	---	---	-34	-119	-247	421	---	21
Total of Subtitle H - Pensions ….		**386**	**527**	**850**	**1,218**	**2,363**	**1,709**	**2,852**	**3,233**	**3,390**	**3,129**	**3,519**	**7,053**	**23,173**
NET TOTAL ……		**-461,396**	**-152,414**	**-6,858**	**1,286**	**3,042**	**2,297**	**3,853**	**4,244**	**4,338**	**3,984**	**4,386**	**-616,375**	**-593,238**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be March 1, 2021. Revenue provisions as submitted in statutory language Cobra_02, Neal_003, NEAL_007, HWC_011 and OTT21132.

Legend for "Effective" column:

apa = amounts paid after
cpo/a = coverage period on or after
cqba = calendar quarters beginning after
cyba = calendar years beginning after
DOE = date of enactment
pyba = plan years beginning after
pyea = plan years ending after
tyba = taxable years beginning after
tyea = taxable years ending after

[1] Estimate includes the following budget effects:	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
Total Revenue Effect	-10,223	-3,146	116	---	---	---	---	---	---	---	---	-13,253	-13,253
On-budget effects	-10,227	-3,114	129	---	---	---	---	---	---	---	---	-13,212	-13,212
Off-budget effects	4	-32	-13	---	---	---	---	---	---	---	---	-41	-41

[2] Estimate provided by the Joint Committee on Taxation staff in collaboration with the Congressional Budget Office.

[3] Estimates contain the following outlay effects:	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
Preserving health benefits for workers ….	-605	-374	-74	---	---	---	---	---	---	---	---	-1,053	-1,053
Child tax credit - improvements for 2021 (sunset 12/31/21); and application of child tax credit in possessions……	18,169	66,185	710	721	725	721	307	311	316	320	323	87,232	88,808
Strengthening the earned income tax credit for individuals with no qualifying children (sunset 12/31/21)	---	9,278	---	---	---	---	---	---	---	---	---	9,278	9,278
Taxpayer eligible for childless earned income credit in case of qualifying children who fail to meet certain identification requirements	---	11	2	1	1	1	2	2	2	2	2	16	26
Improving affordability by expanding premium assistance for consumers….	2,725	14,306	5,203	450	---	---	---	---	---	---	---	22,684	22,684
Extension and modification of the employee retention credit ….	1,090	878	---	---	---	---	---	---	---	---	---	1,968	1,968
Application of premium tax credit in case of individuals receiving unemployment compensation during 2020….	1,351	926	149	---	---	---	---	---	---	---	---	2,426	2,426
Credit allowed in case of certain separated spouses	---	18	18	19	20	21	21	22	23	24	24	96	210
Modification to disqualified investment income test….	---	235	141	143	165	164	162	159	159	165	173	847	1,665
Application of earned income tax credit in possessions of United States	---	712	720	736	753	770	785	801	818	836	853	3,690	7,784
Temporary special rule for determining earned income for purposes of earned income tax credit ….	---	2,866	---	---	---	---	---	---	---	---	---	2,866	2,866
Refundability and enhancement of child and dependent care tax credit (sunset 12/31/21) ….	---	3,752	---	---	---	---	---	---	---	---	---	3,752	3,752
Modification of special rules for minimum funding standards for community newspaper plans [12]….	-7	-7	-11	-15	-18	-21	-24	-27	-30	-32	-35	-79	-227
Extended amortization for single employer plans….	-107	-144	-232	-353	-1,124	-93	-917	-1,156	-1,419	-1,643	-1,819	-2,053	-9,007

[Footnotes for JCX-5-21 continued on following page]

Footnotes continued for JCX-5-21:

[4] Loss of less than $500,000.

[5] Estimate includes the following budget effects:

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
Total Revenue Effect	-78	-39	---	---	---	---	---	---	---	---	---	-117	-117
On-budget effects	-27	-14	---	---	---	---	---	---	---	---	---	-41	-41
Off-budget effects	-51	-25	---	---	---	---	---	---	---	---	---	-76	-76

[6] Estimate includes the following budget effects:

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
Total Revenue Effect	-4,137	-22,345	-7,964	-536	23	---	---	---	---	---	---	-34,959	-34,959
On-budget effects	-4,144	-22,421	---	---	---	---	---	---	---	---	---	-26,565	-26,565
Off-budget effects	7	76	52	10	---	---	---	---	---	---	---	145	145

[7] The statute applies in the case of any taxable year beginning in 2020, so the sunset only applies to tax year 2020.

[8] Estimate includes the following budget effects:

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
Total Revenue Effect	-2,624	-1,660	-232			---	---	---	---	---	---	-4,516	-4,516
On-budget effects	-2,731	-2,586	-381	---	---	---	---	---	---	---	---	-5,698	-5,698
Off-budget effects	107	926	149		---	---	---	---	---	---	---	1,182	1,182

[9] Estimate provided by the Congressional Budget Office.

[10] Estimate includes the following budget and outlay effects:

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
Total Revenue Effect	361	508	826	1,191	2,335	1,678	2,819	3,234	3,477	3,346	3,068	6,899	22,842
On-budget effects	229	312	499	689	973	1,272	1,522	1,644	1,611	1,329	975	3,973	11,055
Off-budget effects	25	53	95	150	238	312	380	434	447	374	273	873	2,781

[11] Estimate includes the following budget and outlay effects:

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
Total Revenue Effect	25	19	24	27	28	31	33	33	32	30	30	154	311
On-budget effects	16	10	11	9	8	8	6	4	[13]	-3	-5	61	63
Off-budget effects	2	2	3	3	3	3	3	2	1	1	[13]	14	21

[12] Outlay effects provided by the Congressional Budget Office. For estimates under Subtitle H, items 2.B.1., 2 B.2 and 2.B.3, spending is decreased (negative) as premiums rise due to higher plan underfunding; this has the same effect on the deficit as an increase in revenues.

[13] Gain of less than $500,000.