Table 1. Estimated Budget Effects of Reconciliation Recommendations by the House Committee on Ways & Means on February 10 and 11, 2021
continued

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-2030	2021-2031
Subtitle H, Total													
On-budget	257	336	526	722	1,100	1,494	1,785	1,938	1,939	1,690	1,415	11,787	13,202
Off-budget	27	55	98	153	241	315	383	435	446	371	293	2,524	2,817
Total	284	391	624	875	1,341	1,809	2,168	2,373	2,385	2,061	1,708	14,311	16,019
Total Changes in Revenues													
On-budget	-33,903	-44,845	-294	2,932	3,508	3,790	4,088	4,248	4,205	3,892	3,657	-52,379	-48,722
Off-budget	94	181	162	163	241	315	383	435	446	371	293	2,791	3,084
Total	-33,809	-44,664	-132	3,095	3,749	4,105	4,471	4,683	4,651	4,263	3,950	-49,588	-45,638
Net Increase or Decrease (-) in the Deficit From Changes in Direct Spending and Revenues													
Estimated Effect on the Deficit	**688,390**	**249,389**	**11,238**	**53**	**-2,612**	**-3,119**	**-4,312**	**-3,806**	**-4,027**	**-3,846**	**-3,689**	**927,349**	**923,660**
Estimated Change in On-Budget Deficit	688,484	249,570	11,400	216	-2,371	-2,804	-3,929	-3,371	-3,581	-3,475	-3,396	930,140	926,744
Off-Budget Deficit	-94	-181	-162	-163	-241	-315	-383	-435	-446	-371	-293	-2,791	-3,084

Components may not sum to totals because of rounding.

CHIP = Children's Health Insurance Program; EITC = earned income tax credit; * = between zero and $500 million.

a. Section would affect direct spending and revenues, which are shown separately.

b. The estimated budgetary effects differ from estimates published by the staff of the Joint Committee on Taxation (JCT). This estimate includes $10 million in funding for implementing section 9501 and for changes in outlays under sections 9501 and 9661 for Medicare, Medicaid, and CHIP, whereas JCT's estimates do not. (See Staff of the Joint Committee on Taxation, Estimated Budgetary Effects of the Revenue Provisions of the Budget Reconciliation Legislative Recommendations, as Passed by the House Committee on Ways and Means on February 11, 2021, JCX-10-21 (February 15, 2021), https://www.jct.gov/publications/2021/jcx-10-21/.)

c. Includes the budgetary effects of section 9612.

d. Includes the budgetary effects of sections 9701, 9702, and 9703.

e. Includes the budgetary effects of section 9706.

Enclosure: February 11, 2021 House Ways and Means Committee Vote

A motion was offered by Mr. Beyer that the recommendations of the committee, and all appropriate accompanying material including additional, supplemental or dissenting views be favorably transmitted to the House Committee on the Budget, in order to comply with the reconciliation directive included in section 2001 of the Concurrent Resolution on the Budget for Fiscal Year 2021, S. Con. Res. 5, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974 was agreed to by a vote of 25 yeas to 18 nays. The vote was as follows:

Representative	**Yea**	**Nay**	**Present**	**Representative**	**Yea**	**Nay**	**Present**
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE	X			MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS	X			MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT	X						
CHAIRMAN NEAL	X						
TOTALS	25					18	

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SUBTITLE A – CRISIS SUPPORT FOR UNEMPLOYED WORKERS

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

Subtitle A, "Crisis Support for Unemployed Workers" as ordered reported by the Committee on Ways and Means on February 10, 2021, extends and expands temporary unemployment insurance programs and funding streams to provide support to workers, employers, and states.

B. Background and Need for Legislation

As of February 2021, COVID-19 has led to more than 27 million confirmed cases resulting in over 466,000 deaths,[1] with Black, Latino, and Native Americans accounting for a disproportionate number of cases and deaths. Weekly applications for unemployment benefits hit a recorded-history high in March of 2020, continued to climb, and remain at levels never seen before this pandemic.[2] Real Gross Domestic Product declined by 3.5 percent in 2020, the largest drop since 1946.[3] The impact of COVID-19 was disproportionately felt by families with children, who have experienced disproportionate levels of material hardship,[4] and by communities of color, where rates of infection, unemployment, and death were disproportionately high.[5][6]

Unemployment Insurance (UI) is a joint federal-state system that provides income support through weekly benefit payments. The permanent-law Unemployment Compensation (UC) program, created under the Social Security Act of 1935, provides unemployment benefits to eligible individuals who become involuntarily unemployed for economic reasons and meet state-established eligibility rules. Although there are broad requirements under federal law regarding UC benefits and financing, the specifics are set out under each state's laws, resulting in 53 different UC programs operated in the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The U.S. Department of Labor (DOL) provides oversight of state UC programs and state administration of all UI benefits. States operate their own permanent-law UC programs and also administer any temporary federal UI benefits.

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[1] *COVID Data Tracker*, CENTERS. FOR DISEASE CONTROL & PREVENTION, Available at https://covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited Feb. 11, 2021).

[2] Unemployment insurance weekly claims data. (n.d.). Retrieved February 12, 2021, from https://oui.doleta.gov/unemploy/claims.asp

[3] Bureau of Economic Analysis. (n.d.). Gross Domestic Product, 4th Quarter and Year 2020 (Advance Estimate). Retrieved February 12, 2021, from https://www.bea.gov/news/2021/gross-domestic-product-4th-quarter-and-year-2020-advance-estimate

[4] Cooney, P., & Shaefer, H. (2021, February). Trends in hardship and mental health in the United States at the end of 2020. Available at https://poverty.umich.edu/files/2021/02/PovertySolutionsMaterialHardshipEndof2020-Feb2021.pdf

[5] Mazure, C. M., PhD. (2020, September 03). Health notes: People of color suffer disproportionate impact of covid-19 pandemic. Retrieved February 12, 2021, from https://medicine.yale.edu/news-article/27086/

[6] Swagel, P. L. (2020). *Characteristics of People Receiving Regular Unemployment Benefits in July 2020* (USA, Congressional Budget Office). Washington, DC: CBO. Available at https://www.cbo.gov/publication/56447

The UI system's two main objectives are to provide temporary and partial wage replacement to involuntarily unemployed workers and to stabilize the economy during recessions (i.e., by providing income support to unemployed workers, who spend this income, maintaining a certain level of economic activity). Augmenting the regular UC program's economic stabilization efforts, federal law includes an automatic expansion of the regular UC benefit with the permanent-law Extended Benefit (EB) program established by the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA; P.L. 91-373). EB may provide up to an additional 13 or 20 weeks of benefits once regular UC benefits are exhausted, depending on worker eligibility, state law, additional federal eligibility requirements, and economic conditions in the state. Congress often supplements these stabilization efforts by enacting temporary UI benefit expansions.

In response to the recent COVID-19-related recession, Congress created several temporary programs through P.L. 116-136, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. These programs are: Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), and Federal Pandemic Unemployment Compensation (FPUC). P.L. 116-260, the Consolidated Appropriations Act, 2021, extended the authorization of these programs and created Mixed Earner Unemployment Compensation (MEUC). Congress also provided states with support and flexibility to address COVID-19-related unemployment through expanded benefit eligibility, additional funding, and other temporary UI measures enacted under the Families First Coronavirus Response Act (FFCRA; P.L. 116-127).

Under current law, all of the temporary programs except for PUA and PEUC are scheduled to end by March 14, 2021. PUA and PEUC are scheduled to close to new entrants on March 14 and cut off all ongoing benefits as of April 5, 2021.

Over 10 million workers are projected to lose their unemployment benefits immediately after the March 14 cutoff date, and many more will exhaust their benefits before August 29, 2021. High levels of economic hardship, with many households experiencing food insecurity, inability to pay basic household expenses, or being behind on rent,[7] suggest that workers need higher supplemental benefits than the current $300 per week.

The increased amount of UI payments to unemployed workers—from both permanent-law and temporary UI programs—dampens the economic effect of lost earnings by injecting additional funds into the economy. UI is a typical fiscal policy response to recessions with a multiplier effect or "bang for the buck" of greater than one (i.e., change in economic output in response to a dollar change in taxes or a dollar change in spending). For example, CBO estimated that, by the first quarter of 2012, the multiplier for UI provisions enacted in 2009 in response to the 2007-2009 recession was 1.15.[8] Permanent-law and temporary UI programs responded to the increased unemployment brought about by the COVID-19-related recession. In

[7] Cooney, P., & Shaefer, H. (2021, February). Trends in hardship and mental health in the United States at the end of 2020. Available at https://poverty.umich.edu/files/2021/02/PovertySolutionsMaterialHardshipEndof2020-Feb2021.pdf

[8] Congressional Budget Office. Estimated Impact of the American Recovery and Reinvestment Act on Employment and Economic Output January 2012 Through March 2012. Available at https://www.cbo.gov/sites/default/files/cbofiles/attachments/05-25-Impact_of_ARRA.pdf

fiscal year 2020, there were approximately 44 million beneficiaries and $466 billion in total UI benefits paid from all UI programs, including temporary programs created under the CARES Act.[9] Researchers found that these payments offset a large portion of what would otherwise have been a very sharp drop in U.S. consumer spending, which is the primary driver of Gross Domestic Product (GDP).[10]

C. Legislative History

Budget Resolution

On February 5, 2021, the House of Representatives approved Senate Concurrent Resolution 5, setting forth the congressional budget for the United States Government for fiscal year 2021 and setting forth the appropriate budgetary levels for fiscal years 2022 through 2030. Pursuant to section 2002(l) of S. Con. Res. 5, the Committee on Ways and Means was directed to submit to the Committee on the Budget changes in laws within its jurisdiction to increase the deficit by not more than $940,718,000,000 for the period of fiscal years 2021 through 2030.

Committee hearings

In light of the emergency presented by the Covid 19 global pandemic and the need for immediate legislative action, no hearings were held in the 117th Congress prior to consideration of Subtitle A.

Committee action

Beginning on February 10, 2021, in response to its instructions under S. Con. Res. 5, the Committee on Ways and Means met to consider budget reconciliation legislative recommendations. On February 10, 2021, Subtitle A, Legislative Recommendations Relating to Crisis Support for Unemployed Workers, was ordered favorably transmitted, as amended, to the House Committee on the Budget by a record vote of 24 to 18.

[9] Congressional Research Service. Memorandum to the Majority Staff of the Committee on Ways and Means. February 5, 2021.

[10] Farrell, D., Ganong, P., Greig, F., Liebeskind, M., Noel, P., & Vavra, J. (2020). Consumption effects of unemployment insurance during the covid-19 pandemic. *SSRN Electronic Journal.* doi:10.2139/ssrn.3654274. Available at https://www.jpmorganchase.com/institute/research/labor-markets/unemployment-insurance-covid19-pandemic

II. EXPLANATION OF THE SUBTITLE

A. Subtitle A – Crisis Support for Unemployed Workers

Current Law

Most temporary federal unemployment programs and funding that was first authorized under the Families First Coronavirus Response Act (P.L. 116-127) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) will expire by March 14, 2021. The Pandemic Emergency Unemployment Compensation (PEUC) program and the Pandemic Unemployment Assistance (PUA) program will fully end by April 5, 2021.

Reasons for Change

Legislative action is needed to preserve and expand temporary unemployment insurance programs and funding to prevent additional worker hardship, employer tax increases, and harm to the economy.

Explanation of Provisions

Section 9001. Short Title. This section provides the short title.

Part 1 – Extension of CARES Act Unemployment Provisions

Section 9011. Extension of Pandemic Unemployment Assistance. This section extends through August 29, 2021 the Pandemic Unemployment Assistance program, which provides unemployment benefits to some self-employed and pandemic-affected individuals who do not qualify for regular state unemployment benefits. This section also increases the total number of weeks of benefits available to individuals who are not able to return to work safely from 50 to 74 and provides guidance to states on coordinating with other unemployment benefits when needed.

Section 9012. Extension of Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations. This section extends a CARES provision that provides a 50 percent subsidy for costs incurred by employers who provide unemployment benefits on a reimbursable basis, rather than via tax contributions, and increases the subsidy to 75 percent beginning after March 31. The subsidy would remain available through August 29, 2021 at the 75 percent rate.

Section 9013. Extension of Federal Pandemic Unemployment Compensation. This section extends through August 29, 2021 the federal supplemental unemployment benefit (FPUC), which is added to both state and federal benefits, and the mixed-earner supplement added to it for eligible workers. It increases the FPUC amount from $300 to $400 for weeks ending after March 14 and before August 29, 2021. This section also clarifies that mixed-earner supplement is treated the same way as the FPUC in determining eligibility for Medicaid and the Children's Health Insurance Program.

Section 9014. Extension of Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week. This section restores full reimbursement for state costs related to waiving the waiting week beginning December 31, 2020 and continues it through August 29, 2021.

Section 9015. Extension of Emergency State Staffing Flexibility. This section extends temporary exceptions to state unemployment insurance staffing restrictions from the CARES Act through August 29, 2021.

Section 9016. Extension of Pandemic Emergency Unemployment Compensation. This section increases the number of weeks of benefits an individual worker may receive in the Pandemic Emergency Unemployment Compensation (PEUC) program from 24 to 48, and extends the period of time in which workers can receive PEUC benefits if they exhaust regular state UI benefits through August 29, 2021. The section also includes rules for the order in which various types of unemployment benefits should be paid.

Section 9017. Extension of Temporary Financing of Short-Time Compensation Payments in States with Programs in Law. This section extends full federal financing of benefits provided in Short-Time Compensation programs for states which have laws establishing such programs within their Unemployment Insurance systems through August 29, 2021.

Section 9018. Extension of Temporary Financing of Short-Time Compensation Agreements for States without Programs in Law. This section extends through August 29, 2021 a 50 percent subsidy for temporary Short-Time Compensation programs, which states established using administrative authority during the pandemic, in states that have not amended state law to permit access in the future.

Part 2 – Extension of FFCRA Unemployment Provisions

Section 9021. Extension of Temporary Assistance for States with Advances. This section ensures that the earliest date on which states would begin accumulating interest on federal loans they have taken to pay state unemployment benefits would be August 29, 2021. The loans allow states with low balances in their unemployment trust funds to delay employer tax increases or other employer surcharges while the economy is struggling.

Section 9022. Extension of Full Federal Funding of Extended Unemployment Compensation. This section extends through August 29,2021, the provision in the Families First Coronavirus Response Act that provides temporary full federal financing of Extended Benefits (EB) for high-unemployment states. States are normally required to pay 50 percent of the cost of EB, which is a program in permanent law.

Part 3 – Department of Labor Funding for Timely, Accurate, and Equitable Payment

Section 9031. Department of Labor Funding. This section provides a direct appropriation of $8 million to the Department of Labor's Employment and Training Administration for costs related

to day-to-day federal administration of unemployment insurance, including the temporary pandemic programs.

Section 9032. Fund for Fraud Prevention, Equitable Access, and Timely Payment to Eligible Workers. This section appropriates $2 billion to the Department of Labor specifically to support program integrity and timely and equitable access to benefits. The Secretary of Labor would be authorized to use the funds directly to develop system-wide program integrity and address access barriers and processing backlogs, distribute funds to state and territorial Unemployment Insurance programs for these purposes, and also to make transfers to the Office of the Inspector General or the Department of Justice or other agencies to support unemployment fraud investigations or prosecutions.

Effective Date

All of the provisions in the subtitle except Sections 9011 and 9016 are effective on enactment. Sections 9011 and 9016 apply as if they had been included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), except that no benefits are payable under such Sections before the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of Subtitle A, Crisis Support for Unemployed Workers on February 10, 2021.

An amendment to the amendment in the nature of a Substitute to Subtitle A that would strike and replace the $400/weekly supplement with an amount equal to 50% of a claimants' weekly benefit amount as determined by the state was offered by Mr. Brady. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment to the amendment in the nature of a substitute to Subtitle A that would allow states to pay a lower weekly supplement amount than $400 and use remaining dollars for return-to-work bonuses or re-employment services for unemployed workers was offered by Mr. Smith of Nebraska. The amendment was defeated by a vote of 17 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED			
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	17		

An amendment to the amendment in the nature of a substitute to Subtitle A that would incorporate a benefit phaseout period and application deadline was offered by Mr. Hern. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment to the amendment in the nature of a substitute to Subtitle A that would strike and replace “75” with “100” to increase the amount of unemployment reimbursement for non-profit organizations was offered by Mr. Smucker. The amendment was withdrawn.

An amendment to the amendment in the nature of a substitute to Subtitle A that would require states to verify identity and receive documentation of prior wages of applicants for Pandemic Unemployment Assistance prior to authorizing benefits was offered by Mr. Nunes. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment to the amendment in the nature of a substitute to Subtitle A that would provide relief by holding harmless taxpayers that had their identities stolen and were victims of unemployment fraud was offered by Mr. Wenstrup. The amendment was withdrawn.

The Chairman's amendment in the nature of a substitute to Subtitle A was agreed to by a voice vote (with a quorum being present).

Subtitle A was ordered favorably transmitted to the House Committee on the Budget as amended by an amendment in the nature of a substitute offered by Chairman Neal by a vote of 24 yeas to 18 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE	X			MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS	X			MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT							
CHAIRMAN NEAL	X						
TOTALS	24			**TOTALS**		18	

IV. BUDGET EFFECTS OF THE SUBTITLE

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the subtitle, Crisis Support for Unemployed Workers, as reported. The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimates of new budget authority, budget outlays, tax expenditures, or revenues contained in the cost estimate prepared by the CBO.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the Committee has received the following cost estimate for the Reconciliation Recommendations of the Committee on Ways and Means.

[Insert A--CBO letter/estimate]

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of Rule XIII and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee advises that general performance goal or objective for which the subtitle authorizes funding is to provide continued and adequate unemployment benefits for workers, to prevent fraud and delays, and to reduce costs for employers during the pandemic.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the subtitle does not contain Federal mandates on the private sector. The Committee has determined that the subtitle does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of Rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the subtitle, and states that the provisions of the subtitle do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

In compliance with clause 3(c)(5) of Rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the subtitle establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant section 6104 of title 31, United States Code.

F. Hearings

Pursuant to section 3(u) of H.Res. 8 (117th Congress), no legislative hearings were held in the 117th Congress to develop or consider Subtitle A due to the exigent nature of the Covid 19 global pandemic and the need for immediate legislative action.

VI. CHANGES IN EXISTING LAW MADE BY THE SUBTITLE

A. Text of Existing Law Amended or Repealed by The Subtitle

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee requested but did not receive the text of changes in existing law made by the subtitle, as reported.

VII. DISSENTING VIEWS

[Insert B – [Dissenting Views]

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

February 16, 2021

DISSENTING VIEWS ON SUBTITLE A.
BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO CRISIS SUPPORT FOR UNEMPLOYED WORKERS

Committee Republicans oppose Subtitle A. Federally funded unemployment compensation has massively expanded in response to the devastation caused by the COVID-19 pandemic and government-imposed shutdowns of economic activity. As of February 6, 2021, federal spending on CARES Act unemployment programs, including Pandemic Unemployment Assistance, Emergency Relief for government entities and non-profits, Federal Pandemic Unemployment Compensation, Pandemic Emergency Unemployment Compensation, full funding for the first week of regular compensation, and 100% federal funding for Extended Benefits, exceeded $435 billion, in a period of less than a year.[1] According to the Congressional Budget Office (CBO), extending and enhancing these programs through August 29th, as provided in Subtitle A, will cost an additional $246 billion and "could increase the unemployment rate as well as decrease labor force participation throughout the period for which those benefits would be in place."[2]

Last spring, increased unemployment benefits played an important role in helping those who lost a job through no fault of their own and – at the time – made sense as a way to support public health measures and reduce the economic impact of stay-at-home orders. Nearly a year later, we face a much different situation, but Democrats insist on keeping in place enhanced unemployment benefits that discourage work. The unemployment rate has gone from a spike of 14.7% in April 2020 to 6.3% last month. CBO projects a decline in unemployment – even with no additional stimulus – reaching 5.3% by the end of 2021. Nevertheless, this bill would increase enhanced unemployment benefits to $400 per week, through the end of the summer.

We know, at this level, unemployment benefits can end up replacing more than 100% of a worker's prior earnings and creates situations where it becomes a rational financial decision for someone to choose to stay on unemployment rather return to safe work. An American Action Forum study estimated at the $400 level – nationally – 50% of workers could make more on unemployment (*submitted for the record*).[3] This isn't a hypothetical. Table A (*submitted for the record*) shows the percentage of workers that would make more with the $400/week unemployment supplement, and how much more they would make – in states represented by Ways and Means Committee Members. In Texas, 55% of workers would make more, and could make up to 177% more than when they were working. In Alabama, 45% of workers would make more, and could make up to 175% more. Despite mounting evidence that a one-size-fits-all solution to unemployment relief is actually hurting efforts to re-open our economy, Democrats want to increase and extend benefits for another six months. Like the $600, the $400 added

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[1] U.S. Department of Labor; https://oui.doleta.gov/unemploy/docs/cares_act_funding_state.html
[2] Cost Estimate: Reconciliation Recommendations of the House Committee on Ways and Means, Congressional Budget Office, February 15, 2021.
[3] "Revisiting Federal Pandemic Unemployment Compensation Under the Biden Administration," Isabel Soto, American Action Forum, February 8, 2021.

weekly benefit is crudely designed and poorly suited for the challenge we now face. As the vaccine is rolled out and states roll back restrictions on businesses – this is the time to reconnect workers with jobs.

Ways and Means Member States	Table A. Impact of Democrat's Proposed $400/weekly Unemployment Supplement		
	% of Workers that Make More[4]	Minimum Wage	% Wage Replacement[5]
Alabama	45%	$7.25/hour	175%
Arizona	40%	$12/hour	133%
California	55%	$12/hour	133%
Florida	45%	$8.65/hour	175%
Georgia	50%	$7.25/hour	187%
Illinois	40%	$9.25/hour	158%
Indiana	45%	$7.25/hour	172%
Kansas	60%	$7.25/hour	180%
Missouri	45%	$9.45/hour	163%
Nebraska	50%	$9.00/hour	161%
New York	50%	$11.80/hour	141%
North Carolina	50%	$7.25/hour	175%
Ohio	50%	$8.70/hour	175%
Pennsylvania	50%	$7.25/hour	177%
South Carolina	45%	$7.25/hour	175%
Texas	55%	$7.25/hour	177%

Committee Republicans are committed to finding a solution that can support unemployed workers who lost their jobs because of lockdowns— and make sure temporary job losses don't turn into permanent ones. A better policy would be to find a way to target dollars so supplemental benefits are tailored to each individual and reflect differences in the cost of living across the country. Last June, Democrats on this Committee admitted as much in a press release saying – "Ideally unemployment compensation would be limited to what out-of-work Americans previously earned…"[6]

Two amendments were offered that would provide a smarter, more effective way to continue to support unemployed workers. Instead of a flat $400/week, the first amendment would have set

[4] "Revisiting Federal Pandemic Unemployment Compensation Under the Biden Administration," Isabel Soto, American Action Forum, February 8, 2021.
[5] Republican Committee staff estimates using DOL Comparison of State Unemployment Insurance Laws, 2019.
[6] The Benefits of Extending Enhanced Unemployment Compensation," Ways and Means Committee Democrats, June 5, 2020.

the Federal Pandemic Unemployment Compensation bonus as equal to 50% of an unemployed worker's weekly benefit amount, which is determined by the state. The benefit of this approach is that it individualizes the supplement and is anchored in prior wages and state policy. It also means no one would end up making more on unemployment than when they were working. Using this formula, wage replacement rates would range from 71% in Indiana to 98% in Oregon, with higher wage replacement rates for low-wage workers. Importantly, this approach would not require states to change their benefit calculation formulas. The weekly benefit amount is a known number every state determines for each person. The state would only need to apply a multiplier of 0.5 and issue a second check in that amount. This amendment offered a plausible alternative and provided a more responsible path for targeting additional unemployment assistance to those who need it, without the hazard of creating a permanent class of long-term unemployed. The amendment was unanimously rejected by Committee Democrats.

A second amendment would have allowed states to choose what fits their needs. In December, 18 states had an unemployment rate lower than 5%. States face different circumstances and should be provided flexibility to direct additional unemployment funding in a way that supports their workers and economic growth. Under this amendment, states could choose to pay a lower unemployment amount than $400 – such as $100, $200, or $300 per week – and re-direct remaining money to activities that help get people back to work. This could include a return-to-work bonus, such as those offered by Idaho last summer,[7] or states could use leftover dollars for re-employment and eligibility assessment services (RESEA) to address individual reemployment needs of claimants. The amendment was unanimously rejected by Committee Democrats.

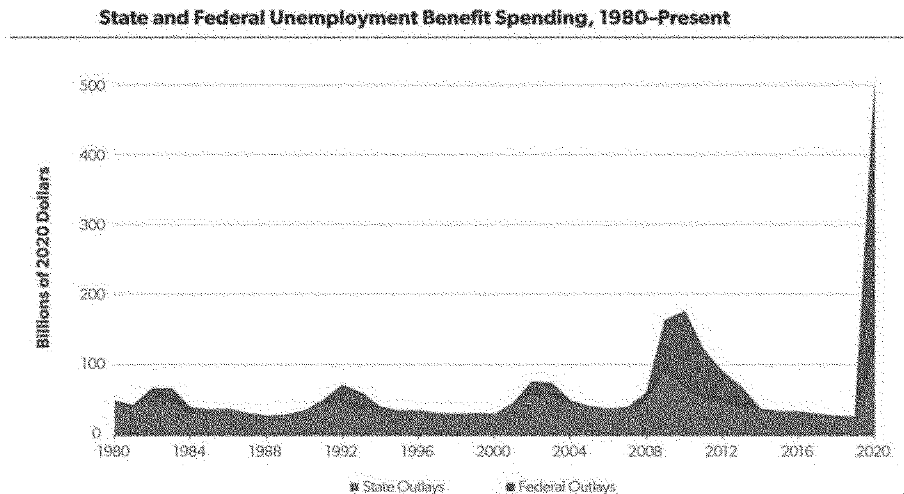
A third amendment would have put in place a benefit phase-out period, consistent with the one first included in Democrats HEROES bill (H.R. 6800) and put in place as part the December bipartisan agreement to extended unemployment benefits through April 5, 2021 (P.L. 116-260). The purpose is to make sure these temporary federal programs are phased-out responsibly. This amendment added an application deadline and a gradual phase-out period, so individuals don't face another cliff in August. The amendment would have included an earlier date, July 25th, prior to the program's expiration of August 29th, after which no new applicants would be accepted, but existing claimants could continue to receive benefits as long as they remain eligible through August 29th. This creates a buffer period for recipients prior to program expiration. Despite the fact that it was originally their idea to include a phaseout period, and they agreed to one in December, the amendment was unanimously rejected by Committee Democrats. It's as though Democrats want to put in place another cliff and extend the emergency CARES Act unemployment programs in perpetuity.

Finally, it should not go unnoticed that the amount of unemployment aid in this bill is grossly out of proportion compared to past recessions. As shown in Figure 1[8] (*submitted for the record*), it is estimated that Congress has allocated more than $630 billion to unemployment benefits since the beginning of the pandemic. To put that in historical context, combined federal unemployment spending in 2020 was three times the next-highest year – in 2010. In the past,

[7] Return to Work Bonuses, Idaho Rebounds: Our Path to Prosperity: https://rebound.idaho.gov/return-to-work-bonuses/
[8] "Federal unemployment benefits to eclipse $500 billion," Matt Weidinger, American Enterprise Institute, December 21, 2020.

Congress has ended emergency benefits much sooner as unemployment rates fell. During the last recession, an additional $25 per week was made. That bonus ended when unemployment was at 9.3%. Currently, Congress is providing an additional $300 per week payment and unemployment is at 6.3%. Under Subtitle A, Democrats would have us go in the opposite direction and increase the payment to $400 per week.

Figure 1.



The CARES Act also provided additional relief for non-profits and state and local governments to help offset the costs of unemployment benefits by 50%. Subtitle A raises the amount for the reimbursable employers to 75%. Committee Republicans offered an amendment to increase federal support to 100% to make sure non-profit organizations will not be forced to shut their doors permanently and can continue to focus on serving our most vulnerable communities. Non-profits and community-based organizations are a crucial part of our social safety net. Many are now facing challenges reopening. According to the Nonprofit Unemployment Insurance Relief Coalition, approximately 100,000 nonprofit organizations are impacted by this provision and many were forced to lay off their employees through no fault of their own.[9] In a letter to Congress, the National Association of Governors highlighted this issue as a threat to recovery and urged increasing the amount to 100%.[10] This is an example of a bipartisan issue and exactly the meaningful type of unemployment COVID relief we should be providing – unlike the harmful flat weekly supplement that leaves main street businesses competing with unemployment benefits for workers.

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[9] "Nonprofits in Crisis: Why Nonprofits that Self-Insure Need 100 Percent Reimbursement from the Federal Government," Nonprofit Unemployment Insurance Relief Coalition.
[10] "Letter on Unemployment Insurance and Economic Recovery, National Governors Association, December 11, 2020.

Finally, Committee Republicans offered two amendments directed at combatting rampant unemployment fraud that is diverting funds away from unemployed workers and harming innocent taxpayers.[11] The Labor Department's Inspector General and the Government Accountability Office have issued repeated warnings about the vulnerability for abuse of CARES Act unemployment insurance programs.[12][13] The Inspector General's initial audit and investigation indicate improper payments, will be higher than 10 percent or at least $63 billion. The Secret Service circulated a memo to its field offices last May saying an international crime ring has been filing unemployment claims in different states using Social Security Numbers belonging to identity theft victims, including first responders, government personnel and school employees.[14] Just this month, California state workforce officials confirmed that they paid out fraudulent unemployment claims totaling over $11 billion and identified another $20 billion in claims still under investigation. Republican Members of the California delegation wrote a letter to the Governor asking for answers about how this was allowed to happen *(submitted for the record)*.[15]

Despite these warnings, Subtitle A would extend CARES Act unemployment benefits through the end of August and includes no additional protections against vulnerabilities to continuing fraud in the program. Generous unemployment benefits, including the additional $600 and now $400 are an easy target for criminals using stolen identities. Until December, applicants were allowed to self-certify eligibility by checking a box and not required to submit documentation of prior earnings. Republicans successfully fought to put some program integrity measures in place, but Democrats have not been serious about addressing this issue on the front end. Committee Republicans offered an amendment to require states to verify the identity of applicants and get documentation prior to sending any money out the door. To protect taxpayer dollars, we must abandon the "pay and chase" model and make sure people are who they say they are before we give out benefits. And make sure they have documentation to back that up too. The amendment was unanimously rejected by Committee Democrats.

This problem of unemployment fraud has created an added burden that will place undue stress on thousands of taxpayers when they can least afford it. As tax filing season swings into full gear, millions of taxpayers have begun receiving forms indicating the amount of unemployment benefits they received in 2020. For many, this may be the first time they discover the state has issued unemployment benefits fraudulently claimed in their name. Committee Republicans offered an amendment to extend the deadline for states to submit these forms (1099-G) to the IRS – so they have more time to work with taxpayers to correct the forms. In many cases

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[11] "The Way Forward on Unemployment: Stop Criminals from Diverting Billions Away from Unemployed Workers," November 16, 2020, Ways and Means Republicans.

[12] U.S. Department of Labor, Office of Inspector General, "DOL-OIG Oversight of the Unemployment Insurance program," February 3, 2021.

[13] "COVID-19: Critical Vaccine Distribution, Supply Chain, Program Integrity, and other Challenges Require Focused Federal Attention," Government Accountability Office, January 28, 2021. (GAO-21-265)

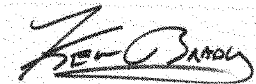
[14] "Massive Fraud Against Unemployment Insurance Programs, U.S. Secret Service, May 5, 2020, Information Only Alert: https://www.documentcloud.org/documents/6891584-GIOC-Alert-20-027-I-State-Unemployment-Fraud-002.html

[15] "McCarthy, Steel, and CA Republicans Condemn Newsome Administration for Mismanagement of $11.4 B in Taxpayer Funds," February 5, 2021.

fraudulent claims are filed using the wrong address. In these cases, taxpayers never get the form and could end up being flagged by the IRS for unreported income – *after* the unknowing taxpayer has filed their taxes. The amendment would have required IRS to hold harmless taxpayers who are victims of identity theft, so no penalties or interest will accrue against them. Finally, the amendment would require states to report the amount of fraudulent unemployment benefits that are excluded from tax forms, so we have an idea nationally just how much of these funds were diverted.

The Ohio Attorney General first alerted Congress to this issue saying they project roughly 1.7 million 1099-G tax forms will be mailed to Ohioans.[16] Ohio suspects tens of thousands of those claims were filed fraudulently using stolen identities. Even the Governor and Lieutenant Governor had claims falsely made in their names. To avoid having to pay taxes on the benefits, taxpayers will need to contact the state to report the fraud and correct the form. In response, several Committee Republicans sent a letter to the Biden Administration to take action to protect taxpayers who were victims of unemployment fraud (*submitted for the record*).[17]

In addition to program integrity measures, such as those offered in these amendments, Republicans strongly believe this Committee has a responsibility to investigate and hold oversight hearings to determine the extent and amount of fraud in CARES Act unemployment insurance programs and for recovering taxpayer dollars.



Kevin Brady
Republican Leader
Committee on Ways and Means

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[16] "AG Yost Asks Congress for Safe Harbor while Ohio Investigates Unemployment Fraud," January 22, 2021.
[17] "Wenstrup Leads Letter to Administration Asking for Relief for Taxpayers that Were Victims of Unemployment Fraud," February 8, 2021, Ways and Means Republicans.

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SUBTITLE B – EMERGENCY ASSISTANCE TO FAMILIES THROUGH HOME VISITING

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

Subtitle B, "Emergency Assistance to Families through Home Visiting," as ordered reported by the Committee on Ways and Means on February 10, 2021, provides an additional $150 million to allow Maternal, Infant, and Early Childhood Home Visiting programs to address the needs of expectant parents and young families during the COVID-19 pandemic.

B. Background and Need for Legislation

The MIECHV program, administered by the U.S. Department of Health and Human Services (HHS), is the primary federal program supporting home visits to vulnerable families with expectant parents or who have children up to the age of kindergarten entry. Home visitors, such as nurses and paraprofessionals, provide a range of supports that include teaching parenting skills, promoting early learning, screening for maternal depression and child school readiness, and providing referrals to community entities, among other topics. Families participate on a voluntary basis.

The Department of Health and Human Services (HHS) allocates both formula and competitive funding to grantees, which include the 50 states, territories (including American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands), and more than 20 tribal entities.[1] In FY2019, states and territories supported 154,496 individual parents and children through 1,015,217 home visits. In FY2018, the most recent year data are available, tribal grantees supported over 3,751 parents and children.[2] Grantees provide funding for local programs that use one or more home visiting models, which refers to the brand-name home visiting approach (e.g., Healthy Families America, Parents as Teachers, and Nurse-Family Partnership) that offers a unique curriculum for participating families. Grantees must use at least 75 percent of their MIECHV funds for home visiting models that have demonstrated, through research reviewed by HHS, positive family outcomes.

As of February 2021, COVID-19 has led to more than 27 million confirmed cases resulting in over 466,000 deaths,[3] with Black, Latino, and Native Americans accounting for a disproportionate number of cases and deaths. Weekly applications for unemployment benefits hit a recorded-history high in March of 2020, continued to climb, and remain at levels never seen

[1] U.S. Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA), "Maternal and Child Initiatives: Home Visiting," https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview; and HHS, Administration for Children and Families (ACF), "Tribal Home Visiting Grantees," https://www.acf.hhs.gov/occ/tribal-home-visiting-grantees. Under the law, nonprofit organizations may carry out a home visiting program in a state that did not apply, or receive approval, for a grant. Nonprofit organizations operate MIECHV-funded home visiting programs in FL, ND, and WY.

[2] HHS, *Fiscal Year 2021 Justification of Estimates for HRSA*, pp. 227-228. Data were not reported on the number of home visits provided by tribal grantees for FY2018.

[3] *COVID Data Tracker*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited Feb. 11, 2021).

before this pandemic.[4] The impact of COVID-19 was disproportionately felt by families with children, who have experienced much higher levels of material hardship,[5] and by communities of color, where rates of infection, unemployment, and death were disproportionately high.[6][7]

Low-income households with children in the U.S.—one of the target populations for home visiting services—have reported heightened concerns about financial stability, housing stability, and access to health care as a result of the pandemic.[8] Pregnant women, another target population for home visiting services, are at increased risk of becoming severely ill or dying from COVID-19 compared to individuals who are not pregnant.[9]

Information from selected states indicates that demand for home visiting services increased following the onset of the pandemic within the U.S. and that maintaining safe operations has been challenging.[10] An April 2020 survey of over 1,300 local programs (of which 40 percent were receiving MIECHV funding) found that nearly all of them were required to stop providing in-person home visiting services immediately.[11] To maintain contact with families, about half the local programs used text messaging and about two-thirds used phone calls and video conferencing frequently. The survey also found that half of families did not have a stable Internet connection and about half did not have the necessary technology for video conferencing.

Division X of the Consolidated Appropriations Act, 2021 (P.L. 116-260) provided statutory flexibility for the MIECHV program to address the pandemic through September 30, 2021 but did not provide additional funding to serve additional families or pay costs associated with the pandemic.

C. Legislative History

Budget Resolution

On February 5, 2021, the House of Representatives approved Senate Concurrent Resolution 5, setting forth the congressional budget for the United States Government for fiscal year 2021 and setting forth the appropriate budgetary levels for fiscal years 2022 through 2030. Pursuant to section 2002(l) of S. Con. Res. 5, the Committee on Ways and Means was directed to

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[4] Unemployment insurance weekly claims data. (n.d.). Retrieved February 12, 2021, from https://oui.doleta.gov/unemploy/claims.asp

[5] Cooney, P., & Shaefer, H. (2021, February). Trends in hardship and mental health in the United States at the end of 2020. Available at https://poverty.umich.edu/files/2021/02/PovertySolutionsMaterialHardshipEndof2020-Feb2021.pdf

[6] Mazure, C. M., PhD. (2020, September 03). Health notes: People of color suffer disproportionate impact of covid-19 pandemic. Retrieved February 12, 2021, from https://medicine.yale.edu/news-article/27086/

[7] Swagel, P. L. (2020). *Characteristics of People Receiving Regular Unemployment Benefits in July 2020* (USA, Congressional Budget Office). Washington, DC: CBO. Available at https://www.cbo.gov/publication/56

[8] Shreela V. Sharma et al., "Social Determinants of Health–Related Needs During COVID-19 Among Low-Income Households With Children," *Preventing Chronic Disease*, vol. 17 (October 1, 2020).

[9] CDC, "Pregnancy, Breastfeeding, and Caring for Newborns: COVID-19 and Pregnancy," https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html.

[10] Rachel Yard and Daniela Lewy, *The Crucial Role of Home Visiting During COVID-19: Supporting Young Children and Families*, Center for Health Care Strategies, June 25, 2020. (Hereinafter, Rachel Yard and Daniela Lewy, *The Crucial Role of Home Visiting During COVID-19: Supporting Young Children and Families.*)

[11] Home Visiting Applied Research Collaborative (HARC), *COVID-19's Early Impact on Home Visiting: First Report of Results from a National HARC-Beat Survey of Local Home Visiting Programs*, April 10, 2020.

submit to the Committee on the Budget changes in laws within its jurisdiction to increase the deficit by not more than $940,718,000,000 for the period of fiscal years 2021 through 2030.

Committee hearings

In light of the emergency presented by the Covid 19 global pandemic and the need for immediate legislative action, no hearings were held in the 117th Congress prior to consideration of Subtitle B.

Committee action

Beginning on February 10, 2021, in response to its instructions under S. Con. Res. 5, the Committee on Ways and Means met to consider budget reconciliation legislative recommendations. On February 10, 2021, Subtitle B, Recommendations Related to Emergency Assistance to Families through Home Visiting, was ordered favorably transmitted, as amended, to the House Committee on the Budget by a record vote of 24 to 18.

II. EXPLANATION OF THE SUBTITLE

A. Emergency Assistance to Families Through Home Visiting

Current Law

Section 511 of the Social Security Act directly provides $400 million each year through fiscal year 2022 for the Maternal, Infant, and Early Childhood Home Visiting Program, which then awards grants to states, territories, and Indian tribal entities. States are required to conduct a needs assessment and provide assistance to families in accordance with identified needs. A minimum of 75 percent of funding must be used to support home visiting program models that meet a specified evidence standard.

MIECHV programs have temporary flexibility to use funds for some purposes not normally allowed, to address pandemic conditions. That flexibility expires September 30, 2021.

Reasons for Change

During the pandemic, many families with young children, including those already served by the MIECHV program and those eligible for MIECHV but not enrolled, are suffering high levels of hardship which current funding levels are insufficient to address.

Explanation of Provisions

Section 9101. This section creates a new section 511A in the Social Security Act entitled, "Emergency Assistance to Families Through Home Visiting Programs," providing additional funding to federal home visiting programs and rules for its use.

Paragraph (a). Supplemental appropriation. This paragraph provides $150 million to MIECHV-funded home visiting programs for specified purposes, to remain available for obligation through the end of fiscal year 2022.

Paragraph (b). Eligibility for funds. This paragraph specifies that to receive funding, entities must be operating a MIECHV home visiting program, consent to amendment of their existing grants or contracts, agree not to reduce staffing levels during the pandemic, and, if they choose to provide diapering supplies during the emergency, coordinate with diaper banks operating in their service areas to the extent practicable.

Paragraph (c). Uses of funds.
This paragraph lays out the allowable uses of the funds provided in paragraph (a). Allowable uses include:

- Serving families with home visits, whether in person or virtually
- Staff costs associated with home visits (including hazard pay)

- Training for home visitors on virtual home visits, emergency preparedness, and domestic violence
- Helping enrolled families acquire technology needed to conduct a virtual home visit, including WiFi access or cell phone minutes
- Providing emergency supplies to enrolled families, including formula, food, water, hand soap and sanitizer, and diapers and diapering supplies
- Coordinating with and providing reimbursement to diaper banks when using them to provide emergency supplies
- Providing prepaid grocery cards to an eligible family

Effective Date

This Subtitle is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of Subtitle B, Emergency Assistance to Families through Home Visiting Programs, February 10, 2021.

An amendment in the nature of a substitute to Subtitle B was agreed to by a voice vote. (with a quorum being present).

Subtitle B was ordered favorably transmitted to the House Committee on the Budget as amended by an amendment in the nature of a substitute offered by Chairman Neal by a vote of 24 yeas to 18 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE	X			MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS	X			MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT							
CHAIRMAN NEAL	X						
TOTALS	24			**TOTALS**		18	

IV. BUDGET EFFECTS OF THE SUBTITLE

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of Subtitle B, as reported. The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimates of new budget authority, budget outlays, tax expenditures, or revenues contained in the cost estimate prepared by the CBO.

C. Cost Estimate Prepared by the Congressional Budget Office

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, please refer to Subtitle A for an estimate for the Reconciliation Recommendations of the Committee on Ways and Means as prepared by CBO.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of Rule XIII and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee advises that the general performance goal or objective of this subtitle is to increase the number of at-risk families receiving home visiting services during the pandemic and ensure that current and additional families are able to obtain basic necessities like food and diapers.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the subtitle does not contain Federal mandates on the private sector. The Committee has determined that the subtitle does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of Rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the subtitle, and states that the provisions of the subtitle do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

In compliance with clause 3(c)(5) of Rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the subtitle establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant section 6104 of title 31, United States Code.

F. Hearings

Pursuant to section 3(u) of H.Res. 8 (117th Congress), no legislative hearings were held in the 117th Congress to develop or consider Subtitle B due to the exigent nature of the Covid 19 global pandemic and the need for immediate legislative action.

VI. CHANGES IN EXISTING LAW MADE BY THE SUBTITLE

A. Text of Existing Law Amended or Repealed by the Subtitle

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee requested but did not receive the text of changes in existing law made by the subtitle, as reported.

VII. DISSENTING VIEWS

[Insert A – Dissenting Views]

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

February 16, 2021

DISSENTING VIEWS ON SUBTITLE B.
BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO EMERGENCY ASSISTANCE TO FAMILIES THROUGH HOME VISITING PROGRAMS

Committee Republicans oppose Subtitle B. This legislation represents a missed opportunity to work in a bipartisan manner to improve health and development outcomes for children and families in poverty through evidence-based home visiting programs. In December, Republicans and Democrats worked together to create new flexibilities in the Maternal, Infant, and Early Childhood Home Visiting program – or MIECHV – through the end of the fiscal year. These and other provisions of the *Supporting Foster Youth and Families through the Pandemic Act* were signed into law as part of the year-end COVID relief package (P.L. 116-260).[18] These temporary flexibilities were a direct response to the pandemic and included virtual home visits, sustained funding for staffing regardless of enrollment, expenditures for training, acquisition of technology for virtual home visits, and providing emergency supplies to families. They also temporarily provided HHS with authority to delay certain deadlines that may be impacted by the pandemic, including performance measure data reporting and statewide needs assessments. Just one month later, Committee Democrats are taking a "go it alone" approach shutting out Republicans on an issue with a rich history of bipartisan support.

Kevin Brady
Republican Leader
Committee on Ways and Means

[18] "Walorski, Davis Applaud Inclusion of Foster Youth Support in COVID-19 Relief Bill," December 21, 2020.

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SUBTITLE C – BUDGET RECONCILIATION LEGISLATIVE RECOMENDATIONS RELATED TO EMERGENCY ASSISTANCE TO CHILDREN AND FAMILIES

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

Subtitle C, "Budget Reconciliation Legislative Recommendations Related to Emergency Assistance to Children and Families" as ordered reported by the Committee on Ways and Means on February 10, 2021provides $1 billion to Temporary Assistance for Needy Families (TANF) program agencies for states, the District of Columbia, tribes, and U.S. Territories, as well as to territorial human services agencies in territories that do not have TANF programs. The funds may only be used to administer and provide Non-Recurrent Short Term (NRST) benefits to families with children.

B. Background and Need for Legislation

As of February 2021, COVID-19 has led to more than 27 million confirmed cases resulting in over 466,000 deaths,[1] with Black, Latino, and Native Americans accounting for a disproportionate number of cases and deaths. Weekly applications for unemployment benefits hit a recorded-history high in March of 2020, continued to climb, and remain at levels never seen before this pandemic.[2] Real Gross Domestic Product declined by 3.5 percent in 2020, the largest drop since 1946.[3] The impact of COVID-19 was disproportionately felt by families with children, who have experienced much higher levels of material hardship,[4] and by communities of color, where rates of infection, unemployment, and death were disproportionately high.[5][6]

Families with children and communities of color have experienced severe economic hardship during the pandemic. Nearly half of all families with children reported having trouble paying basic household expenses, with even higher rates among Black and Latino families – two-thirds of Black families and 58 percent of Latino families. Families with children are also experiencing much higher rates of food insecurity and the inability to pay rent or other housing costs.[7]

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[1] *COVID Data Tracker*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited Feb. 11, 2021).

[2] Unemployment insurance weekly claims data. (n.d.). Retrieved February 12, 2021, from https://oui.doleta.gov/unemploy/claims.asp

[3] Bureau of Economic Analysis. (n.d.). Gross Domestic Product, 4th Quarter and Year 2020 (Advance Estimate). Retrieved February 12, 2021, from https://www.bea.gov/news/2021/gross-domestic-product-4th-quarter-and-year-2020-advance-estimate

[4] Cooney, P., & Shaefer, H. (2021, February). Trends in hardship and mental health in the United States at the end of 2020. Available at https://poverty.umich.edu/files/2021/02/PovertySolutionsMaterialHardshipEndof2020-Feb2021.pdf

[5] Mazure, C. M., PhD. (2020, September 03). Health notes: People of color suffer disproportionate impact of covid-19 pandemic. Retrieved February 12, 2021, from https://medicine.yale.edu/news-article/27086/

[6] Swagel, P. L. (2020). *Characteristics of People Receiving Regular Unemployment Benefits in July 2020* (USA, Congressional Budget Office). Washington, DC: CBO. Available at https://www.cbo.gov/publication/56

[7] Tracking the covid-19 recession's effects on food, housing, and employment hardships. (2021). Available at https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and

Research shows that experiencing poverty has long-term consequences for children, especially young children,[8] and the longer they remain in poverty without help, the worse the consequences are.[9] Allowing this hardship to continue without intervention is likely[10] to affect long-term health, school, and work outcomes for children of the pandemic.

Going into the pandemic, Temporary Assistance for Needy Families (TANF), which has lost over a third of its value since 1996,[11] only provided basic cash assistance to about 20 percent of all poor children nationwide. That rate is even lower in some states.[12] The number of families receiving TANF basic cash assistance has increased by only 4 percent[13] during the pandemic, despite a much more dramatic spike in need.

C. Legislative History

Budget Resolution

On February 5, 2021, the House of Representatives approved Senate Concurrent Resolution 5, setting forth the congressional budget for the United States Government for fiscal year 2021 and setting forth the appropriate budgetary levels for fiscal years 2022 through 2030. Pursuant to section 2002(l) of S. Con. Res. 5, the Committee on Ways and Means was directed to submit to the Committee on the Budget changes in laws within its jurisdiction to increase the deficit by not more than $940,718,000,000 for the period of fiscal years 2021 through 2030.

Committee hearings

In light of the emergency presented by the Covid 19 global pandemic and the need for immediate legislative action, no hearings were held in the 117th Congress prior to consideration of Subtitle C.

Committee action

Beginning on February 10, 2021, in response to its instructions under S. Con. Res. 5, the Committee on Ways and Means met to consider budget reconciliation legislative recommendations. On February 10, 2021, Subtitle C, Legislative Recommendations Relating to Emergency Assistance to Children and Families, by a record vote of 24 to 18.

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[8] Duncan, G. J., & Magnuson, K. (2011). The long reach of early childhood poverty. Available at https://www.researchgate.net/publication/281253723_The_Long_Reach_of_Early_Childhood_Poverty

[9] Brooks-Gunn, J., & Duncan, G. J. (1997). The effects of poverty on children. *The Future of Children, 7*(2), 55. doi:10.2307/1602387

[10] Benzeval, M., Bond, L., Campbell, M., Egan, M., Lorenc, T., Petticrew, M., & F. (2018, January 05). How does money influence health? Retrieved February 12, 2021, from https://www.jrf.org.uk/report/how-does-money-influence-health

[11]Falk, E. H. (2021). *The Temporary Assistance for Needy Families (TANF) block grant: Responses to frequently asked questions*. Washington, DC: CRS. Available at https://crsreports.congress.gov/product/pdf/RL/RL32760

[12] Falk, E. H. (2021). *The Temporary Assistance for Needy Families (TANF) block grant: Responses to frequently asked questions*. Washington, DC: CRS. Available at https://crsreports.congress.gov/product/pdf/RL/RL32760

[13] Falk, G. (2020). *The Temporary Assistance for Needy Families (TANF) block grant*. Washington, DC: CRS. Available at https://crsreports.congress.gov/product/pdf/IF/IF10036

II. EXPLANATION OF THE SUBTITLE

A. Emergency Assistance to Children and Families

Current Law

No applicable provision under current law.

Reasons for Change

Current law does not provide enough federal funding to help families with children avoid material hardship during the pandemic.

Explanation of Provisions

Section 9201. Pandemic Emergency Assistance Fund. Funds a $1 billion Pandemic Emergency Assistance Fund within Section 403 of the Social Security Act and provides rules for how funds must be used.

Paragraph (1). Establishes the fund for the applicable period, which begins April 1, 2021 and ends September 30, 2022.

Paragraph (2). Provides $1 billion for the fund.

Paragraph (4). Within the fund, this paragraph requires $2 million to be used by the Department of Health and Human Services (HHS) to administer the fund and provide technical assistance to states, tribes, and territories. Under this paragraph, the remainder of the funding is to be allocated as follows:

- 92.5 percent of funds to be distributed to US states and Washington DC through an allotment formula that is half based on the population of children in the state and half based on prior state expenditures on direct cash assistance and Non-Recurrent Short-Term benefits to low-income families with children.
- 7.5 percent of funds are set-aside for Tribal TANF programs and all U.S. Territories, to be distributed in a manner deemed appropriate by the HHS Secretary.

The paragraph also specifies that a condition of receiving the full amount of funding is to promptly notify HHS about intent to use allotted funds. For States and Washington DC, HHS must receive such expenditure commitment within 45 days of enactment. For Tribal TANF programs and US Territories, HHS must receive such expenditure commitment within 90 days of enactment.

Paragraph (5). Requires the Secretary of HHS to reallocate unspent funds among states, tribes, and territories that are willing to use them in the same proportions as the original funding was provided.

Paragraph (6). For any US Territory that is not currently operating a Territory TANF program, this paragraph specifies that the HHS Secretary shall distribute the territory's allotted funds to the agency that administers the bulk of local human services programs in the territory.

Paragraph (7). Specifies that no more than 15 percent of Pandemic Emergency Assistance Fund dollars may be spent on administrative costs, and the remainder may only be spent on Non-Recurrent Short-Term cash and other Non-Recurrent Short-Term benefits, as defined in ACF-196R, published on July 31, 2014. The paragraph also specifies that funds may not supplant other federal, state, or tribal funds, and that funds from the original allocation must be spent by the end of fiscal year 2022. Funds that have been reallotted to other states, tribes and territories must be spent within 12 months of receipt.

Paragraph (8). Provides that once the allotted funds from the Pandemic Emergency Assistance Fund have been spent, states must submit an expenditure report within 90 days after expenditure, and territories and tribes must submit within 120 days after expenditure, and also gives the Secretary of HHS the authority to collect and adjust expenditure data.

Paragraph (9). Exempts Pandemic Emergency Assistance Funds from the overall cap on funding to U.S. Territories in Section 1108 of the Social Security Act.

Paragraph (10). Requires the Secretary of Health and Human Services to implement the Pandemic Emergency Assistance Fund as soon as possible.

Paragraph (11). Defines terms used within the subsection.

Effective Date

Section 9201 is effective on April 1, 2021.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of Subtitle C, Emergency Assistance to Children and Families, on February 10, 2021.

An amendment to the amendment in the nature of a substitute to Subtitle C that would allocate Pandemic Emergency Assistance Funds to states proportionately based on the number of children in poverty, was offered by Ms. Miller. The amendment was defeated by a vote of 17 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT			
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	17		

An amendment to the amendment in the nature of a substitute to Subtitle C that would require states to use 25% of Pandemic Emergency Assistance Funds for work support activities was offered by Mr. LaHood. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment to the amendment in the nature of a substitute to Subtitle C offered by Mr. Brady was ruled nongermane. Mr. Brady moved to appeal the ruling of the Chair and Mr. Beyer moved to table the appeal. Mr. Beyer's motion to table the appeal of the ruling of the Chair was agreed to by a vote of 24 yeas to 18 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE	X			MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS	X			MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT							
CHAIRMAN NEAL	X						
TOTALS	24			**TOTALS**		18	

An amendment in the nature of a substitute to Subtitle C was agreed to by a voice vote. (with a quorum being present).

Subtitle C was ordered favorably transmitted to the House Committee on the Budget as amended by an amendment in the nature of a substitute offered by Chairman Neal by a roll call vote of 24 yeas to 18 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE	X			MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS	X			MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT							
CHAIRMAN NEAL	X						
TOTALS	24			**TOTALS**		18	

IV. BUDGET EFFECTS OF THE SUBTITLE

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the subtitle, Emergency Assistance to Children and Families, as reported. The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimates of new budget authority, budget outlays, tax expenditures, or revenues contained in the cost estimate prepared by the CBO.

C. Cost Estimate Prepared by the Congressional Budget Office

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, please refer to Subtitle A for an estimate for the Reconciliation Recommendations of the Committee on Ways and Means as prepared by CBO.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of Rule XIII and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee advises that the general performance goal or objective for which this subtitle authorizes funding is to provide direct emergency assistance to help families with children purchase basic necessities.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the subtitle does not contain Federal mandates on the private sector. The Committee has determined that the subtitle does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of Rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the subtitle, and states that the provisions of the subtitle do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

In compliance with clause 3(c)(5) of Rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the subtitle establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant section 6104 of title 31, United States Code.

F. Hearings

Pursuant to section 3(u) of H.Res. 8 (117th Congress), no legislative hearings were held in the 117th Congress to develop or consider Subtitle C due to the exigent nature of the Covid 19 global pandemic and the need for immediate legislative action.

VI. CHANGES IN EXISTING LAW MADE BY THE SUBTITLE

A. Text of Existing Law Amended or Repealed by The Subtitle

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee requested but did not receive the text of changes in existing law made by the subtitle, as reported.

VII. DISSENTING VIEWS

[Insert A – Dissenting Views]

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

February 16, 2021

DISSENTING VIEWS ON SUBTITLE C.
BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO EMERGENCY ASSISTANCE FOR CHILDREN AND FAMILIES

Committee Republicans oppose Subtitle C. It took a pandemic and Budget reconciliation measure to accomplish, but believe it or not, Ways and Means Democrats brought a Temporary Assistance for Needy Families (TANF) proposal before the Committee for consideration. Unfortunately, the proposal cannot be considered real reform. Instead, Democrats propose a new $1 billion Pandemic Emergency Fund. As written, Subtitle C allocates these new funds to states using a 50-50 formula that considers the number of children in each state and what each state spent on assistance and other benefits in 2019. Poverty is not a part of the calculation.

One of the biggest issues Republicans have identified in this COVID reconciliation package is the sheer lack of effort to target additional relief to families and communities that are the most impacted. These resources would be better targeted to existing need if they were allocated based on child poverty. An amendment was offered to allocate the $1 billion in TANF Pandemic Emergency Assistance funds proportionately based on the number of children living in poverty in each state. According to a memo from the Congressional Research Service (*submitted for the record*), this allocation formula would result in more funding for 11 states represented by Democrat Members of this Committee.[19] The memo demonstrates that this bill does not target resources to areas where they could have the biggest impact.

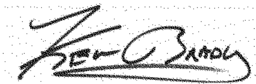
For example, Alabama would receive $7 million more if funds were distributed based on child poverty, and Mississippi would receive $10 million more. In contrast, large states like California (would receive $97 million less) and New York (would receive $73 million less) would see a substantial decrease under the child poverty formula. In general, this reveals how skewed the underlying TANF allocation formula is – particularly with regards to its reliance on prior state spending. See Table B for a list of all states. Committee Republicans believe these resources should go into the hands of those who need them most—not just the biggest states, but the states with the most child poverty. Despite repeated declarations of their commitment to reducing child poverty, Committee Democrats rejected the amendment unanimously.

State	Table B. Estimated Allocations to States for a TANF Pandemic Emergency Fund Under Alternative Formulas (rounded)		
	$1B allocated in the Chairman's Mark	$1B allocated based on Child Poverty	Difference using child poverty versus Chairman's Mark
Alabama	$10.1 M	$17.5 M	+$7 M

[19] "Memorandum: TANF Pandemic Emergency Fund," Congressional Research Service, February 9, 2021.

Alaska	$3.3 M	1.7 M	-$1.6 M
Arizona	$14.5 M	$23.7 M	+$9.2 M
Arkansas	$5 M	$11.7 M	+$6.7 M
California	$202.3 M	$104.9 M	-$97.4 M
Colorado	$13.5 M	$10.4 M	-$3.1 M
Connecticut	$8.3M	$7.8 M	-$0.5 M
Delaware	$2.1 M	$2.5 M	+$0.4 M
DC	$14.6 M	$1.8 M	-$12.8 M
Florida	$35.4 M	$56.7 M	+$21.4 M
Georgia	$21.9 M	$35.5 M	+$13.6 M
Hawaii	$4.2 M	$2.8 M	-$1.4 M
Idaho	$4.1 M	$4.5 M	+$0.4 M
Illinois	$20.4 M	$33.6 M	+$13.2 M
Indiana	$10.7 M	$17.7 M	+$7.1 M
Iowa	$6.3 M	$7.1 M	+$0.7 M
Kansas	$5.1 M	$7.8 M	+$2.7 M
Kentucky	$17.3 M	$16.3 M	-$1.0 M
Louisiana	$8.4 M	$22.2 M	+$13.9 M
Maine	$3.8 M	$ 2.5 M	-$1.3 M
Maryland	$17.7 M	$12.1 M	-$5.6 M
Massachusetts	$27.7 M	$11.9 M	-$15.8 M
Michigan	$19.0 M	$28.5 M	+$9.6 M
Minnesota	$14.3 M	$11.0 M	-$3.3 M
Mississippi	$4.7 M	$14.8 M	+$10.1 M
Missouri	$14.5 M	$17.6 M	+$3.2 M
Montana	$2.8 M	$2.5 M	-$0.3 M
Nebraska	$4.4 M	$3.9 M	-$0.5 M
Nevada	$6.8 M	$8.8 M	+2.0 M
New Hampshire	$4.1 M	$1.4 M	-$2.3 M
New Jersey	$17.2 M	$18.1 M	+$0.9 M
New Mexico	$6.4 M	$8.9 M	+$2.6 M
New York	$127.9 M	$54.7 M	-$73.2 M
North Carolina	$16.8 M	$33.9 M	+$17.1 M
North Dakota	$1.4 M	$1.4 M	$0
Ohio	$33.8 M	$35.9 M	+$2.1 M

Oklahoma	$7.1 M	$14.3 M	+$7.2 M
Oregon	$12.2 M	$8.5 M	-$3.7 M
Pennsylvania	$26.4 M	$33.5 M	+$7.0 M
Rhode Island	$4.3 M	$2.2 M	-$2.2 M
South Carolina	$10.1 M	$16.5 M	+$6.4 M
South Dakota	$2.3 M	$2.4 M	+$0.1 M
Tennessee	$12.9 M	$22.4 M	+$9.4 M
Texas	$49.4 M	$107.8 M	+$58.3 M
Utah	$7.3 M	$7.0 M	-$0.3 M
Vermont	$1.6 M	$0.9 M	-$0.7 M
Virginia	$15.7 M	$18.8 M	+$3.1 M
Washington	$22.6 M	$15.1 M	-$7.5 M
West Virginia	$4.6 M	$5.4 M	+$0.8 M
Wisconsin	$14.5 M	$12.9 M	-$1.6 M
Wyoming	$1.5 M	$1.2 M	-$0.3 M



Kevin Brady
Republican Leader
Committee on Ways and Means

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SUBTITLE D – ELDER JUSTICE AND SUPPORT GUARANTEE

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

Subtitle D, "Elder Justice and Support Guarantee," directly appropriates $276 million for fiscal year 2021, of which $88 million is to fully fund activities of the *Elder Justice Act* (EJA) for fiscal year 2021 and $188 million is to fund those activities in fiscal year 2022. Of total appropriated funding, $100 million per year must be used for Adult Protective Services (APS) programs, which address adult maltreatment.

B. Background and Need for Legislation

The *Elder Justice Act* (EJA) was originally introduced in 2002 and was ultimately enacted in 2010 as part of the *Patient Protection and Affordable Care Act* (ACA, P.L. 111-148, as amended) to fund public health and social services programs for the prevention, detection, and treatment of adult maltreatment.

Elder abuse was a public health problem globally even before COVID-19 estimated to affect approximately one in 10 individuals in the United States over the age of 60 suffers physical, verbal or sexual abuse, or financial exploitation. Data indicates the pandemic has exacerbated this problem.[1] Elder abuse is a complex issue, often leading to calls for a multifaceted policy response that combines public health interventions, social services programs, and law enforcement. To address this complexity, the EJA contained Adult Protective Services and other public health and social services approaches to the prevention, detection, and treatment of elder abuse. The *Elder Justice Act* is Subtitle B of Title XX of the *Social Security Act*.

Elder Justice and APS activities receive annual funding through the discretionary appropriations process under Labor-HHS-Education account, "Aging and Disability Services Programs," which is administered by the Administration for Community Living (ACL) within the U.S. Department of Health and Human Services (HHS). To date, the effectiveness of the *Elder Justice Act* has been limited by inadequate annual appropriations. Most programs and activities authorized under the EJA have either not received any funding since enactment or have not received funding at their authorized levels. Thus, given increased concerns about support for older adults and people with disabilities, the *Consolidated Appropriations Act of 2021* (P.L. 116-260) included $100 million in appropriations for EJA programs, half of which were designated for APS.

Historically, the largest source of federal funding for APS has been the Social Services Block Grant (SSBG), which is authorized in Subpart A of Title XX. In 2019, 37 states spent a total of $155 million in SSBG funds on APS. For the SSBG, APS is one of 28 service categories

[1] https://www.psychiatrictimes.com/view/elder-abuse-and-ageism-during-covid-19

defined in federal regulations as an allowable use of the Social Services Block Grant.[2] States have great flexibility in spending their SSBG allotments and are not required to spend these funds in any particular category (nor are they limited to the 28 categories defined in regulation). Nevertheless, APS is commonly one of the largest SSBG service categories. For instance, the FY 2019 SSBG Annual Report indicates that APS accounted for about five percent of all SSBG expenditures, making it the seventh-largest SSBG service category in dollar terms.[3] However, state APS agencies report that current SSBG funding is not sufficiently meeting their needs to fully and equitably respond to all adult maltreatment allegations.[4]

APS programs are social services programs established through legislation enacted in all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. APS programs often serve seniors and adults with disabilities by offering a system for reporting and investigating abuse, as well as providing social services to victims; however, there is no uniform definition across states for who is served or what social services are provided. In general, state APS programs use the concept of disability to define the populations they serve. Most states serve older adults (with or without disability criteria) and younger individuals with at least one disability. A few states only serve older adults.[5] Prior to enactment of the EJA, no dedicated federal funding authority was established for state APS programs.

While the extent of adult maltreatment is largely unknown, some studies indicate that it is prevalent and that many incidents of abuse are never reported.[6] A 2010 study exploring the extent of elder abuse in the United States found that 11 percent of individuals aged 60 and older residing in the community reported some type of abuse in the past year.[7] Similarly, a 2008 study found that nine percent of community-residing older adults aged 57 to 85 self-reported verbal mistreatment, 3.5 percent self-reported financial mistreatment, and 0.2 percent self-reported physical mistreatment by a family member in the past year.[8] According to the Congressional Research Service, such studies likely reflect an underestimate because they do not include all categories of abuse, exclude individuals who reside in institutional settings such as nursing homes, and generally exclude individuals with significant cognitive impairment. Additionally, incidents of adult maltreatment may go unreported, as older individuals may be reluctant to

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[2] See 45 CFR Part 96, Appendix A, Uniform Definitions of Services, at https://ecfr.federalregister.gov/on/2021-02-10/title-45/subtitle-A/subchapter-A/part-96/appendix-Appendix%20A.

[3] U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, *Social Services Block Grant Program Fiscal Year 2019 Annual Report*, Table C2, p. 159, at https://www.acf.hhs.gov/ocs/report/ssbg-annual-report-fy-2019.

[4] Pi-Ju Liu & Leslie Ross (2020) Adult Protective Services Training: A Brief Report on the State of the Nation, Journal of Elder Abuse & Neglect, DOI: 10.1080/08946566.2020.1845271

[5] L. McGee and K. Urban, *Adult Maltreatment Data Report 2019*. Submitted to the Administration for Community Living, U.S. Department of Health and Human Services, 2020.

[6] National Center on Elder Abuse, Statistics and Data, https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#prevalence.

[7] Acierno, Ron, M. A. Hernandez, A. B. Amstadter, et al., "Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study," American Journal of Public Health, vol. 100 (2010).

[8] Laumann, Edward O., S. A. Leitsch, and L. J. Waite, "Elder Mistreatment in the United States: Prevalence Estimates From a Nationally Representative Study," The Journals of Gerontology Series B: Psychological and Social Sciences, vol. 63 (2008).

report abuse by an individual they rely on for their personal care and well-being.[9] The physical and emotional effects of elder abuse can have lasting effects and may lead to disability or even premature death.[10] Moreover, research indicates that there is an association between victims who have physical and cognitive impairments, as well as inadequate social supports, and an increased risk of elder abuse.[11]

In the institutional setting, there is a longstanding history of abuse in nursing homes, including the use of both physical and chemical restraints on patients, both of which were outlawed in 1987 when Congress passed the *Omnibus Reconciliation Act* (OBRA) *of 1987* (P. L. No. 100-203).[12, 13] Still, the use of chemical restraints persist, as, according to a Committee on Ways and Means analysis, in the fourth quarter of 2019, approximately 20 percent of all skilled nursing facility (SNF) residents in the United States (U.S.) – about 298,650 people every week – received some form of antipsychotic medication (a common chemical restraint), most without any psychosis diagnosis for which the drugs are indicated.[14, 15, 16, 17] Similarly, a 2019 HHS Office of the Inspector General (OIG) investigation, which examined high-risk Emergency Department (ED) admissions from skilled nursing facilities (SNFs), revealed that up to 20 percent of these admissions were the result of abuse or neglect that was neither reported to state survey agencies nor local law enforcement.[18]

According to the CDC's National Healthcare Safety Network (NHSN) system, as of January 24, 2021, more than 121,000 residents and 1,400 staff of federally certified nursing

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[9] Centers for Disease Control and Prevention, Understanding Elder Abuse: Fact Sheet, Division of Violence and Prevention, National Center for Injury Prevention and Control, 2016, http://www.cdc.gov/violenceprevention/pdf/em-factsheet-a.pdf.

[10] Lachs M.S., C.S. Williams, S. O'Brien, et al., "The Mortality of Elder Mistreatment," Journal of the American Medical Association, vol. 280 (1998).

[11] U.S. Government Accountability Office, Stronger Federal Leadership Could Enhance National Response to Elder Abuse, GAO-11-208, Mar 2, 2011, http://www.gao.gov/assets/320/316224.pdf. Reissued on March 22, 2011.

[12] Klauber, Martin and Wright, Bernadette, The 1987 Nursing Home Reform Act, *American Association of Retired Persons*, (2001). Available at: https://www.aarp.org/home-garden/livable-communities/info-2001/the_1987_nursing_home_reform_act.html

[13] Subtitle C of the *Omnibus Reconciliation Act* (OBRA) *of 1987*, Pub. L. No. 100-203.

[14] Committee on Ways and Means, *Under-Enforced and Over-Prescribed: The Antipsychotic Drug Epidemic Ravaging America's Nursing Homes* (2020). Available at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/WMD%20Nursing%20Home%20Report_Final.pdf

[15] Committee on Ways and Means calculations of MDS Frequency Report: Fourth Quarter 2019 Antipsychotic Medications Received, *Centers for Medicare and Medicaid Services*, (2019). Available at: https://www.cms.gov/apps/mds/mds_notemp/mds30FreqStart.asp?isSubmitted=mds30Freq3&var=N0410A&date=33

[16] Mollot, Richard, Despite Promised Crackdown, Citations for Inappropriate Drugging Remain Rare, *Long Term Care Community Coalition* (2018). Available at: https://nursinghome411.org/wp-content/uploads/2018/11/LTCCC-Advisory-Nursing-Home-Drugging-Citations-November-2018.pdf

[17] Report to the Congress: Medicare Payment Policy, *Medicare Payment Advisory Commission*, (2020). Available at: http://medpac.gov/docs/default-source/reports/mar20_entirereport_sec.pdf

[18] Department of Health and Human Services, "Incidents of Abuse or Neglect at Skilled Nursing Facilities were not Always Reported and Investigated. June 2019. A-01-16-00509. https://oig.hhs.gov/oas/reports/region1/11600509.pdf

homes have lost their lives to COVID-19.[19] The total number of COVID-19 deaths due to infections in nursing homes is estimated to be higher, for example, if broadened to include all residents who were discharged from a nursing home or similar facility and later expired in a hospital or other setting. Although the total number of COVID-19 deaths attributable to infections in nursing homes may be higher than reported, the total that is known represents a large percentage of the total lives lost to COVID-19. As of January 22, 2021, resident and staff COVID-19 deaths in long-term care facilities (as defined by states) reflected 37 percent of COVID-19 deaths within the U.S. despite representing only five percent of total COVID-19 cases.[20, 21] Furthermore, concerns about abuse and mistreatment of vulnerable populations, particularly seniors and people with disabilities, have only increased during the COVID-19 pandemic, as many individuals have become either further socially isolated in their communities or unable to visit with family and friends in their institutional setting due public health risks – all factors that increase the risk of elder abuse.[22]

C. **Legislative History**

Background

On February 5, 2021, the House of Representatives approved Senate Concurrent Resolution 5, setting forth the congressional budget for the United States Government for fiscal year 2021 and setting forth the appropriate budgetary levels for fiscal years 2022 through 2030. Pursuant to section 2002(l) of S. Con. Res. 5, the Committee on Ways and Means was directed to submit to the Committee on the Budget changes in laws within its jurisdiction to increase the deficit by not more than $940,718,000,000 for the period of fiscal years 2021 through 2030.

Committee hearings

In light of the emergency presented by the COVID-19 global pandemic and the need for immediate legislative action, no hearings were held in the 117th Congress prior to consideration of Subtitle D.

Committee action

Beginning on February 10, 2021, in response to its instructions under S. Con. Res. 5, the Committee on Ways and Means met to consider budget reconciliation legislative

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[19] CMS, "The Nursing Home COVID-19 Public File," accessed February 11, 2021, at https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg/.

[20] As explained in the "Background on Terms Used to Refer to LTCFs" section within this memo, in addition to federally certified nursing facilities, states may include assisted living facilities or similar residential settings in their state definition of "long-term care setting" or "long-term care facility."

[21] Kaiser Family Foundation, "COVID-19: Long-Term Care Facilities," accessed February 11, 2021, at https://www.kff.org/coronavirus-covid-19/issue-brief/state-covid-19-data-and-policy-actions/#long-term-care-cases-deaths.

[22] Makaroun, L. K., Bachrach, R. L., & Rosland, A. M. (2020). Elder Abuse in the Time of COVID-19-Increased Risks for Older Adults and Their Caregivers. *The American journal of geriatric psychiatry : official journal of the American Association for Geriatric Psychiatry*, *28*(8), 876–880. https://doi.org/10.1016/j.jagp.2020.05.017

recommendations. On February 10, 2021, Subtitle D, Elder Justice Support Guarantee, was ordered favorably transmitted, as amended, to the House Committee on the Budget by a record vote of 23 to 18.

II. EXPLANATION OF THE SUBTITLE

Subtitle D – Elder Justice Support Guarantee

Current Law

SSA Title XX-B, Elder Justice, authorizes funding to address federal coordination of elder abuse activities, such as establishment of the Elder Justice Coordinating Council. It also authorizes the administration of new grant activities and other specified reports and studies. Specifically, SSA Section 2042(b) requires the HHS Secretary to establish a grants program to enhance APS provided by states and local governments. Annual grants awarded to states, the District of Columbia, and U.S. territories are to be distributed based on a statutory funding formula that takes into account each state or territory's relative share of the total U.S. population aged 60 years and older.

Reason for Change

Current levels of EJA funding are inadequate to support the safety and dignity of older adults and people with disabilities, particularly during the pandemic. The COVID-19 pandemic has had a disproportionate impact on older people living in community or long-term care settings, underscoring the need to protect this vulnerable population. Explanation of Provisions

Description of Provision

Section 9301. Additional Funding for Aging and Disability Services Programs. This section adds a new Section 2010 to Subpart A of Title XX which directly appropriates $276 million to programs in the *Elder Justice Act* and allows $88 million to be used in 2021 and $188 million to be used in 2022. The provision also specifies that adult protective services funding may be used to protect and assist non-elderly at-risk adults.

Effective Date

All provisions of the Subtitle are effective on enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of Subtitle D on February 10, 2021.

An amendment to the amendment in the nature of a substitute to Subtitle D that would redirect the $276M of funds obligated to the Elder Justice Act towards testing and diagnostics was offered by Mr. Schweikert. The amendment was withdrawn.

An amendment to the amendment in the nature of a Substitute to Subtitle D offered by Mr. Brady was ruled nongermane. Mr. Brady moved to appeal the ruling of the Chair and Mr. Beyer moved to table the appeal. Mr. Beyer's motion to table the appeal of the ruling of the Chair was agreed to by a vote of 22 yeas to 18 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL				MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE				MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS				MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT							
CHAIRMAN NEAL	X						
TOTALS	22			**TOTALS**		18	

An amendment to the amendment in the nature of a Substitute to Subtitle D that would prohibit funds from going to programs in states that do not have COVID-19-related medical liability protections for health care providers working in long term care facilities under the Elder Justice Act was offered by Mr. Wenstrup. The amendment was defeated by a roll call vote of 18 yeas to 23 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS				MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		23		**TOTALS**	18		

An amendment in the nature of a substitute to Subtitle D was agreed to by a voice vote. (with a quorum being present).

Subtitle D was ordered favorably transmitted to the House Committee on the Budget as amended by an amendment in the nature of a substitute offered by Chairman Neal by a vote of 23 yeas to 18 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE	X			MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS				MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT							
CHAIRMAN NEAL	X						
TOTALS	23			**TOTALS**		18	

BUDGET EFFECTS OF THE SUBTITLE

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of Subtitle D, Elder Justice Support and Guarantee, as reported. The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO).

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimates of new budget authority, budget outlays, tax expenditures, or revenues contained in the cost estimate prepared by the CBO.

C. Cost Estimate Prepared by the Congressional Budget Office

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, please refer to Subtitle A for an estimate for the Reconciliation Recommendations of the Committee on Ways and Means as prepared by CBO.

IV. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of Rule XIII and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee advises that the general performance goal or objective for which this measure authorizes funding is to prevent maltreatment of vulnerable seniors and adults with disabilities, including those in long-term care facilities.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the *Unfunded Mandates Reform Act of 1995* (Pub. L. No. 104-4). The Committee has determined that the subtitle does not contain Federal mandates on the private sector. The Committee has determined that the subtitle does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of Rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the subtitle, and states that the provisions of the subtitle do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

With respect to clause 3(c)(5) of Rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the subtitle establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant section 6104 of title 31, United States Code.

F. Hearings

Pursuant to section 3(u) of H.Res. 8 (117th Congress), no legislative hearings were held in the 117th Congress to develop or consider Subtitle D due to the exigent nature of the COVID-19 global pandemic and the need for immediate legislative action.

V. CHANGES IN EXISTING LAW MADE BY THE SUBTITLE, AS REPORTED

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee requested but did not receive the text of changes in existing law made by the subtitle, as reported.

VI. DISSENTING VIEWS
[Insert A – Dissenting Views]

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

February 16, 2021

DISSENTING VIEWS ON SUBTITLE D.
BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO ELDER JUSTICE AND SUPPORT GUARANTEE

Last year, the 116th Congress was able to unify and enact five different bipartisan COVID-19 relief measures geared towards crushing the COVID-19 virus and rebuilding the United States economy. However, in this reconciliation bill, the Majority aims to make partisan funding mandatory for programs that can and should go through the annual appropriations process.

For instance, Subtitle D of Budget Reconciliation Legislative Recommendations Relating to Elder Justice and Support Guarantee obligates a total of $276 million towards programs under the Elder Justice Act in fiscal years 2021 and 2022. On a bipartisan basis, the Consolidated Appropriations Act of 2021 invested $100 million to administer those very programs, a significant increase in funding. But while the ink is still drying on that deal, the majority is using what should be a COVID-19 relief package to break that December 2020 bipartisan agreement. While combating elder abuse is a worthy endeavor, it is one that can be addressed on a bipartisan basis through the regular appropriations process.

Given the ongoing pandemic, Republicans believe the $276 million spend as part of this subtitle could be better directed towards COVID-19 diagnostics and testing; vaccine distribution to seniors in rural and underserved areas; and improving vital mental health programs. In the zero-sum game that is the Democrats' partisan budget reconciliation process, any dollar that is not spent on these priorities is frankly a dollar misspent.

There are numerous emerging technologies that have been proven to help seniors during the COVID-19 pandemic, such as at-home COVID-19 testing[20]; medical alert necklaces that detect falls; and bracelets that can monitor vital signs. As these remote patient monitoring tools become more widely available, Congress should expand the resources available to assist the elderly in accessing these diagnostics and methods of COVID-19 testing.

Moreover, data has shown that hospitalization rates for adults 65-74 is more than 2.5 times higher than for adults between 40-49 years old.[21] And as of February 8, 2021, the majority of older adults have still not yet received one or more doses of the COVID-19 vaccine.[22] There is nothing in this committee's reconciliation recommendations that addresses solutions to bolster COVID-19 vaccine distribution to seniors who are higher at risk for COVID-19 illness.

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[20] https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-antigen-test-first-over-counter-fully-home-diagnostic

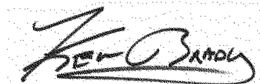
[21] https://www.kff.org/coronavirus-covid-19/issue-brief/at-this-early-stage-of-the-covid-19-vaccine-roll-out-most-older-adults-have-not-yet-been-vaccinated-as-supply-remains-limited/

[22] Ibid

As our schools remain closed and our communities continue to implement social distancing guidelines and stay at-home orders in the wake of the COVID-19 pandemic, we have seen a rise in children and young adults struggling with mental health issues. According to the CDC, the proportion of mental health related emergency department visits increased in April 2020 and remained elevated through October 2020.[23] Additionally, in this past June, it was reported that 31% of U.S. adults struggled with anxiety and depression symptoms, while 13% of U.S. adults started or increased substance use.[24] Preliminary data from the CDC shows that in the first three months of 2020, an estimated 19,416 individuals died of a drug overdose in the U.S., almost 3,000 more adults than the same time period in 2019.[25]

As this country continues to fight the COVID-19 pandemic, it is important to remember our nation is still in a long battle with the opioid epidemic. Congress must focus on prioritizing funding for mental health and behavioral health programs, as just over $400 million (less than 10%) of the $4.7 billion for these programs has been utilized.

One last consideration that the committee reconciliation recommendations ignore is common sense liability protections for nursing homes and front-line health care workers. There have been over 525,000 confirmed cases of COVID-19 amongst nursing home staff members, 1,499 of whom have sadly passed away. Our health care heroes should not need to be worried about a wave of frivolous lawsuits while scrabbling to provide care during this public health emergency. During a Ways and Means Health Subcommittee Hearing in June 2020, members heard testimony detailing everything some front-line health care workers were doing to stretch limited resources to provide the best care they could.[26] These workers should not now be legally liable for doing their best. The funds provided in Subtitle D are far more than enough for state agencies to investigate and pursue the real and legitimate cases of malpractice and elder abuse. But Republicans believe good actors must be protected as well. An amendment to condition the funding provided in Subtitle D to those states that put liability protections in place for health care workers was rejected by all the committee Democrats.



Kevin Brady
Republican Leader
Committee on Ways and Means

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[23] https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm
[24] https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm
[25] https://www.cdc.gov/nchs/data/health_policy/Provisional-Drug-Overdose-Deaths-by-Quarter-Demographic-Characteristics-Q1-2020.pdf
[26] https://gop-waysandmeans.house.gov/event/hearing-on-examining-the-covid-19-nursing-home-crisis/

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SUBTITLE E – SUPPORT TO SKILLED NURSING FACILITIES IN RESPONSE TO COVID-19

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

Subtitle E, "Support to Skilled Nursing Facilities In Response to COVID-19," as ordered reported by the Committee on Ways and Means on February 11, 2021, provides $200 million in additional funding to Medicare's quality improvement organization (QIO) program for the purposes of improving infection control in skilled nursing facilities (SNFs), as well as an additional $250 million for SNF strike teams, to be distributed to the states, District of Columbia, and U.S. territories. This funding will directly help stem sickness and death that has plagued nursing facilities during the COVID-19 pandemic and provide resources to protect patients and workers.

B. Background and Need for Legislation

According to the Centers for Disease Control and Prevention (CDC), residents who reside in – and individuals who work at – nursing homes (or similar care settings) are at high risk of being affected by respiratory illnesses like COVID-19 due to the congregate nature of those environments. Further, residents of those care settings are more likely to be elderly and/or have underlying chronic medical conditions, which are characteristics that increase the likelihood of death or serious harm if these individuals are infected with such illness.

These realities have, in part, contributed to a massive loss of life in nursing homes during the current COVID-19 pandemic. According to the CDC's National Healthcare Safety Network (NHSN) system, as of January 24, 2021, more than 121,000 residents and 1,400 staff of federally certified nursing homes have lost their lives to COVID-19.[1] The total number of COVID-19 deaths due to infections in nursing homes is estimated to be higher, for example, if broadened to include all residents who were discharged from a nursing home or similar facility and later expired in a hospital or other setting. Although the total number of COVID-19 deaths attributable to infections in nursing homes may be higher than reported, the total that is known represents a large percentage of the total lives lost to COVID-19. As of January 22, 2021, resident and staff COVID-19 deaths in long-term care facilities (as defined by states) reflected 37 percent of COVID-19 deaths within the U.S., despite representing only five percent of total COVID-19 cases. [2]

C. Legislative History

Background

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[1] CMS, "The Nursing Home COVID-19 Public File," accessed February 11, 2021, at https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg/.

[2] Kaiser Family Foundation, "COVID-19: Long-Term Care Facilities," accessed February 11, 2021, at https://www.kff.org/coronavirus-covid-19/issue-brief/state-covid-19-data-and-policy-actions/#long-term-care-cases-deaths.

On February 5, 2021, the House of Representatives approved Senate Concurrent Resolution 5, setting forth the congressional budget for the United States Government for fiscal year 2021 and setting forth the appropriate budgetary levels for fiscal years 2022 through 2030. Pursuant to section 2002(l) of S. Con. Res. 5, the Committee on Ways and Means was directed to submit to the Committee on the Budget changes in laws within its jurisdiction to increase the deficit by not more than $940,718,000,000 for the period of fiscal years 2021 through 2030.

Committee hearings

2 In light of the emergency presented by the COVID 19 global pandemic and the need for immediate legislative action, no hearings were held in the 117th Congress prior to consideration of Subtitle E.

Committee action

Beginning on February 10, 2021, in response to its instructions under S. Con. Res. 5, the Committee on Ways and Means met to consider budget reconciliation legislative recommendations. On February 11, 2021, Subtitle E, Support to Skilled Nursing Facilities In Response to COVID-19, was ordered favorably transmitted, as amended, to the House Committee on the Budget by a record vote of 24 to 18.

II. EXPLANATION OF THE SUBTITLE

A. Subtitle E – Support to Skilled Nursing Facilities in Response to COVID-19

Current Law

Nursing Homes

Among other responsibilities, the Centers for Medicare & Medicaid Services (CMS) is required to oversee certain institutional care facilities that participate in Medicare under Title XVIII of the Social Security Act (SSA or the Act) or Medicaid under Title XIX of the SSA, which CMS refers to as "long-term care facilities" (LTCFs; also referred to as "nursing homes" throughout this summary). To differentiate participating LTCFs in each program, federal law designates Medicare LTCFs as SNFs under Section 1819 of the SSA and Medicaid LTCFs as nursing facilities (NFs) under Section 1919 of the SSA. The majority of federally certified LTCFs participate in both programs and, thus, constitute SNFs and NFs. In the United States, 15,340 LTCFs participated in Medicare and/or Medicaid as of January 2021. Of this total, 94 percent of LTCFs were dually certified to participate in both Medicare and Medicaid, four percent were certified as Medicare-only, and two percent were certified as Medicaid-only.

The more commonly used term "nursing home" is often substituted for LTCF and SNF/NF designations when describing these federally certified settings; however, not all nursing homes are federally certified to participate in Medicare and/or Medicaid. States primarily have responsibility for licensing health care providers, including institutional care settings, and may license such settings as "nursing homes." In fact, one federal requirement is that an LTCF must have a state license to operate. The criteria necessary to obtain an operational license may vary across states; some may mirror criteria in federal requirements, while other criteria may be more or less stringent than those established by federal law. Regardless, a license to operate as a "nursing home" within each state may be based on provider requirements that differ from those at the federal level. Accordingly, for purposes of federal certification, LTCFs are nursing homes that are federally certified, meaning they meet a minimum set of federal requirements.

Similarly, the term "nursing home" may be informally used to describe residential care settings that provide services similar to SNFs or NFs but do not participate in Medicare or Medicaid and thus are not required to satisfy federal requirements. For example, states may include nursing homes and assisted living facilities or similar residential settings in their state definition of "long-term care setting" or "long-term care facility." But unless that setting, or part of that setting, is also federally certified as either a SNF and/or NF, it is not an LTCF as defined by CMS.

In summary, all federally certified nursing homes are LTCFs; some are SNFs, some are NFs, and most are both. But not all state-licensed nursing homes are federally certified nursing homes that participate in Medicare and/or Medicaid.

Depending on what type(s) of facility are specified, resources may be allocated to a different set of "nursing homes," a group defined by a state operational license and/or the additional federal certification. In Subtitle E, the group of facilities specified are SNFs, which are

federally certified nursing homes that participate in Medicare as defined in Social Security Act (SSA) Section 1819 (98 percent of LTCFs, as defined by CMS).

Quality Improvement Organizations

The SSA includes several provisions establishing and outlining the scope of QIOs and their contracts with CMS. Subsection (g) of Section 1862 gives the Secretary of HHS the authority to award contracts through QIOs, while Section 1152 of the SSA defines a "quality improvement organization" as an entity which "(1) is able, as determined by the Secretary, to perform its functions under this part in a manner consistent with the efficient and effective administration of this part and title XVIII; (2) has at least one individual who is a representative of health care providers on its governing body; and (3) has at least one individual who is a representative of consumers on its governing body." Finally, Section 1153 describes additional requirements related to contracting with QIOs, and Section 1154 delineates their specific functions.

Medicare's quality assurance activities are primarily handled by State Survey Agencies (SAs) and Quality Improvement Organizations (QIOs). SAs and QIOs operate in all states and the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The State Survey Agencies are responsible for inspecting Medicare provider facilities (e.g., nursing homes, home health agencies, and hospitals) to ensure they are in compliance with federal safety and quality standards. QIOs are mostly private, not-for-profit organizations that monitor the quality of care delivered to Medicare beneficiaries and educate/provide technical assistance to providers on the latest quality-improvement techniques.

Strike Teams

Current statute does not include reference to "strike teams" in the health care sector.

Reasons for Change

Since the early days of the COVID-19 pandemic, nursing homes have been infection hot spots, accounting for more than one-third of U.S. COVID-19 deaths nationwide, despite representing just five percent of cases.[3] In 11 states, at least half of the COVID-19 deaths have occurred in nursing homes. [4]

Accordingly, Subtitle E provides funding for on-the-ground support specifically targeted at improving infection control in the nursing home setting. CMS's QIO program focuses on improving the quality of care provided to Medicare beneficiaries through a series of QIO contracts tied to meeting clinical improvement benchmarks for a given geographic/clinical area. QIOs are uniquely positioned to provide on-the-ground support with infection control in the

[3] Kaiser Family Foundation, "COVID-19: Long-Term Care Facilities," accessed February 11, 2021, at https://www.kff.org/coronavirus-covid-19/issue-brief/state-covid-19-data-and-policy-actions/#long-term-care-cases-deaths.

[4] Kaiser Family Foundation, "COVID-19: Long-Term Care Facilities," accessed February 11, 2021, at https://www.kff.org/coronavirus-covid-19/issue-brief/state-covid-19-data-and-policy-actions/#long-term-care-cases-deaths.

nursing home setting, and preliminary data have already shown significant QIO success in addressing COVID-19 incidence rates.

This policy also ensures states have additional resources to deploy to nursing homes to fend off COVID-19 outbreaks as they occur. Some states, including Massachusetts Maryland, North Carolina, Florida, Texas, New Jersey, Ohio, Wisconsin, and Tennessee, have already developed successful strike team programs to support long-term care facilities in more effectively responding to the pandemic – but more resources are needed.

Explanation of Provisions

Sec. 9401. Providing for infection control support to skilled nursing facilities through contracts with quality improvement organizations. This section amends 1862(g) of the Social Security Act to provide direct appropriations of $200 million to the Secretary of the Department of Health and Human Services for the purpose of carrying out infection control support related to COVID-19 in skilled nursing facilities through quality improvement organizations.

Sec. 9402. Funding for strike teams for resident and employee safety in skilled nursing facilities. This section amends 1819 of the Social Security Act by adding a new subsection (k) to provide direct appropriations of $250 million to the Secretary of the Department of Health and Human Services for the purpose of allocating money to the states, District of Columbia, and U.S. territories to establish strike teams to respond to COVID-19 outbreaks in skilled nursing facilities.

Effective Date

Subtitle E: Effective beginning on the date of enactment.

IV. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of Subtitle E – Support to Skilled Nursing Facilities in Response to COVID-19 on February 11, 2021.

An amendment to the amendment in the nature of a substitute to Subtitle E that would make funds to states conditional on governors signing an attestation that nursing home data reporting has been accurate and will continue to be accurate and require that GAO should investigate any significant past or future nursing home data reporting discrepancies was offered by Mr. Reed. The amendment was defeated by a roll call vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24			18		

An amendment to the amendment in the nature of a substitute to Subtitle E that would direct HHS to provide notification to Medicare providers that the deficit impact of the Democrats' reconciliation package will result in a $18 billion sequester was offered by Mr. Smith of Missouri. The amendment was withdrawn.

An amendment to the amendment in the nature of a substitute to Subtitle E that would ensure this subtitle does not go into effect until the Medicare trustee confirms it does not make the Medicare Hospital Insurance Trust Fund worse off nor does it make rural hospitals and health care providers worse off was offered by Mr. Estes. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment in the nature of a substitute to Subtitle E was agreed to by a voice vote. (with a quorum being present).

Subtitle E was ordered favorably transmitted to the House Committee on the Budget as amended by an amendment in the nature of a substitute offered by Chairman Neal by a vote of 24 yeas to 18 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE	X			MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS	X			MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT							
CHAIRMAN NEAL	X						
TOTALS	24			**TOTALS**		18	

V. BUDGET EFFECTS OF THE SUBTITLE

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of subtitle E, Support to Skilled Nursing Facilities in Response to COVID-19. The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO).

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimates of new budget authority, budget outlays, tax expenditures, or revenues contained in the cost estimate prepared by the CBO.

C. Cost Estimate Prepared by the Congressional Budget Office

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, please refer to Subtitle A for an estimate for the Reconciliation Recommendations of the Committee on Ways and Means as prepared by CBO.

VI. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of Rule XIII and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee advises that the general performance goal or objective of this subtitle is to provide assistance to skilled nursing facilities in battling COVID-19 outbreaks and to improve infection control protocols and fund Strike Teams and Quality Improvement Organizations to assist with combatting Covid-19 in these facilities.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of Rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

With respect to clause 3(c)(5) of Rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant section 6104 of title 31, United States Code.

F. Hearings

Pursuant to section 3(u) of H.Res. 8 (117th Congress), no legislative hearings were held in the 117th Congress to develop or consider Subtitle E due to the exigent nature of the COVID-19 global pandemic and the need for immediate legislative action.

VII. CHANGES IN EXISTING LAW MADE BY THE SUBTITLE

A. Text of Existing Law Amended or Repealed by the Subtitle

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee requested but did not receive the text of changes in existing law made by the subtitle, as reported.

VIII. DISSENTING VIEWS

[Insert A – Dissenting Views]

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

February 16, 2021

DISSENTING VIEWS ON SUBTITLE E. BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO SKILLED NURSING FACILITIES IN RESPONSE TO COVID-19

Subtitle E of Budget Reconciliation increases funding for nursing home strike teams and allocates additional funds for improving nursing home infection control. While both of these causes, and COVID-19 response as a whole, have been bipartisan efforts thus far, the majority opted to politicize these issues through a partisan process.

In the last year, Republicans and Democrats have worked together to pass five separate COVID-19 relief bills providing $4 trillion in assistance.[27] Included in this aid was billions of relief money to help nursing homes. Specifically, over $15 billion has already been distributed from the Provider Relief Fund- including $5 billion explicitly targeted to help nursing homes improve infection control.[28] When asked, the Department of Health and Human Services was unable to account for how much more money, already provided by Congress for infection control and strike teams in previous COVID-19 relief packages, remained unspent.

The superfluous spending throughout this package is not without consequences. Because the majority opted for a completely partisan process and used Budget Reconciliation, they will not be able to exempt this bill from PAYGO rules. Therefore, the $1.9 trillion of the spending in this package will trigger a corresponding increase in sequestration for the rest of the budget window. The projected sequestration will result in annual cuts from Medicare of tens of billions of dollars.[29] This means payment cuts for many of the same providers that have been on the front lines treating COVID-19 patients throughout the Public Health Emergency.

During the markup, Committee Republicans also raised concerns around troubling reports regarding the accuracy of nursing home data reported from New York. A January 30, 2021, report from the New York Attorney General showed that New York has been underreporting COVID-19 deaths amongst nursing home patients by up to 50 percent.[30] This would be particularly concerning, not only because of the death and devastation experienced by New York patients and families, but also for how this reported data impacts national public health decisions. The federal government counts on state reported data to inform public health decisions; it is vital that data is as accurate as possible.

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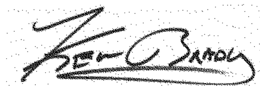
[27] https://www.rpc.senate.gov/policy-papers/covid-19-relief-funding
[28] https://www.hhs.gov/about/news/2020/12/07/trump-administration-announces-new-half-billion-incentive-payment-distribution-to-nursing-homes.html
[29] https://thefederalist.com/2021/02/02/democrats-may-raid-medicare-to-fund-stimulus-for-the-wealthy/
[30] https://ag.ny.gov/press-release/2021/attorney-general-james-releases-report-nursing-homes-response-covid-19

To that end, Ways and Means Republicans offered an amendment to this Subtitle that would have required Governors to sign a simple attestation certifying past and future COVID-19 nursing home data be as accurate as possible. Committee Democrats rejected this amendment on a party line vote.

Just hours after that vote, it was reported that a top aide to Governor Cuomo admitted to Democratic state legislators that the Governor rejected their legislative request for nursing home data last August because the Cuomo administration was worried the numbers were "going to be used against us."[31] This stunning admission warrants future Committee action, but in the meantime, the minority hopes this new report will cause Democrats to reconsider the proposed attestation amendment.



Kevin Brady
Republican Leader
Committee on Ways and Means

[31] https://www.nytimes.com/2021/02/12/nyregion/new-york-nursing-homes-cuomo.html

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SUBTITLE F – PRESERVING HEALTH BENEFITS FOR WORKERS

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

To help employees who have been laid off due to no fault of their own, the subtitle provides for a subsidized a period of COBRA coverage beginning with the month after the date of enactment and ending on September 30, 2021. An assistance eligible individual who is eligible for COBRA continuation coverage is an individual who qualifies for COBRA by reason of the termination of employment (except for a voluntary termination) and who does not have another offer of coverage through employer-sponsored insurance or Medicare. Provided as a refundable payroll tax credit to the former employer, the subsidy amount is 85 percent of the COBRA premium with the individual paying the remaining 15 percent of the premium. The subtitle also provides an opportunity for enrollment in COBRA coverage for workers with qualifying events during the Coronavirus Disease 2019 (COVID-19) public health emergency. The subtitle also requires enhanced COBRA notification requirements.

B. Background and Need for Legislation

Employment-based health insurance is a predominant source of health insurance coverage to workers and their dependents. The Census Bureau estimates that in 2019, 56.4% of the United States civilian, noninstitutionalized population (including employees, their spouses, and their dependents) had insurance through an employer.[1] As a result of this connection between employment and health insurance, when workers lose their jobs, they can also lose their and their family's health insurance.

One consequence of the COVID-19 pandemic and corresponding recession is that many workers have lost their jobs.[2] The Bureau of Labor Statistics has estimated that there were approximately 33.3 million layoffs or discharges between February 2020 and November 2020, which are approximately 15 million more than the same period during 2019.[3] To the extent that these individuals were receiving employer-sponsored health insurance through their jobs, they would have needed to enroll in COBRA continuation coverage or identify another source of health insurance in order to remain insured.[4]

When offering COBRA coverage to qualified individuals, employers are permitted to charge the covered beneficiary 100% of the premium (both the portion normally paid by the employee and the portion that otherwise would be paid by the employer), plus an additional 2%

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[1] Katherine Keisler-Starkey, and Lisa N. Bunch, Health Insurance Coverage in the United States: 2019, U.S. Census Bureau, September 2020, at https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-271.pdf.

[2] The time periods for the recessions are from National Bureau of Economic Research (NBER), "US Business Cycle Expansions and Contractions," at https://www.nber.org/cycles.html.

[3] Bureau of Labor Statistics, *Job Openings and Labor Turnover Survey*, Layoffs and discharges at https://data.bls.gov/timeseries/JTS000000000000000LDL.

[4] For more information on potential health insurance options for these individuals, see CRS In Focus IF11523, *Health Insurance Options Following Loss of Employment*.

administrative fee. Given the high cost, many workers who have lost employment cannot afford the COBRA continuation premiums leaving these individuals and their families uninsured.

Given the extreme economic uncertainty facing many unemployed workers during the COVID-19 pandemic, paying 102 percent of the entire insurance premium for COBRA coverage is often cost-prohibitive. This leads many individuals to become uninsured, during a public health pandemic when timely access to health care is paramount. By supporting coverage through COBRA, individuals will better be able to keep their doctors, provider networks and continuity of care while they look for other employment or wait to be brought back by their employers, helping to eliminate gaps in care and particularly protecting those with ongoing medical conditions or need for treatment. It also ensures that those individuals do not have to restart payments toward a deductible, further protecting individuals from incurring additional out-of-pocket costs.

Congress provided a temporary subsidy for COBRA benefits to eligible individuals who had been terminated from employment as part of the American Recovery and Reinvestment Act of 2009. As with the policy of this subtitle, employers who paid the subsidized portion of the premium were reimbursed through a refundable payroll tax credit.

C. Legislative History

Budget resolution

On February 5, 2021, the House of Representatives approved Senate Concurrent Resolution 5, setting forth the congressional budget for the United States Government for fiscal year 2021 and setting forth the appropriate budgetary levels for fiscal years 2022 through 2030. Pursuant to section 2002(l) of S. Con. Res. 5, the Committee on Ways and Means was directed to submit to the Committee on the Budget changes in laws within its jurisdiction to increase the deficit by not more than $940,718,000,000 for the period of fiscal years 2021 through 2030.

Committee hearings

Pursuant to section 3(u) of H.Res. 8 (117th Congress), no legislative hearings were held in the 117th Congress to develop or consider Subtitle F due to the exigent nature of the Covid 19 global pandemic and the need for immediate legislative action.

Committee action

Beginning on February 10, 2021, in response to its instructions under S. Con. Res. 5, the Committee on Ways and Means met to consider budget reconciliation legislative recommendations. On February 11, 2021, Subtitle F, Legislative Recommendations Relating to Continuation of Job-Based Coverage, was ordered favorably transmitted, as amended, to the House Committee on the Budget by a record vote of 25 to 18.

II. EXPLANATION OF SUBTITLE F

BUDGET RECONCILAITION LEGISLATIVE RECOMMENDATIONS RELATED TO CONTINUATION OF JOB-BASED COVERAGE

Subtitle F—Preserving Health benefits for workers

A. Preserving Health Benefits for Workers (sec. 9501 of the bill; new sec. 139I, sec. 4980B, new sec. 6432, and new sec. 6720C of the Code; and secs. 601 to 608 of ERISA)

Present Law

In general

Employer-sponsored health plans (referred to as "group health plans")[5] 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").[6] These continuation of coverage requirements are often referred to as "COBRA continuation coverage" or "COBRA" requirements.[7]

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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[5] 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.

[6] Sec. 4980B. All section references herein are to the Internal Revenue Code of 1986, as amended (herein "Code"), unless otherwise stated. Section 4980B(d) provides exceptions for plans maintained by employers with fewer than 20 employees, plans of governmental employers, and church plans.

[7] 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");[8] 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[9] (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.

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

[9] 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[10] 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 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.

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[10] 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. Sec. 4980B(f)(2)(B)(i)(VIII).

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[11] 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

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[11] 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.

Special rules relating to COVID-19

On May 4, 2020, the Department of Labor ("DOL") Employee Benefits Security Administration ("EBSA") and the Internal Revenue Service ("IRS") issued temporary relief in response to the COVID-19 pandemic.[12] This relief extended various COBRA time frames and was intended to help minimize the possibility that individuals would lose health insurance because they failed to comply with certain COBRA time frames during the COVID-19 pandemic. Specifically, the days from March 1, 2020 until 60 days after the announced end of the COVID-19 national emergency period[13] (or another date specified by the IRS and EBSA) cannot count toward identified COBRA-related time frames. These time frames include the 60-day COBRA election period, the date for making COBRA premium payments, and the date for notifying a plan administrator of a qualifying event.

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").[14] 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.[15] In addition,

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[12] IRS and EBSA, "Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak," 85 Fed. Reg. 26351, May 4, 2020.

[13] The COVID-19 national emergency refers to the "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," issued on March 13, 2020. See https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.

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

[15] 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

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 (also known as payroll 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 the Federal income tax.[16] In addition, tier 1 of the Railroad Retirement Tax Act ("RRTA") imposes a tax on compensation paid to railroad employees and representatives.[17]

FICA taxes have 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.[18] The tax is assessed on covered wages up to the OASDI wage base ($142,800 in 2021).[19] 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.[20] An equivalent 1.45 percent is withheld from employee wages.[21] Additional Medicare taxes are withheld from employee wages in excess of $200,000 at a rate of 0.9 percent.[22] 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.[23] 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.[24] OASDI and HI taxes are generally allocated by statute among separate trust funds: the OASDI Trust

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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.

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

[17] Sec. 3221.

[18] Sec. 3101.

[19] 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).

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

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

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

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

[24] Sec. 3102(b).

Funds, Medicare's Hospital Insurance Trust Fund, and the Supplementary Medical Insurance Trust Fund.[25]

Premium assistance for COBRA benefits

As part of the American Recovery and Reinvestment Act of 2009,[26] 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 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.

Reasons for Change

The COVID-19 pandemic has caused significant economic hardships for many people. The economic crisis has led to widespread job loss, and as a result many Americans have lost their employer-sponsored health insurance at a time when it is critical to have quality, affordable health insurance. The Committee believes it is important to ensure that individuals can retain their health insurance during this period of crisis and can remain with the doctors and health care systems they know and trust.

Explanation of Provision

Reduced COBRA premium

The provision 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 provision 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,[27] and (2) elects such coverage.

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

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

[27] 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,

Under the provision, any premium assistance provided is excludible from the gross income of the assistance eligible individual.[28] 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 provision, 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.[29] 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[30] program that provides comparable continuation coverage. It does not include coverage under a health flexible spending arrangement offered under a cafeteria plan.[31]

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;[32] a qualified small employer health reimbursement arrangement;[33] or a flexible spending arrangement.[34]

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

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except for a voluntary termination. Terminations due to the employee's gross misconduct do not qualify the beneficiary for COBRA continuation coverage.

[28] The provision creates a new section 139I to provide the income exclusion.

[29] 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.

[30] 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.

[31] Sec. 125.

[32] 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.

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

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

(generally 18 months or 36 months, absent an event that permits coverage to be terminated) even though the premium assistance may only apply for six 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.

If an assistance eligible individual receiving premium assistance for COBRA continuation coverage under the provision becomes eligible for coverage under another group health plan (except as described in the prior paragraph) or Medicare, the provision 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.[35] 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 provision 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 provision 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 provision 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 provision, and must not extend

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

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 to whom premium is payable

The provision provides that the person[36] to whom continuation coverage premiums are payable is allowed a credit for each calendar quarter against HI tax[37] or the equivalent amount of RRTA tax[38] in an amount equal to the premiums not paid by assistance eligible individuals for continuation coverage by reason of the provision with respect to such quarter.[39] The person to 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[40] or for purposes of the employee retention credit[41] 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.[42]

Under the provision, 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 provision may be taken into account as qualified wages for purposes of the employee

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[36] 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).

[37] Sec. 3111(b).

[38] Sec. 3221(a).

[39] The provision creates new section 6432 to provide for the credit. Also, the provision does not include express language that "holds harmless" the Federal Hospital Insurance Trust Fund from any effects of the provision. 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 provision does not affect either the rate under section 3111(b) or applicable wages, but only provides a credit against the amount of tax, the provision does not affect the trust fund, and no hold harmless language is needed.

[40] Pub. L. No. 116-127, secs. 7001 and 7003, as amended by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, and by the Consolidated Appropriations Act, 2021 ("CAA"), Pub. L. No. 116-260.

[41] CARES Act, sec. 2301, as amended by the CAA.

[42] 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.

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.[43]

The provision 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 provision.

Notice requirements

Under the provision, 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 provision and ending on 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 provision 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 provision. 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,[44] the provision 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 provision.

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[43] Pub. L. No. 116-127, secs. 7001 and 7003, as amended by the CARES Act and the CAA.

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

The provision 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 provision 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.

Coordination with the HCTC

Under the provision, any assistance eligible individual who receives premium assistance under the provision for any month is not eligible with respect to such month for the health coverage tax credit ("HCTC").[45]

Regulatory authority

The provision 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 provision as it relates to the premium assistance, including the prevention of fraud and abuse.[46] In addition, the provision 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 provision 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[47]).

Effective Date

[45] 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).

[46] The provision 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 provision, in addition to the rules relating to expedited review and outreach.

[47] As described in section 3504.

The provision is generally effective on date of enactment.

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 provision 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 provision.

III. VOTES OF THE COMMITTEE

Pursuant to clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of Budget Reconciliation Legislative Recommendations Relating to Continuation of Job-Based Coverage, the "Worker Health Coverage Protection Act," on February 11, 2021.

An amendment to the amendment in the nature of a substitute to Subtitle F that would add pro-life Hyde protections to COBRA was offered by Ms. Walorski. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

16

An amendment to the amendment in the nature of a substitute to Subtitle F that would restrict COBRA eligibility to eligible workers who lost their jobs due to President Biden's Executive Action on January 20, 2021, among other things was offered by Mr. Arrington. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment to the amendment in the nature of a substitute to Subtitle F that would restrict eligibility for COBRA subsidies to workers with Social Security Numbers was offered by Mr. Hern. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment in the nature of a substitute to Subtitle F was agreed to by a voice vote (with a quorum being present).

Subtitle F was ordered favorably transmitted to the House Committee on the Budget as amended by an amendment in the nature of a substitute offered by Chairman Neal by a vote of 25 yeas to 18 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE	X			MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS	X			MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT	X						
CHAIRMAN NEAL	X						
TOTALS	25			**TOTALS**		18	

IV. BUDGET EFFECTS OF SUBTITLE F

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the subtitle.

The subtitle is estimated to decrease Federal fiscal year budget receipts by $13.3 billion for the period 2021 through 2031.

[Insert Revenue Table]

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the subtitle involves no new or increased budget authority. The Committee further states that subtitle F includes a new tax expenditure with respect to section 139I of the Code, as described above.

C. Cost Estimate Prepared by the Congressional Budget Office

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by CBO, refer to Subtitle A.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the subtitle contains no measure that authorizes funding, so no statement of general performance goals and objectives is required.

C. Information Relating to Unfunded Mandates

With respect to section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4), the Committee has determined that the subtitle that the subtitle does not contain Federal mandates on the private sector. The Committee has determined that the subtitle does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI, Clause 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that "It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase." The Committee, after careful review, states that the subtitle does not involve any retroactive Federal income tax rate increase within the meaning of the rule.

E. Tax Complexity Analysis

Section 4022(b) of Pub. L. No. 105-266, the Internal Revenue Service Restructuring and Reform Act of 1998 (the "RRA"), requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the RRA because the subtitle contains no provision that amends the Internal Revenue Code of 1986 and has "widespread applicability" to individuals or small businesses within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of subtitle F, and states that the provisions of the subtitle do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the subtitle establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Pub. L. No. 111139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to section 6104 of title 31, United States Code.

H. Hearings

Pursuant to section 3(u) of H. Res. 8 (117th Congress), no legislative hearings were held in the 117th Congress to develop or consider Subtitle F, Budget Reconciliation Legislative Recommendations Relating to Continuation of Job-Based Coverage, due to the exigent nature of the COVID-19 global pandemic and the need for immediate legislative action.

VI. CHANGES IN EXISTING LAW MADE BY SUBTITLE F

A. Text of Existing Law Amended or Repealed by the Subtitle

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee requested but did not receive the text of changes in existing law made by the subtitle, as reported.

VII. DISSENTING VIEWS

[Insert D--Dissenting Views]

ESTIMATED BUDGETARY EFFECTS OF THE REVENUE PROVISIONS OF THE BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS, AS REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS

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

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.

Legend for "Effective" column:
cpo/a = coverage period on or after
DOE = date of enactment
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.

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

February 16, 2021

DISSENTING VIEWS ON SUBTITLE F.
BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO COTINUATION OF JOB-BASED COVERAGE

Subtitle F of Budget Reconciliation Legislative Recommendations Relating to Continuation of Job-Based Coverage creates a new federal subsidy through September 30, 2021, equal to 85 percent of premium costs for those eligible workers who would enroll in health insurance coverage through the Consolidated Omnibus Budget Reconciliation Act (COBRA).

The American economy is rebuilding. Unemployment has fallen steadily since the height of the pandemic in April – folks are getting back to work, and this nation is proving its resilience and strength. Given these circumstances, passing a multi-billion-dollar COBRA subsidy now doesn't make much sense. Alternative coverage options are available to Americans without this new spending: while everyone who loses their employer-sponsored insurance already gets a special enrollment period (SEP), the President has additionally reopened a broad healthcare.gov SEP– just weeks after the 2021 plan year open enrollment closed.

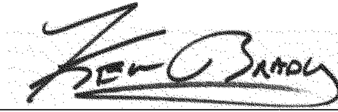
Moreover, this new subsidy would further increase the amount of taxpayer dollars subsidizing coverage that includes abortion, not restricted to circumstances other than rape, incest, or to save the life of the mother. A majority of Americans — nearly 60 percent — agree that taxpayer dollars should not fund abortion.[32] A Republican amendment to add this common-sense Hyde Amendment language to subtitle F was rejected.

Instead of a new, deficit-increasing, multi-billion-dollar government subsidy program that lacks bipartisan Hyde Amendment protections, this Congress should be focused on defeating the virus, reopening schools, and incentivizing economic recovery and coverage through employer-sponsored insurance. That is the best and most effective use of taxpayer dollars, not a too-late subsidy for health insurance when patients who lose their job-based care already have coverage options at their disposal.

There are a number of ways Congress could have increased spending in a bipartisan way. Republicans would encourage Democrats to consider more targeted relief efforts, including increased vaccine outreach to rural and underserved communities and enhanced mental health and Substance Use Disorder treatment services.

Instead, the Democratic majority is insisting upon a partisan, one-sided process with no room for Republican input. This is not the bipartisan relief bill that the American people deserve.

[32] https://www.nationalreview.com/corner/poll-strong-majority-of-americans-back-the-hyde-amendment/



Kevin Brady
Republican Leader
Committee on Ways and Means

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SUBTITLE G – PROMOTOING ECONOMIC SECURITY

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

To ensure that individuals are afforded the necessary economic security needed in this unprecedented time of economic turmoil, Subtitle G, "Promoting Economic Security," (1) provides direct payments for individuals, (2) expands essential tax credits targeted at workers and families, including the earned income tax credit, the child tax credit, and the child and dependent care tax credit; (3) expands employer incentives for providing paid leave; (4) improves health care affordability; and (5) extends incentives to keep workers connected with employers that have been adversely impacted by the COVID-19 pandemic.

B. Background and Need for Legislation

The COVID-19 global pandemic has caused untold economic and personal harm to millions of American families and businesses. The 116th Congress provided substantial aid to both businesses and individuals, including supplemental unemployment insurance benefits, two rounds of stimulus checks, and grants issued through the Paycheck Protection Program. Despite these prior efforts, as the pandemic rages on, and as the rollout of the vaccine remains in its infancy, Americans continue to struggle. This subtitle contains the additional aid that American families need as well as essential supports for our healthcare system to ensure that the most vulnerable among us are protected.

First, to provide immediate assistance to the millions of individuals and families struggling to make ends meet, this subtitle provides for an additional round of $1,400 stimulus payments, designed to level up the recent $600 supplement bringing the total to $2,000.

Next, in recognition of the unique struggles of low-income workers and families with children, this subtitle makes crucial expansions to tax credits targeted at workers and families. For 2021, it enhances the earned income tax credit (EITC) for workers without children by nearly tripling the maximum credit and extending eligibility, ensuring that federal taxes do not pull any workers' incomes below the poverty line. The subtitle expands the child tax credit in 2021 to $3,000 per child (or $3,600 for children under six), and it makes the credit fully refundable and eligible for advance payments so parents can count on a stable monthly income supplement. And finally, it will help families access high-quality childcare by substantially increasing the value of, and making fully refundable, the child and dependent care tax credit to allow families to claim up to half of their childcare expenses in 2021.

While vaccines are being distributed, thousands remain sick and the virus continues to spread. This subtitle contains crucial public health measures, extending the tax incentive to provide paid family and medical leave through September 30, 2021, and extending those provisions to certain public sector employees originally excluded from these benefits. It also reduces health care premiums for low- and middle-income families by increasing the Affordable Care Act's premium tax credits for 2021 and 2022, helping families retain their healthcare when they need it most.

C. Legislative History

Budget resolution

On February 5, 2021, the House of Representatives approved Senate Concurrent Resolution 5, setting forth the congressional budget for the United States Government for fiscal year 2021 and setting forth the appropriate budgetary levels for fiscal years 2022 through 2030. Pursuant to section 2002(l) of S. Con. Res. 5, the Committee on Ways and Means was directed to submit to the Committee on the Budget changes in laws within its jurisdiction to increase the deficit by not more than $940,718,000,000 for the period of fiscal years 2021 through 2030.

Committee hearings

In light of the emergency presented by the COVID-19 global pandemic and the need for immediate legislative action, no hearings were held in the 117th Congress prior to consideration of Subtitle G, Budget Reconciliation Legislative Recommendations Relating to Promoting Economic Security.

Committee action

Beginning on February 10, 2021, in response to its instructions under S. Con. Res. 5, the Committee on Ways and Means met to consider budget reconciliation legislative recommendations. On February 11, 2021, Subtitle G, Legislative Recommendations Relating to Promoting Economic Security, was ordered favorably transmitted, as amended, to the House Committee on the Budget by a record vote of 24 to 18.

II. EXPLANATION OF THE SUBTITLE

GENERAL BACKGROUND

A. Present Law

The following descriptions of present law are relevant to the income tax credit provisions in Parts 1 through 4 and Part 7 of the subtitle.

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.[1] 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.[2]

Dependents

Under section 152 of the Internal Revenue Code, a taxpayer's dependents include both the taxpayer's qualifying children and the taxpayer's qualifying relatives.[3] A dependent must be a citizen, national,[4] or resident of the United States or of a country contiguous to the United States (*i.e.*, Canada or Mexico).[5]

Generally, a qualifying child of a taxpayer is any individual who (1) meets the age test,[6] 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.[7] The individual also (3) must share the same principal place of abode as the taxpayer for more than one-half of the taxable year,[8] (4) may not have provided over one-half of his or her own support for the taxable year,[9] and (5) may not file a joint return with a spouse.[10] 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

[1] See secs. 37, 6401, 6402.

[2] See sec. 6402(a).

[3] All section references herein are to the Internal Revenue Code of 1986, as amended (herein "Code"), unless otherwise stated.

[4] 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.

[5] Sec. 152(b)(3). There are special rules for certain adopted children.

[6] Sec. 152(c)(1)(C), (c)(3).

[7] Sec. 152(c)(1)(A), (c)(2), (f)(1).

[8] Sec. 152(c)(1)(B).

[9] Sec. 152(c)(1)(D).

[10] Sec. 152(c)(1)(E); see also sec. 152(b)(2).

24 at the end of the calendar year and a full-time student,[11] or (3) permanently and totally disabled at any time during the calendar year, regardless of age.[12]

A qualifying relative of a taxpayer is any individual who (1) bears the appropriate relationship to the taxpayer,[13] (2) has gross income for the taxable year that does not exceed the personal exemption amount,[14] (3) receives over one-half of his or her support from the taxpayer,[15] and (4) is not a qualifying child of the taxpayer.[16] A qualifying relative who files a joint return with a spouse does not qualify as a dependent.[17]

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.[18] 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.[19]

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.[20] 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 Taxpayer Identification Number ("TIN") or Social Security Number ("SSN") for specified individuals. A

[11] 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.

[12] 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).

[13] Sec. 152(d)(1)(A), (d)(2).

[14] 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) is not 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 and before 2026). See Treas. Reg. sec. 1.152-2(e)(1); 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.

[15] Sec. 152(d)(1)(C).

[16] Sec. 152(d)(1)(D).

[17] Sec. 152(b)(2).

[18] Sec. 152(d)(2).

[19] Sec. 152(d)(2)(H).

[20] Sec. 24(c). The age requirement must be met at the close of the taxable year. See IRS Tax Year 2020 Form 1040 and 1040-SR Instructions (Rev. 2-2021), p.18.

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.[21]

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.[22]

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.[23] An individual who is eligible to receive an SSN may not apply for an ITIN.[24] An ITIN does not provide eligibility to work in the United States or allow the ITIN holder to claim Social Security benefits.

Taxation in 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[25] 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 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.[26] 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.[27]

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

[21] Sec. 6109(a); Treas. Reg. sec. 301.6109-1(a)(1)(ii)(A).

[22] 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)(III) of the Social Security Act, codified as 42 U.S.C. sec. 405(c)(2)(B)(i)(III).

[23] Treas. Reg. sec. 301.6109-1(a)(1)(ii)(B), (d)(3).

[24] Treas. Reg. sec. 301.6109-1(d)(3)(ii).

[25] The Code refers to the territories as "possessions."

[26] 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.

[27] Sec. 937.

wherever the Code refers to the United States).[28] 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.[29]

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.

[28] 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).

[29] 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 (sec. 9601 of the subtitle and new sec. 6428B of the Code)

Present Law

In response to the economic and health crises in 2020, Congress enacted two refundable income tax credits for individuals that are advanceable to eligible individuals. Each credit is described below.

2020 CARES Act recovery rebate

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")[30] 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.

[30] Pub L. No. 116-136, sec. 2201, March 27, 2020.

[31] Sec. 6428. 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 pp. 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 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

[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).

[40] Sec. 205(c)(2)(B)(i)(I) (or that portion of subclause (III) that relates to subclause (I)) of the Social Security Act.

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 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]

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[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.

[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-

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, an eligible taxpayer that did 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 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

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).

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 advance refund allowed or made to an individual or any 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, the overpayments resulting from these credits generally are not subject to offset for other taxes or non-tax debts owed to the Federal government or State governments.[49]

As an exception, overpayments resulting from recovery rebate credits and the advance refund are 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

[49] Prior to amendment, the CARES Act prohibited overpayments resulting 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).

[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 a 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/economic-impact-payment-information-center-topic-d-receiving-my-payment.

[51] Sec. 464(c) of the Social Security Act, 42 U.S.C. sec. 664(c).

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 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.

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[52] Pub. L. No. 116-260, Div. N, sec. 272, December 27, 2020.

[53] Sec. 6428A(a).

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 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).

[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.

[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.

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 paid electronically with a unique identifier that allows the financial institution maintaining the account to identify the payment as protected.

Reasons for Change

In response to the on-going economic and health crises due to COVID-19, the Committee believes that another round of recovery rebates is needed to assist struggling Americans and to boost the economy for workers and families. The $1,400 credits provided for in this subtitle will supplement the $600 credits in the CAA so that every American eligible for the full credit receives the $2,000 rebate amount that this Committee believes is necessary for relief and recovery.

This round of rebates is designed to help those most in need by further targeting certain provisions of the 2020 recovery rebate and the 2020 additional recovery rebate. The provision expands relief to families who support older children and other relatives. The provision also provides rebates to all mixed-status families, including those with dependents who are U.S. citizens (without regard to the status of their parents). The provision targets relief to lower- and middle-income Americans by phasing out the rebates more rapidly than in previous iterations of the recovery rebates. Finally, the provision provides an advance payment of recovery rebates in the form of a direct deposit, check, or new debit card and provides for a second advance payment in certain circumstances based on the most up-to-date tax information available to the IRS,

which is more likely to reflect families' economic circumstances as a result of the COVID-19 pandemic.

Explanation of Provision

In general

The provision 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:

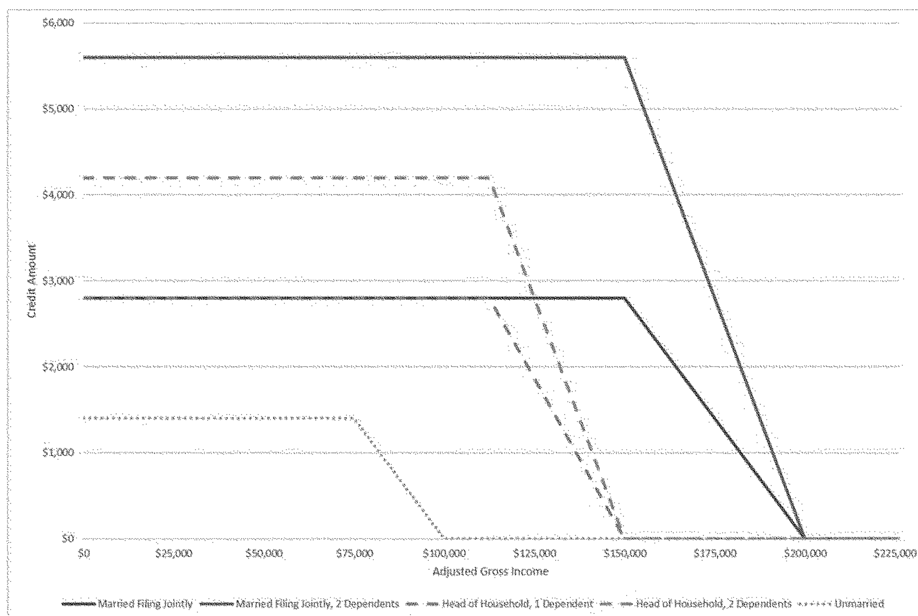
- $1,400 ($2,800 in the case of a joint return), and
- $1,400 for each dependent of the individual.[59]

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.

Figure 1.–Proposed 2021 Recovery Rebate Credit Amount by AGI for Selected Taxpayers

[59] Sec. 6428B(b). A dependent is defined in section 152 of the Code.
[60] Sec. 6428B(c).
[61] Sec. 6428B(d).



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 for employment in the United States.[63] As with the 2020 recovery rebate and the 2020 additional

[62] Sec. 6428B(e)(2).

[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

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 provision 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 based on 2019 return 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

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are 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). Sec. 6428B(g)(9).

[65] Sec. 6428B(g).

[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.

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, who was a member of the Armed Forces of the United States during the taxable year for which the return is filed, dies before January 1, 2021, 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 made or allowed 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]

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

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[67] 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.

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 provision, 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 provision 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 provision 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 provision for any person to whom a credit is allowed against territory income taxes as a result of the provision (*i.e.*, 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 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

[69] 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.

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 provision is effective on the date of enactment.

PART II—CHILD TAX CREDIT

A. Child Tax Credit Improvements for 2021 (sec. 9611 of the subtitle and sec. 24 and new sec. 7527A of the Code)

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), section 931 (exclusion of income for a bona fide resident of American Samoa), or section 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]

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

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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).

[77] Sec. 24(d).

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 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]

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[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.

[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.

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.

Reasons for Change

The Committee recognizes the importance of providing financial assistance to families raising children and notes that the need for assistance is heightened because of the on-going economic and health crises due to COVID-19. The Committee also recognizes that households with young children currently show disproportionate rates of severe economic distress and that early childhood privation can lead to lifelong educational, health, and social disadvantages. Finally, the Committee believes that monthly advance payments of the child tax credit would more effectively serve the needs of the most vulnerable families, rather than the current annual payment system.

The provision increases the child tax credit, extends the refundable additional child tax credit to families who would otherwise be unable to claim the credit or only be able to claim the credit in part, and raises the credit value for families with young children. Additionally, the provision directs the Secretary to establish a program for advance payments of the child tax credit.

Explanation of Provision

Temporary increase in credit amount and qualifying child age limit

Under the provision, 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 six 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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[86] Sec. 24(i)(3). The provision applies for taxable years beginning in 2021.

[87] *Ibid.*

[88] 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), (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 six and $1,000 per child age six and older); it does not reduce the child tax credit amount provided to a taxpayer under present law.[90]

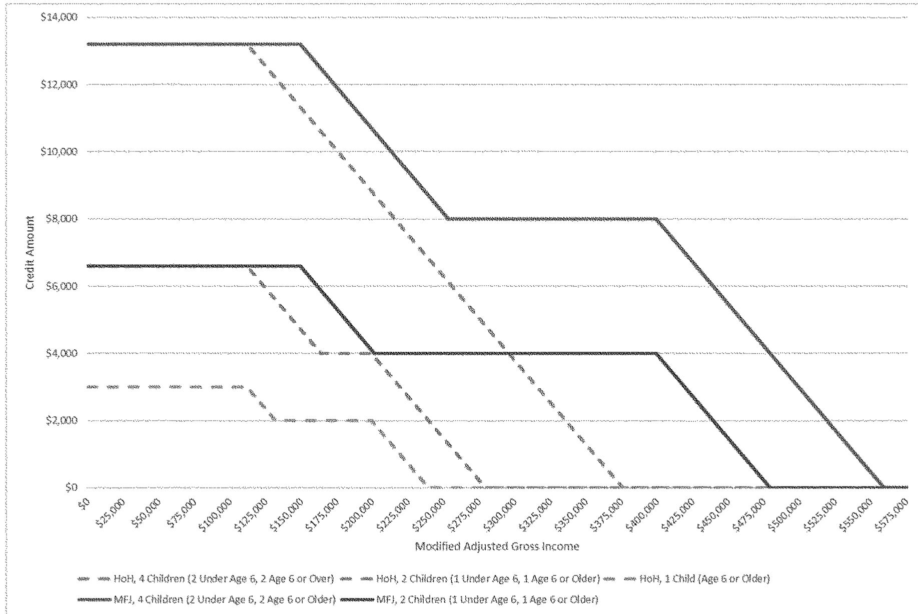
Figure 2 illustrates the proposed child tax credit by modified AGI for selected combinations of filing status and number of qualifying children.

Figure 2.–Proposed Child Tax Credit for 2021
by Modified AGI for Selected Taxpayers

[89] Sec. 24(i)(4).

[90] Under the provision, 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. Sec. 24(i)(4)(C). The applicable credit increase amount is the difference between (1) the aggregate child tax credit allowable under the provision and (2) the aggregate child tax credit allowable under the provision 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 provision, 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 seven and modified AGI of $140,000 would qualify for a $2,000 child tax credit in 2021 under present law. Under the provision, 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 provision, 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 six or older) is also illustrated in Figure 2.



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 qualifying children remains nonrefundable.

Temporary advance payments of the child tax credit

In general

The provision 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

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[91] 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.

taxpayers.[93] Each advance payment is 1/12 of an annual advance 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 advance 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 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 annual 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 annual advance 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 annual advance amount to take into account any other information provided to the Secretary by

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[93] Sec. 7527A(a).

[94] 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 annual advance amount.

[95] Sec. 7527A(f). The advance payments generally must comply with the electronic payment requirements of 31 U.S.C. sec. 3332.

[96] Sec. 7527A(g).

[97] 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. Sec. 7527A(b)(4).

[99] Sec. 7527A(b)(1).

[100] Sec. 7527A(b)(5).

[101] Sec. 7527A(b)(2).

[102] Sec. 7527A(b)(3)(A).

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 annual advance 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 annual advance 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]

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

[103] *Ibid.*
[104] Sec. 7527A(b)(3)(B).
[105] Sec. 7527A(c)(2).
[106] Sec. 7527A(c)(1).
[107] Sec. 7527A(d).
[108] Sec. 7527A(f)(4).
[109] Sec. 24(j)(1).
[110] 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).

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.

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 subtitle (described in the following section).

Effective Date

The provision applies to taxable years beginning after December 31, 2020.

[112] The safe harbor amount is $2,000 multiplied by the difference in the number of qualifying children used to determine the advance payment amount and the 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] Sec. 7527A(h).

[114] Sec. 24(i)(1), (k)(2).

[115] Sec. 7527A(f)(5).

B. Application of Child Tax Credit in Possessions (sec. 9612 of the subtitle and sec. 24 of the Code)

Present Law

The present law rules for the child tax credit in the territories of the United States are described in the previous section.

Reasons for Change

The Committee recognizes the importance of providing financial assistance to families raising children and notes that the need for assistance is currently heightened because of the on-going economic and health crises due to COVID-19. It also recognizes the need to assist the U.S. territories, the citizens of which are U.S. citizens or nationals.

The Committee wishes to provide funding to Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa to cover the cost of child tax credit programs. It also wishes to directly provide the child tax credit to families in Puerto Rico.

Explanation of Provision

Under the provision, 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 provision 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 subtitle (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]

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[116] Sec. 24(k)(1).
[117] Sec. 9611 of the subtitle (described in the preceding section).

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]

American Samoa

The provision 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 subtitle (described in the preceding section).

The provision 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 provision applies to taxable years beginning after December 31, 2020.

[118] This amount is currently $1,400 for taxable years beginning in 2021.
[119] Sec. 24(k)(2).
[120] Sec. 24(k)(3).

PART III—EARNED INCOME TAX CREDIT

A. Strengthening the Earned Income Tax Credit for Individuals with No Qualifying Children (sec. 9621 of the subtitle and sec. 32 of the Code)

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 exclusion election available to U.S. citizens or resident aliens living abroad) are not eligible to claim the EITC.[126]

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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).

[126] Sec. 32(c)(1)(C).

To claim the EITC, the taxpayer must include the taxpayer's valid SSN and the 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 of $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.

[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%

Reasons for Change

The EITC is intended to improve incentives to work and to provide tax relief to low- and moderate-income workers, relief that is of heightened importance now because of the on-going economic and health crises due to COVID-19. In addition, the EITC is an effective means by which the overall progressivity of the tax system can be promoted. The Committee believes that expanding access to the EITC to more workers and increasing the amount of the credit for taxpayers with no qualifying children will further these goals.

For taxpayers with no qualifying children, the Committee believes that the definition of eligible individuals should be updated to reflect the modern workforce by expanding the age range to include younger and older workers, and that the amount of the credit should be increased.

Finally, the Committee recognizes the pandemic will have a long-lasting impact on the economy. It is clear that additional income support will be necessary well after this coronavirus relief bill is enacted. Enacting this provision in 2021 will ensure that this particularly vulnerable population of workers will have continued support in calendar year 2022.

Explanation of Provision

For 2021, the provision expands EITC eligibility and increases the amount of the credit for taxpayers with no qualifying children.[133]

[132] *Ibid.*

[133] Sec. 32(n). The provision applies for taxable years beginning in 2021.

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, 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 provision 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 provision 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 provision increases the amount of the credit for taxpayers with no qualifying children.[141] The provision 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

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[134] Sec. 32(n)(1)(A), (B)(i).

[135] Sec. 32(n)(1)(A), (B)(ii). The provision 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).

[136] Sec. 32(n)(1)(B)(iii), (D), (C).

[137] 42 U.S.C. sec. 621-628b.

[138] 42 U.S.C. sec. 670-679c.

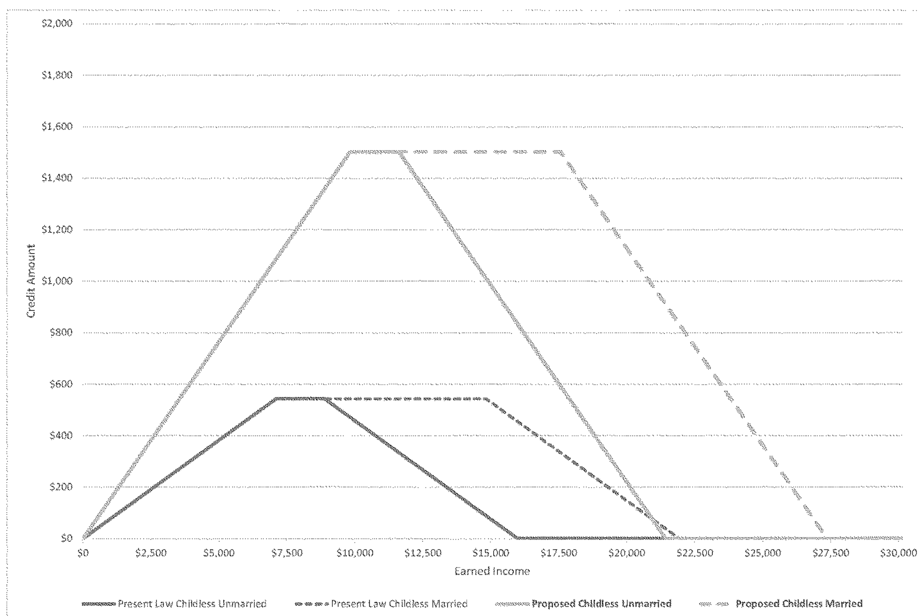
[139] See section 480(d)(1) of the Higher Education Act of 1965, 20 U.S.C. § 1087vv, for the meaning of terms used in this definition.

[140] Sec. 32(n)(2).

[141] Sec. 32(n)(3), (4).

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.

Figure 3.–Proposed EITC for 2021



Effective Date

The provision 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 (sec. 9622 of the subtitle and sec. 32 of the Code)

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]

Reasons for Change

The EITC is intended to improve incentives to work and to provide tax relief to low- and moderate- income workers, relief that is of heightened importance now because of the on-going economic and health crises due to COVID-19. The Committee believes that the more modest EITC for no qualifying children should be available to taxpayers who meet the applicable criteria, but whom are unable to claim the more generous EITC for taxpayers with qualifying children because they fail to meet the identification requirements for qualifying children.

Explanation of Provision

The provision 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 provision applies to taxable years beginning after December 31, 2020.

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[142] Sec. 32(c)(1)(F).

C. Credit Allowed in the Case of Certain Separated Spouses (sec. 9623 of the subtitle and sec. 32 of the Code)

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.

Reasons for Change

The EITC is intended to improve incentives to work and to provide tax relief to low- and moderate- income workers, relief that is of heightened importance now because of the on-going economic and health crises due to COVID-19. The Committee believes that separated individuals should be eligible for the EITC.

Explanation of Provision

The provision changes the exception under which an otherwise married individual may claim the EITC on a separate return. Under the provision, 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 provision 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 provision 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 (sec. 9624 of the subtitle and sec. 32 of the Code)

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).

Reasons for Change

The EITC is intended to improve incentives to work and to provide tax relief to low- and moderate-income workers, relief that is of heightened importance now because of the on-going economic and health crises due to COVID-19. The Committee believes that individuals with moderate amounts of investment income should be eligible for the EITC.

Explanation of Provision

The provision 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 provision applies to taxable years beginning after December 31, 2020.

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[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 (sec. 9625 of the subtitle and sec. 32 and new sec. 7530 of the Code)

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.

Reasons for Change

The EITC is intended to improve incentives to work and to provide tax relief to low- and moderate- income workers, relief that is of heightened importance now because of the on-going economic and health crises due to COVID-19. The Committee wishes to encourage Puerto Rico to expand its EITC in order to further these goals, and it wishes to encourage American Samoa to enact an EITC in order to further these goals. The Committee recognizes the importance of providing funding to all of the U.S. territories, the citizens of which are U.S. citizens or nationals, in order to help fund their EITC programs.

Explanation of Provision

Under the provision, 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 provision requires the Secretary to pay to Puerto Rico each calendar year, starting in 2021, a specified matching amount.[151] 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 for 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 to spend $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 or $200 million) and the specified matching amount is $630 million (the lesser of

[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.

[151] Sec. 7530(a).

(1) $850 million – $210 million = $640 million or (2) 3 * $210 million = $630 million). For each calendar year 2021 through 2025, the provision 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 provision, 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 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 provision 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 provision 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.[152] The amount of the required annual payment to each territory is the cost to that territory of its EITC in that year. For each calendar year 2021 through 2025, the provision 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. Each territory must provide an annual report to the Secretary that includes an estimate of the cost of its EITC for the current year and a statement of the cost in the preceding year.

American Samoa

The provision 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.[153] The amount of the annual payment is the lesser of (1) the cost to American Samoa of such credit each year or (2) $16 million, indexed for inflation. For each calendar year 2021 through 2025, the provision 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 provision is effective on the date of enactment.

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[152] Sec. 7530(b).

[153] Sec. 7530(c).

F. Temporary Special Rule for Determining Earned Income for Purposes of the Earned Income Tax Credit (sec. 9626 of the subtitle and sec. 32 of the Code)

Present Law

Eligible taxpayers may claim an EITC and child tax credit. The amount of the EITC is based on the taxpayer's earned income.[154] The amount of the additional child tax credit, the refundable component of the child tax credit, is generally based on the taxpayer's earned income.[155]

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[156] using 2019 rather than 2020 earned income, if the taxpayer's earned income in 2020 is less than in 2019.[157]

Reasons for Change

The on-going economic and health crises due to COVID-19 have disrupted employment for many hardworking Americans. The Committee believes that this should be accounted for and that earned income should be measured based on a taxable year without such disruptions so as to maximize benefits for low- and middle-income workers.

Explanation of Provision

The provision permits a taxpayer to elect to calculate the taxpayer's EITC for taxable years beginning in 2021 using 2019 rather than 2021 earned income, if the taxpayer's earned income in 2021 is less than in 2019.[158]

For purposes of the provision, 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 provision is treated as a mathematical or clerical error. An election under the provision is disregarded for purposes of calculating gross income in the election year.

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[154] Sec. 32.

[155] Sec. 24(d).

[156] The provision applies for taxable years beginning in 2021.

[157] 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, and Maria), former sec. 1400S(d) (Hurricanes Katrina, Rita, and Wilma), repealed by Pub. L. No. 115-141, March 23, 2018.

[158] The provision does not allow taxpayers to make an election with respect to the additional child tax credit. However, section 9611 of the subtitle, discussed above, makes the child tax credit fully refundable for 2021, without regard to earned income.

The provision 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 to the loss in revenue by reason of the application of the provision. This amount is determined by the Secretary based on information provided by the government of the territory.

The provision 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 provision if a mirror Code tax system had been in effect in the territory. The provision 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 provision is effective on the date of enactment.

PART IV—DEPENDENT CARE ASSISTANCE

A. Refundability and Enhancement of Child and Dependent Care Tax Credit (sec. 9631 of the subtitle and sec. 21 of the Code)

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.[159] For this purpose, employment-related child and dependent care expenses are expenses for household services and expenses for the care of a qualifying individual.[160] 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.[161] 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.[162]

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.[163] Thus, for taxpayers with AGI above $43,000, the credit rate is 20 percent. The phase-down 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.[164] Married taxpayers must file a joint return in order to claim the credit.

Reasons for Change

The Committee recognizes that access to safe, affordable child and dependent care is necessary for parents and other caregivers to fully participate in the workforce. The on-going economic and health crises due to COVID-19 have exacerbated the shortage of safe, affordable

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[159] Sec. 21.

[160] Sec. 21(b)(2). Expenses do not include amounts paid for a camp where a qualifying individual stays overnight.

[161] Sec. 21(c).

[162] Sec. 21(d). Earned income has the same definition as for purposes of the EITC. Treas. Reg. sec. 1.21-2(b)(3).

[163] Sec. 21(a).

[164] Sec. 21(b)(1).

child and dependent care. Therefore, the Committee wishes to provide increased relief to help offset the costs of child and dependent care. By increasing the maximum credit rate and making the credit fully refundable, this provision offers direct financial assistance to working parents and caregivers who incur dependent care expenses. The Committee further believes that this financial assistance should be available to all taxpayers who incur dependent care expenses; by making the credit fully refundable, the Committee extends the availability of this financial assistance to all taxpayers without regard to their net tax liability.

The Committee also recognizes the importance of providing funding to the U.S. territories, the citizens of which are U.S. citizens or nationals, to fund programs that support child and dependent care.

Explanation of Provision

The provision temporarily expands the child and dependent care tax credit for 2021.[165] First, the provision 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.[166] 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.[167]

In addition, the provision 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).[168] 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.[169] 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 provision applies a two-part phaseout to the 50-percent credit rate.[170] 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).[171]

Figure 4.–Proposed Child and Dependent Care Tax Credit for 2021 by AGI for Selected Taxpayers

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[165] Sec. 21(g). The provision applies for taxable years beginning in 2021.

[166] Sec. 21(g)(1).

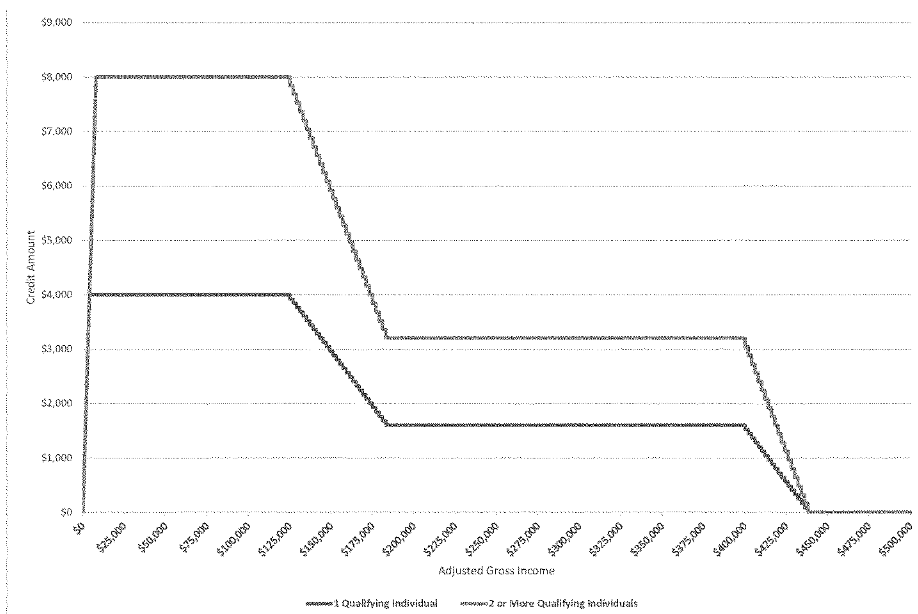
[167] Thus, a member of the Armed Forces of the United States stationed outside the United States while serving on extended active duty is treated as having a principal place of abode in the United States.

[168] Sec. 21(g)(3).

[169] Sec. 21(g)(2).

[170] Sec. 21(g)(4).

[171] Figure assumes AGI and earned income are equal for these taxpayers.



Treatment of the U.S. territories

Under the provision, the Secretary is directed to make payments for 2021[172] 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 provision 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 provision. This amount is determined by the Secretary based on information provided by the government of the territory.[173]

The provision 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 provision if a mirror Code tax system had been in effect in the territory.[174] The provision prohibits the Secretary from making these payments

[172] The provision applies for taxable years beginning in 2021.
[173] Sec. 21(h)(1).
[174] Sec. 21(h)(2).

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 provision for any person to whom a credit is allowed against territory income taxes as a result of the provision (*i.e.*, under that territory's mirror Code).[175] 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 provision applies to taxable years beginning after December 31, 2020.

[175] Sec. 21(h)(3).

B. Employer-Provided Dependent Care Assistance (sec. 9632 of the subtitle and sec. 129 of the Code)

Present Law

An annual exclusion[176] 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[177] 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.[178]

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.[179]

Amounts attributable to dependent care assistance that are excludible from gross income are also excludible from wages for employment tax purposes.[180]

A dependent care assistance program may be structured to allow contributions on a pre-tax basis through a cafeteria plan.[181] 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.[182] Qualified benefits provided under a cafeteria plan include dependent care assistance.

Reasons for Change

The Committee recognizes the importance of supporting working families who are raising children or caring for dependents, and it also recognizes the value in encouraging employers to provide assistance to employees for such care. The on-going economic and health crises due to COVID-19 have exacerbated the shortage of safe, affordable child and dependent care. The provision increases the annual exclusion with respect to employer-provided dependent care assistance in order to provide increased support to working families and a further incentive for employers to offer such a benefit.

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[176] Sec. 129(a).

[177] Sec. 129(d).

[178] 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.

[179] 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).

[180] Secs. 3121(a)(18), 3306(b)(14), 3401(b)(18).

[181] Sec. 125.

[182] Sec. 125(d).

Explanation of Provision

The provision temporarily increases, for any taxable year beginning in 2021, the amount of the exclusion for employer-provided dependent care assistance. The provision increases such 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 provision 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 provision 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 provision is effective for taxable years beginning after December 31, 2020.

PART V—CREDITS FOR PAID SICK AND FAMILY LEAVE

A. Extension of Credits and Other Modifications (secs. 9641 to 9650 of the subtitle)

Present Law

The Families First Coronavirus Response Act ("FFCRA")[183] 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,[184] and the expanded family and medical leave requirements in the Emergency Family and Medical Leave Expansion Act,[185] 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[186] 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.[187] Qualified sick leave wages are defined as wages[188] and compensation[189] 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.[190]

Qualified family leave wages are wages[191] and compensation[192] paid by an employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act.[193] 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

[183] Pub. L. No. 116-127, March 18, 2020.

[184] Division E, FFCRA, Pub. L. No. 116-127.

[185] Division C, FFCRA, Pub. L. No. 116-127.

[186] 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.

[187] Notice 2020-21.

[188] Sec. 3121(a).

[189] Sec. 3231(e).

[190] Sec. 7001 of Pub. L. No. 116-127, as amended by the CAA, Pub. L. No. 116-260, sec. 286.

[191] Sec. 3121(a).

[192] Sec. 3231(e).

[193] See IRS Notice 2020-54.

been effective until March 31, 2021.[194] 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.[195]

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 Medical Leave Expansion Act.[196] 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

[194] Sec. 7001 of Pub. L. No. 116-127, as amended by the CAA, Pub. L. No. 116-260, sec. 286.
[195] Sec. 5102(a), Division E, FFCRA, Pub. L. No. 116-127.
[196] Sec. 3102, Division C, FFCRA, Pub. L. No. 116-127.

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.[197] 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,[198] but only to the extent such amounts are excluded from the employees' income as coverage under an accident or health plan.[199] Qualified health plan expenses are allocated to qualified sick leave wages in such manner as the Secretary (or the Secretary's delegate) may prescribe.[200] Except as otherwise provided by the Secretary, such allocations are treated as properly made if they are 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).

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[201] and research expenditures of qualified small businesses[202] 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.[203]

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

[197] 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.

[198] Sec. 5000(b)(1).

[199] Sec. 106(a).

[200] 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).

[201] Sec. 3111(e).

[202] Sec. 3111(f).

[203] 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.

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.[204]

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[205] 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[206] (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)

[204] 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.[204] 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.

[205] Within the meaning of sec. 1402.

[206] Division E and C, FFCRA, Pub. L. No. 116-127.

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,[207] 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[208] (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) $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.[209]

If an eligible self-employed individual receives qualified family leave wages,[210] 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.

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[207] As defined by sec. 7001(c) of FFCRA, Pub. L. No. 116-127.

[208] Division C, FFCRA, Pub. L. No. 116-127.

[209] 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.

[210] As defined by sec. 7003(c) of the FFCRA, Pub. L. No. 116-127.

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.

Reasons for Change

The Committee recognizes the importance of encouraging employers to provide paid sick leave and family leave to employees who are unable to work or telework due to the COVID-19 pandemic. The Committee believes that the credits for paid sick and expanded family leave enacted as part of the FFCRA and expanded and extended as part of the CARES Act and the CAA have provided and will continue to provide much needed resources to self-employed individuals and to employers to provide paid sick time and family leave for their workers. An extension of the credits, including an expansion of the wage limits applicable to such credits, allowance of paid family leave for the same reasons as paid sick leave, plus COVID-19 vaccinations, and a reset of the number of days allowed for paid sick leave, will further encourage the availability and access to paid sick and family leave due to COVID-19. With the pandemic continuing to impact the ability of employees and self-employed individuals to work, the Committee believes it is important to extend this assistance through September 30, 2021.

Explanation of Provision

Extension of credits

The provision 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 through September 30, 2021.

Increase in limitations on credits for paid family leave

The provision 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 provision addresses the denial of double benefit for self-employed individuals. In the case of an individual who receives wages[211] or compensation[212] 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 provision 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 provision amends the definition of qualified family leave wages by adding, in part, that 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.

Expansion of reasons for paid family leave credit

The provision amends the definition of qualified family leave wages and the qualified family leave equivalent amount by providing that such wages include those which would be required to be paid for any reason described in the six categories that apply for purposes of eligibility for paid sick leave.[213]

Paid leave credits allowed for COVID-19 vaccination

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[211] Sec. 3121(a).

[212] Sec. 3231(e).

[213] Section 5102(a) of Division E, FFCRA, Pub. L. No. 116-127. The reasons for paid sick leave are 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.

The provision expands the definition of qualified sick leave wages and qualified family leave equivalent amount to include time the employee or self-employed individual is unable to work (or telework) because the employee or self-employed individual 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 provision 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,[214] full-time employees, or employees on the basis of employment tenure with the employer.

Reset of limitation on paid sick leave

The provision 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 (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.[215] 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 provision also coordinates these changes with Divisions C and E of the FFCRA.

Credits allowed against employer Hospital Insurance ("HI") tax

Under the provision, the credit is a credit against OASDI tax and the equivalent amount of RRTA tax with a credit against HI tax and the equivalent amount of RRTA tax.[216] The refundable credit against HI tax and the equivalent amount of RRTA tax applies to qualified sick leave wages and qualified family leave wages paid with respect to calendar quarters after March

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[214] Sec. 414(q).

[215] 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.

[216] The provision does not include express language that "holds harmless" the Federal Hospital Insurance Trust Fund from any effects of the provision. Under current law, amounts are 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 provision does not affect either the rate under section 3111(b) or applicable wages, but only provides a credit against the amount of tax, the provision does not affect the trust fund, and no hold harmless language is needed.

31, 2021 and before October 1, 2021. The credit for the qualified sick leave equivalent amount and qualified family leave equivalent amount is also extended to September 30, 2021.

Application of credits to certain governmental employers

The provision 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 provision 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.[217]

Effective Date

The provision is generally effective for amounts paid with respect to calendar quarters after March 31, 2021. The provision is effective for purposes of the paid sick leave credit for self-employed individuals for taxable years beginning after December 31, 2020.

[217] Sec. 45S.

PART VI—EMPLOYEE RETENTION CREDIT

A. Extension of Employee Retention Credit (sec. 9651 of the subtitle)

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 the Federal income tax.[218] In addition, tier 1 of the RRTA imposes a tax on compensation paid to railroad employees and representatives.[219]

FICA taxes comprise two components: OASDI tax and HI tax. With respect to OASDI tax, 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.[220] The tax is assessed on covered wages up to the OASDI wage base ($142,800 in 2021[221]). Generally, the OASDI wage base rises based on increases in the national average wage index.[222]

The HI tax also 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.[223] An equivalent 1.45 percent is withheld from employee wages.[224] Additional Medicare taxes are withheld from employee wages in excess of $200,000 at a rate of 0.9 percent.[225] 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.[226] 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.[227] OASDI and HI taxes are generally allocated by statute among separate trust funds: the OASDI Trust

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

[219] Sec. 3221.

[220] Sec. 3101.

[221] See the Social Security Administration's Contribution and Benefit Bases, available at https://www.ssa.gov/OACT/COLA/cbb.html.

[222] Sec. 230 of the Social Security Act (42 U.S.C. sec. 430).

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

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

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

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

[227] Sec. 3102(b).

Funds, Medicare's Hospital Insurance Trust Fund, and Supplementary Medical Insurance Trust Fund.[228]

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.[229] 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.[230] The RRTA imposes a tax on compensation paid by covered employers to employees in recognition for the performance of services.[231] 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.[232] 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.[233] In addition, rail employees and employers both pay tier 2 taxes, which are used to finance railroad retirement benefits above Social Security benefit levels.[234] Tier 2 benefits are similar to a private defined benefit pension.

Employment tax in the U.S. territories

Employers and employees in the U.S. territories are generally subject to FICA payroll tax obligations.[235] 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

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

[229] Sec. 3121(a).

[230] Sec. 3121(b)(9).

[231] 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.

[232] Sec. 3231(e).

[233] The rate is 7.65 percent, consisting of 6.2 percent for retirement on earnings up to $142,800 in 2021, and 1.45 percent for Medicare hospital insurance on all earnings. The Additional Medicare tax applies a rate of 0.9 percent on earnings above $200,000.

[234] In 2021, the tier 2 tax rate on earnings up to $106,200 is 4.9 percent for employees and 13.1 percent for employers. See the U.S. Railroad Retirement Board Reminders for 2021, available at https://rrb.gov/Benefits/Forms/G-34.

[235] 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.

local taxes.[236] 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.[237] 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.[238]

Employee retention 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[239] imposed on the employer and the equivalent rate for RRTA tax[240] 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

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[236] 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.

[237] See, *e.g.*, sec. 303 of Pub. L. No. 116-260, Div. EE (providing a credit in response to certain major disasters declared in 2020); 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).

[238] For a more detailed description of one 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.

[239] Sec. 3111(a).

[240] Sec. 3221(a).

veterans,[241] for research expenditures of a qualified small business,[242] or for paid sick or family leave under sections 7001 and 7003 of the FFCRA.[243] 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.[244]

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.[245] 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.[246]

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 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 COVID19.

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

[241] This credit is described in section 3111(e).

[242] This credit is described in section 3111(f).

[243] Pub. L. No. 116-127, as amended by the CARES Act, Pub. L. No. 116-135, and the CAA, Pub. L. No. 116-260.

[244] 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.

[245] 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.

[246] 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.

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.[247] 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.[248] All persons treated as a 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

[247] Section 206(a) of Division EE of the CAA (Pub. L. No. 116-260), clarifies this definition, as described below.

[248] 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-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.

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 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[249] or compensation[250] 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,[251] but only to the extent such amounts are excluded from the employees' income as coverage under an accident or health plan.[252] 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).[253]

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 employee retention credit, the employer would be able to deduct $2,500 of wage expense (assuming such wages are not subject to capitalization) and $155 of applicable employment tax liability, for a total income tax deduction of $2,655 for the quarter with respect to those wages. If the employer claims an employee retention credit of $1,250 for those wages, the employee retention credit would offset $155 of applicable employment taxes 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 applicable employment 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 applicable

[249] Sec. 3121(a).
[250] Sec. 3231(e).
[251] Group health plan for this purpose is defined in section 5000(b)(1).
[252] For the exclusion, see section 106(a).
[253] Section 206(b) of Division EE of the CAA clarifies this definition, as described below.

employment taxes.[254] If the employer claims an employee retention credit of $1,250, the employee retention credit 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).

Any credit allowed is treated as a credit described in section 3511(d)(2) (relating to certified professional employer organizations).

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;[255] (2) to provide for the reconciliation of

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[254] 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.

[255] 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.

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 other 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.

Retroactive modifications

Section 206(a) of Division EE of the CAA clarifies that, in the case of an organization described in section 501(c) of the Code, any reference to gross receipts in the CARES Act employee retention credit (as modified by the CAA) shall be treated as a reference to gross receipts within the meaning of section 6033 of the Code.

Section 206(b) of Division EE of the CAA clarifies that health plan expenses paid to provide and maintain a group health plan[256] 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(c) of Division EE of the CAA alters the interaction of the credit and the Paycheck Protection Program ("PPP"). First, it removes the rule in section 2301(j) of the CARES Act that provided that an employer that received a PPP loan[257] 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 are potentially eligible for the credit. Section 1106 of the CARES Act[258] is then 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[259] do not include qualified wages taken into account in determining the amount of the employee retention credit, and an employer is permitted to elect not to take into account any amount of the

[256] As defined in section 5000(b)(1) of the Code.

[257] 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).

[258] 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.).

[259] Redesignated by the CAA as section 7A(b) of the Small Business Act.

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[260] to deny forgiveness.

Finally, section 206(d) of Division EE of the CAA requires the Secretary to issue such forms, instructions, regulations, and other 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 CAA to elect to treat any applicable amount as an amount paid in the calendar quarter which includes the date of enactment of the CAA (*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 permitted to be treated as qualified wages as a result of subsection (c)(2) of such section (addressing coordination between the PPP 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 on date of enactment of the CAA

Section 303(d) 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.[261]

Modifications that are effective for calendar quarters beginning after December 31, 2020

Section 207(a) 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 also 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.[262]

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.[263]

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

[260] Redesignated by the CAA as section 7A(g) of the Small Business Act.

[261] 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.

[262] See sec. 207(b) of the CAA.

[263] See sec. 207(c) of the CAA.

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, rather than the quarter for which the credit is claimed, to the gross receipts for the corresponding calendar quarter in 2019. 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.[264]

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.[265]

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.[266]

The rule prohibiting certain government employers from claiming the credit is modified.[267] 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 are not 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

[264] For the rules described in this paragraph, see sec. 207(d)(1) and (2) of the CAA.
[265] See sec. 207(e)(1) of the CAA.
[266] See sec. 207(e)(2) of the CAA.
[267] See sec. 207(d)(3) of the CAA.

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).[268]

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[269] 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 2019 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.[270] 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.[271]

The grant of authority in section 2301(l) of the CARES Act is modified to require that any forms, instructions, regulations, or other 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 accurately report the credit based on the information provided by the customer.[272]

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 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 CAA, provide educational materials about the credit to all employers.[273]

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 PPP 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.[274]

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[268] See sec. 207(f) of the CAA.

[269] As defined in section 45R(d)(5)(B) of the Code.

[270] 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.

[271] For the rules described in this paragraph, see sec. 207(g) of the CAA.

[272] See sec. 207(h) of the CAA.

[273] For the rules described in this paragraph, see sec. 207(i) of the CAA.

[274] See sec. 207(j) of the CAA.

Reasons for Change

Between February 2020 and January 2021, the U.S. economy shed nearly ten million jobs.[275] The on-going public health crisis and economic downturn warrants incentives to preserve the employer/employee relationship for businesses and workers most affected by the pandemic. Millions of Americans rely on their employer to provide healthcare, retirement savings, childcare, and other benefits.

The Committee believes that the employee retention credit enacted as part of the CARES Act and expanded and extended as part of the CAA has provided and will continue to provide much needed resources for businesses negatively affected by the COVID-19 pandemic to pay and provide health care for their workers. With the pandemic continuing to dampen economic activity, particularly with regard to services-based businesses, the Committee believes it is important to extend this assistance through the end of calendar year 2021.

Explanation of Provision

The provision extends the credit by two calendar quarters to apply to wages paid before January 1, 2022.

Under the provision, the credit is a credit against the employer's share of HI tax and the equivalent amount of RRTA tax.[276]

As revised by the provision, 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.[277] 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.

[275] Bureau of Labor Statistics, Employment Situation Summary, "The Employment Situation -- January 2021," February 5, 2021, available at www.bls.gov/news.release/empsit.nr0.htm.

[276] 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 provision does not include express language that "holds harmless" the Federal Hospital Insurance Trust Fund from any effects of the provision. Under current 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 provision does not affect either the rate under section 3111(b) or applicable wages, but only provides a credit against the amount of tax, the provision does not affect the trust fund, and no hold harmless language is needed.

[277] Under section 9647 of the subtitle, 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 "Extension of Credits and Other Modifications (secs. 9641 to 9650 of the subtitle)" elsewhere in this document.

Effective Date

The provision is effective for calendar quarters beginning after June 30, 2021.

PART VII—PREMIUM ASSISTANCE CREDIT

A. Temporary Modifications to the Premium Assistance Credit (secs. 9661, 9662, and 9663 of the subtitle and sec. 36B of the Code)

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," [278] health insurance plans offered through an American Health Benefit Exchange ("Exchange") created by the Patient Protection and Affordable Care Act ("PPACA").[279] 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.[280] 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.[281] 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).[282] Modified AGI is defined as AGI increased by (1) any amount excluded from gross income for citizens or residents living abroad,[283] (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.[284] To be eligible for the premium assistance credit, individuals who are married must file a joint return.[285] Individuals who are listed as dependents on a return are not eligible for the premium assistance credit.

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[278] 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.

[279] 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").

[280] Sec. 1412 of the PPACA, 42 U.S.C sec. 18082.

[281] 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.

[282] Sec. 36B(d)(2).

[283] Sec. 911.

[284] Under section 86, only a portion of an individual's Social Security benefits is included in gross income.

[285] Sec. 36B(c)(1)(C).

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.[286] 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.[287] 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)[288] of the employee's household income.[289] 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,[290] reduced by the individual's or family's share of premiums.[291] 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.

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[286] Sec. 36B(c)(2). Minimum essential coverage is defined in section 5000A(f).

[287] Sec. 36B(c)(2)(C).

[288] Rev. Proc. 2020-36, 2020-32 I.R.B. 244.

[289] 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).

[290] 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.

[291] 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.

Table 1.–Household's Share of Premiums (for 2021)[292]

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").[293] The individual must provide information on income, family size, changes in marital or family status or income, and citizenship or lawful presence status.[294] 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.[295] If an

[292] 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.

[293] 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.

[294] 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.

[295] 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

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.[296]

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.

Table 2.–Recapture Limits (for 2021)[297]

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

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.

[296] 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.

[297] 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.

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.[298] 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.[299] 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.[300] 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.[301] HHS strongly encouraged States operating their own marketplace platforms to establish similar enrollment opportunities.

Unemployment compensation

Unemployment compensation benefits are includible in gross income.[302] 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.[303] 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.[304] The CAA generally extended and reauthorized certain provisions of the CARES Act unemployment insurance expansion.[305]

Reasons for Change

The COVID-19 pandemic has caused significant economic hardships for many people. The economic crisis has led to widespread job loss, and as a result many Americans have lost their employer-sponsored health insurance at a time when it is critical to have quality, affordable health insurance. To ensure that unemployed workers can maintain and afford health insurance,

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[298] PPACA sec. 1311, 42 U.S.C. 13031.

[299] 45 CFR 155.420.

[300] President 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.

[301] 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.

[302] Sec. 85.

[303] Sec. 85(b); see also Treas. Reg. sec. 1.85-1(b)(1).

[304] Pub. L. No. 116-136, Div. A, Title II, subtitle A.

[305] Pub. L. No. 116-260, Div. N, Title II, subtitle A.

the provision improves the affordability of health insurance purchased through an Exchange by increasing the availability and generosity of premium assistance credits for 2021 and 2022. The provision reduces, and in some cases eliminates, the share of health insurance premiums that low- and middle-income families must contribute to the cost of coverage, thereby lowering their out-of-pocket costs for healthcare.

Due to the economic crisis, taxpayers also may have experienced unexpected changes in income, such as the receipt of unemployment compensation or significant overtime pay. These unexpected changes could cause taxpayers who received advance payments of the premium assistance credit during 2020 to have predicted their income inaccurately and, as a consequence, to be subject to recapture of excess advance payments when they file their 2020 income tax returns. To offset the negative effects of this income volatility and resulting unexpected tax liability, the provision eliminates the recapture of excess advance payments for 2020 so that taxpayers will not have an additional tax burden from unexpected changes in income.

Finally, the Committee recognizes that unemployed workers face unique hardships in securing health insurance for themselves and their families. The provision provides that workers who receive unemployment compensation at any point during 2021 generally are eligible for premium assistance credits that will cover the full cost of quality health insurance purchased through an Exchange. These provisions will build upon the special enrollment period announced by the President to assist families during the COVID-19 pandemic.

Explanation of Provision

Improving affordability by expanding premium assistance for consumers

For taxable years beginning in 2021 and 2022, the provision reduces or eliminates an individual's or family's share of premiums used in determining the amount of the premium assistance credit. The provision 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 provision. 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

Household income (expressed as a percent of FPL)	Initial percentage of household income	Final percentage of household income
200% up to 250%	2.0	4.0
250% up to 300%	4.0	6.0
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 provision 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 provision no excess advance payment is subject to recapture. The provision applies to taxpayers who file a 2020 income tax return and reconcile any advance payment of the credit.[306]

Application of premium assistance credit in case of individuals receiving unemployment compensation during 2021

The provision 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.[307] 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 provision, 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.

[306] 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.

[307] Unemployment compensation is as defined in section 85(b).

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 requirements could include information available to the Secretary from third-party information reporting.[308]

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 provisions 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 provision to temporarily modify the recapture limitations applies to taxable years beginning after December 31, 2019.

[308] See sec. 6050B (returns relating to unemployment compensation).

PART VIII—MISCELLANIOUS PROVISIONS

A. Repeal of Worldwide Allocation of Interest Election (sec. 9671 of the subtitle and sec. 864(f) of the Code)

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.[309] An affiliated group in this context generally is defined by reference to the rules for determining whether corporations are eligible to file consolidated returns.[310] 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.[311] 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,[312] section 864(f) provides that the common parent of a U.S. affiliated group may elect to allocate and apportion the interest

[309] Sec. 864(e)(1), (e)(2).

[310] 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.

[311] 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).

[312] 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[313] 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 relating to taxable years 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. As a result of this rule, 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, in the aggregate, more highly leveraged than is the entire worldwide group.

Reasons for Change

The Committee believes that the election to allocate and apportion interest expense on a worldwide basis raises significant administrative and policy concerns. An election under section 864(f) would allow for the allocation of interest expense based on the assets and liabilities of the members of a worldwide group. It is unclear how the aggregate computation contemplated by section 864(f) applies to the shareholder computations for determining taxable income for purposes of the foreign tax credit limitation. For this reason, the Committee believes section 864(f) is not administrable in its current form.

Congress has delayed the effective date of section 864(f) several times without any ill effect to the economy or taxpayers generally. In that time, Congress made extensive changes to the international tax system, including substantially reducing the corporate income tax rate and providing other benefits to multinational corporations. An election would have the effect of reducing the amount of interest expense allocated and apportioned to foreign source income, providing a further tax benefit to multinational corporations. The Committee does not believe such an additional benefit is warranted considering the tax burden multinational corporations generally face. In consideration of these factors, the Committee has determined that section 864(f) should be repealed.

Explanation of Provision

The provision repeals section 864(f), so that taxpayers may not elect to allocate and apportion interest expense on a worldwide basis.

Effective Date

The provision is effective for taxable years beginning after December 31, 2020.

[313] As defined in section 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 (secs. 9672 and 9673 of the subtitle)

Present Law

Tax treatment relating to amounts excluded from income

Exclusions from income

Gross income means all income from whatever source derived.[314] 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,[315] 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.[316] Similarly, income exclusions apply to qualified disaster relief payments and qualified disaster mitigation payments.[317]

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.[318] Similarly, a pro rata limitation on interest deductions applies in the case of a financial institution with tax-exempt interest income.[319] 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).[320]

[314] Sec. 61; *U.S. v. Kirby Lumber Co.*, 284 U.S. 1 (1931).

[315] Sec. 61(a)(11).

[316] Sec. 108(a).

[317] Sec. 139.

[318] 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.

[319] 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)).

[320] 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 all the taxpayer's average unborrowed policy cash values and average adjusted bases of all other assets (sec. 264(f)(1) and (2)).

Reductions in tax attributes.–In the case of discharge of indebtedness income that is excluded from income,[321] rules for reduction of tax attributes apply.[322] 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.[323]

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.[324] 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.[325]

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.[326] 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 basis of the partnership interest, generally measured at the end of the partnership year in which the loss occurs or the deduction arises.[327]

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.[328] The basis in the partnership interest is

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[321] Sec. 108.

[322] Secs. 108(b) and 1017.

[323] 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).

[324] Sec. 265(a)(6).

[325] 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.

[326] Secs. 701 and 702.

[327] Sec. 704(d). Other limitations may apply. See *e.g.*, secs. 465 and 469.

[328] 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

increased by the partner's distributive share of partnership income, including income that is exempt from tax.[329] 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.[330]

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.[331] 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[332]), 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[333] provides that an eligible entity that applies for a specified type of Small Business Act loan[334] may request an advance.[335] The advance generally may not exceed $10,000. The applicant is not required to repay the advance, even if the loan for which the applicant applied is subsequently denied.[336]

The CAA[337] (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.[338] In the case of EIDL funding that is received relating to small business

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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.

[329] Sec. 705(a)(1)(B).

[330] 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)).

[331] Secs. 1363(a) and 1366.

[332] Secs. 1367(a)(1)(A) and 1366(a)(1)(A).

[333] Pub. L. No. 116-136.

[334] 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).

[335] CARES Act sec. 1110(e).

[336] CARES Act sec. 1110(e)(5).

[337] Pub. L. No. 116-260.

[338] 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).

continuity, adaptation, and resiliency,[339] the funding is not included in the income of the person that receives the funding.[340]

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.[341] 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 (or the Secretary's delegate) to prescribe rules for determining a 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 their partnership interests, respectively, is increased.

Reasons for Change

The Committee acknowledges that the on-going COVID-19 pandemic has disrupted business activities and affected the revenues of businesses. This pandemic-related disruption has

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[339] 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 beginning on January 31, 2020 and ending on 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)).

[340] Sec. 278(b) of Division N of the CAA.

[341] Because the exclusion from income is allowed under section 278(b) of Division N of the CAA, and not under Internal Revenue Code section 108, the tax attribute reduction requirements that relate to the income exclusion under section 108 do not apply.

made it difficult for some businesses to pay employees' wages and to pay other costs and obligations of the business. Under these unusual circumstances, the Committee has determined that the benefit of Targeted EIDL Advances and Restaurant Revitalization Grants to recipients should not be reduced by the Federal income tax cost of receiving the Advance or Grant. Consequently, the provision clarifies that the Targeted EIDL Advances and the Restaurant Revitalization Grants made under the provisions of the Coronavirus relief bill are excludable from the income of the recipient, just as rounds of EIDL advances were excludable from the income of the recipient under prior legislation. For the same reason, this provision clarifies that no deduction is denied, no tax attribute is reduced, and no basis increase is denied, by reason of the exclusion of the Targeted EIDL Advance or the Restaurant Revitalization Grant from the recipient's income.

In the case of either a Targeted EIDL Advance or a Restaurant Revitalization Grant received by a partnership or S corporation, the provision includes rules relating to their treatment that are consistent with the purpose not to reduce the benefit of the Advance or Grant. Under these rules a partner or S corporation shareholder increases the basis of the interest in the entity so that otherwise allowable deductions remain allowable. These rules for a recipient that is a partnership or S corporation are at the same time intended to prevent abuse of the exclusion (or related rules for deductions, tax attributes, and basis increases) through the use of passthrough entities. In particular, in the case of a partnership, the rules are intended to prevent creation of disparities between the aggregate basis of partners' interests in the partnership and the aggregate basis of partnership assets.

Explanation of Provision

Tax treatment relating to Targeted EIDL Advances

In connection with the appropriation of additional funds for Targeted EIDL Advances by the House Committee on Small Business,[342] the provision 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 provision 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 provision requires the Secretary (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 provision gives Federal income tax treatment identical to such treatment for EIDL Advances under the CAA.

Tax treatment relating to Restaurant Revitalization Grants

[342] See sec. 6002 of Title VI of the Small Business Committee Print (providing for reconciliation pursuant to S. Con. Res. 5, the Concurrent Resolution on the Budget for Fiscal Year 2021), "Targeted EIDL Advance."

In connection with the establishment of the Restaurant Revitalization Fund and the associated appropriation of funds by the House Committee on Small Business,[343] the provision 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 (or the Secretary's delegate),[344] if the person that receives the amount 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 the determination of the basis of a partner's interest in the partnership and the passthrough of items to an S corporation shareholder. The provision requires the Secretary (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.

[343] See sec. 6003 of Title VI of the Small Business Committee Print (providing for reconciliation pursuant to S. Con. Res. 5, the Concurrent Resolution on the Budget for Fiscal Year 2021), "Support for Restaurants."

[344] The Committee intends that the basis of partnership interests or S corporation stock is to be decreased to the extent an excluded Grant amount is returned under the terms of the Restaurant Revitalization Grant legislative provisions, and directs the Treasury Department to implement this intent in its guidance.

III. VOTES OF THE COMMITTEE

Pursuant to clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of Budget Reconciliation Legislative Recommendations Relating to Promoting Economic Security, on February 11, 2021.

An amendment to the amendment in the nature of a substitute to Subtitle G that would provide a Healthy Workplace Tax Credit - 50% payroll tax credit for COVID employee protection, workplace reconfiguration, and technology expenses was offered by Mr. Rice. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD							
MS. PLASKETT		X					
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment to the amendment in the nature of a substitute to Subtitle G that would create a general business credit for businesses that hire long-term unemployed workers (unemployed for more than 12 weeks): $1,000 credit/hire ($500 for part-time) for any qualifying business, additional $1,000 credit/hire (full-time or part-time) for small businesses with 50 or fewer employees was offered by Mr. Smucker. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD							
MS. PLASKETT		X					
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment to the amendment in the nature of a substitute to Subtitle G that would provide the additional ($1,400 per individual, spouse, and dependent) economic impact payments under the subtitle for workers unemployed due to two Biden executive orders: (1) moratorium on oil and gas leasing on federal lands and waters, and (2) revocation of Keystone XL pipeline permit was offered by Mr. Brady. The amendment was defeated by a vote of 17 yeas to 25 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)			
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT		X					
CHAIRMAN NEAL		X					
TOTALS		25		**TOTALS**	17		

An amendment to the amendment in the nature of a substitute to Subtitle G that would provide a small business tax credit to offset the cost of the federal minimum wage mandate was offered by Mr. Buchanan. The amendment was defeated by a vote of 16 yeas to 25 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)			
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON			
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT		X					
CHAIRMAN NEAL		X					
TOTALS		25		**TOTALS**	16		

An amendment to the amendment in the nature of a substitute to Subtitle G that would expand 529-eligible expenses to books and instructional materials, tutoring expenses, fees for exams related to college admissions, and educational therapy for students with disabilities was offered by Mr. Smith of Missouri. The amendment was defeated by a vote of 17 yeas to 25 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)			
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT		X					
CHAIRMAN NEAL		X					
TOTALS		25		**TOTALS**	17		

An amendment to the amendment in the nature of a substitute to Subtitle G that would create an Increased Child Tax Credit ($2,000 under TCJA) made permanent was offered by Mr. Smith of Missouri. The amendment was defeated by a vote of 17 yeas to 25 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)			
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT		X					
CHAIRMAN NEAL		X					
TOTALS		25		**TOTALS**	17		

An amendment to the amendment in the nature of a substitute to Subtitle G that would require Treasury to establish a program for reviewing EITC and CDCTC claims and inconsistencies was offered by Mr. Schweikert. The amendment was defeated by a vote of 17 yeas to 25 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)			
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT		X					
CHAIRMAN NEAL		X					
TOTALS		25		**TOTALS**	17		

An amendment to the amendment in the nature of a substitute to Subtitle G that would provide the ability for divorced spouses and victims of domestic violence who previously filed taxes on a joint basis to update their tax information for purposes of receiving a recovery rebate was offered by Mr. Reed. The amendment was defeated by a vote of 18 yeas to 23 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT				MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD							
MS. PLASKETT		X					
CHAIRMAN NEAL		X					
TOTALS		23		**TOTALS**	18		

An amendment to the amendment in the nature of a substitute to Subtitle G that would provide for better customer service at the IRS for people who receive erroneous and missing advance payments of a recovery rebate was offered by Mr. Kelly. The amendment was withdrawn.
An amendment to the amendment in the nature of a substitute to Subtitle I that would strike the new universal entitlement and expansions created under the amendment in the nature of a substitute and replace them with more tailored policies to lower health care costs and improve coverage options for Americans was offered by Mr. Nunes. The amendment was withdrawn.

An amendment to the amendment in the nature of a substitute to Subtitle G that would add provisions to the amendment in the nature of a substitute that advance long-term, sustainable solutions to achieve the goal of American medical security and manufacturing dominance was offered by Mr. Rice. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment to the amendment in the nature of a substitute to Subtitle G that would condition eligibility on a demonstration of at least 10 percent reduced income in 2020 as compared to 2019 and would require the use of 2020 tax return information for the advance payment was offered by Mr. Arrington. The amendment was defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment in the nature of a substitute to Subtitle G was agreed to by a voice vote. (with a quorum being present).

Subtitle G was ordered favorably transmitted to the House Committee on the Budget as amended by an amendment in the nature of a substitute offered by Chairman Neal by a vote of 24 yeas to 18 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE	X			MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS	X			MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT							
CHAIRMAN NEAL	X						
TOTALS	24			**TOTALS**		18	

IV. BUDGET EFECTS OF THE SUBTITLE

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the subtitle.

Subtitle G is estimated to decrease Federal fiscal year budget receipts by $603 billion for the period 2021 through 2031.

[Insert A- Revenue Table]

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that subtitle G involves no new or increased budget authority. The Committee further states that the following sections of the subtitle include new tax expenditures: sections 9601 (2021 recovery rebates to individuals), 9611 (Child tax credit improvements for 2021), 9621 (Strengthening the earned income tax credit for individuals with no qualifying children), 9622 (Taxpayer eligible for childless earned income credit in case of qualifying children who fail to meet certain identification requirements), 9623 (Credit allowed in case of certain separated spouses), 9624 (Modification of disqualified investment income test), 9626 (Temporary special rule for determining earned income for purposes of earned income tax credit), 9631 (Refundability and enhancement of child and dependent care tax credit), 9632 (Increase in exclusion for employer-provided dependent care assistance), 9661 (Improving affordability by expanding premium assistance for consumers), 9662 (Temporary modification of limitations on reconciliation of tax credits for coverage under a qualified health plan with advance payments of such credit), 9663 (Application of premium tax credit in case of individuals receiving unemployment compensation during 2021), 9672 (Tax treatment of targeted EIDL advances), and 9673 (Tax treatment of restaurant revitalization grants). These provisions are described in the above table.

C. Cost Estimate Prepared by the Congressional Budget Office

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, please refer to subtitle A for an estimate for the Reconciliation Recommendations of the Committee on Ways and Means as prepared by CBO.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the subtitle contains no measure that authorizes funding, so no statement of general performance goals and objectives is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the subtitle contains a Federal mandate on the private sector with respect to the repeal of worldwide allocation of interest election. The Committee has determined that the subtitle does not impose a Federal intergovernmental mandate on State, local, or tribal governments. Refer to subtitle A for CBO analysis of mandates contained in the Reconciliation Recommendations of the Committee on Ways and Means.

D. Applicability of House Rule XXI, Clause 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that "It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase." The Committee, after careful review, states that the subtitle does not involve any retroactive Federal income tax rate increase within the meaning of the rule.

E. Tax Complexity Analysis

Section 4022(b) of Pub. L. No. 105-266, the Internal Revenue Service Restructuring and Reform Act of 1998 (the "RRA"), requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, for each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided below along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are comments of the IRS and Treasury regarding each provision included in the complexity analysis.

List of Provisions in the Complexity Analysis

1. 2021 recovery rebates to individuals (sec. 9601 of the subtitle)

Summary description of provision

For taxable years beginning in 2021, the provision creates a one-time refundable credit, called a recovery rebate, in the amount of $1,400 ($2,800 in the case of a joint return), plus $1,400 for each dependent of the taxpayer for the taxable year. The rebate is subject to an AGI phaseout. The taxpayer generally must provide an SSN for each individual for whom a refund amount is claimed. The 2021 recovery rebates are similar in many respects to the 2020 recovery rebates and the 2020 additional recovery rebates.

The Secretary is directed to make advance payments of the rebate based on 2019 or 2020 return information. The Secretary may also make payments of the rebate to non-filers based on information available to the Secretary. The Secretary may make an additional round of payments based on newly-filed 2020 income tax returns. Taxpayers must reduce the recovery rebate credit claimed on their 2021 income tax return by any advance payments received, but excess advance payments of the credit are not subject to recapture.

Finally, under the provision, the U.S. Treasury will cover over the costs of the recovery rebates to the territories.

Number of affected taxpayers

It is estimated that the provision will affect approximately 163 million tax returns.

Discussion

The IRS will need to modify forms, instructions, and publications to reflect this one-time refundable credit. The IRS also may need to issue regulations or other guidance to clarify rules regarding eligibility for and the amount of the credit and to provide advance payments to non-filers. The IRS may need to provide a tool for individuals to look up their advance refund amount to reconcile with their 2021 recovery rebate credit.

The IRS will need to create a system to make advance refunds to tax filers and non-filers based on information it has available. This system will require significant programming and other information technology changes. The IRS also will need to generate notices regarding the advance refunds and will need to conduct an outreach campaign regarding the availability of advance refunds.

Taxpayers will need to maintain records of any advance refund amounts received. The advance refunds and reconciliation may result in an increase in disputes with the IRS. The advance payment program and reconciliation may increase tax preparation costs for individuals.

Finally, IRS and Treasury will have to approve plans from the territories and update agreements to make payments to the territories as required under the provision.

2. Child tax credit improvements for 2021 (sec. 9611 of the subtitle)

Summary description of provision

The provision, for taxable years beginning in 2021: (1) makes the child tax credit fully refundable for taxpayers with a principal place of abode in the United States for over one-half of the taxable year; (2) changes the definition of qualifying child to include 17-year old children; and (3) increases the amount of the credit to $3,600 for qualifying children younger than six years old and $3,000 for qualifying children six years old and older, while adding a new phaseout for the amount of the credit increase.

The provision also, for taxable years beginning in 2021, directs the Secretary to establish a program to make advance payments of the child tax credit and requires reconciliation of advance payments on the taxpayer's tax return, subject to a safe harbor amount that phases out with AGI.

Finally, under the provision, the above-described changes to the child tax credit apply to bona fide residents of Puerto Rico for taxable years beginning in 2021, except that such residents are not eligible for the advance payment program.

Number of affected taxpayers

It is estimated that the provision will affect approximately 35 million tax returns.

Discussion

The IRS will need to modify forms, instructions, and publications to reflect the three enumerated temporary changes to the child tax credit described above. The IRS also may need to issue regulations or other guidance to clarify rules regarding eligibility for and the amount of the credit. Taxpayers newly eligible for the child tax credit may have to keep additional records. It is not otherwise anticipated that taxpayers will need to keep additional records due to the changes, or that compliance with the changes will impose any costs on taxpayers. The changes should not result in an increase in disputes with the IRS. In addition, these changes should not increase the tax preparation costs for most individuals.

In order to establish the advance payment program, the IRS will need to modify forms, instructions, and publications. It will also need to create an online portal that allows taxpayers to elect out of the program and allows taxpayers to provide additional information. The IRS will also need to create a notice to send to taxpayers providing the aggregate amount of advance payments. Regulatory guidance may be necessary to provide additional rules for the advance payment program and reconciliation. This program will require significant programming and other information technology changes. Taxpayers will need to maintain records of advance payments received, but will be assisted by receipt of the IRS notice. The advance payments and reconciliation may result in an increase in disputes with the IRS. The advance payment program and reconciliation may also increase tax preparation costs for individuals.

The application of the provision to bona fide residents of Puerto Rico will require the IRS to create new forms, instructions, and publications for these residents to file returns with the United States to claim the child tax credit. Regulatory guidance may be necessary to provide additional rules for these residents. These residents will need to keep additional records to establish eligibility for the child tax credit. There may be additional disputes between these residents and the IRS about eligibility for the child tax credit and calculation of the child tax credit. Finally, these residents will have increased tax preparation costs because they will now have to file tax returns with the IRS.

3. Strengthening the earned income tax credit for individuals with no qualifying children; temporary special rule for determining earned income for purposes of earned income tax credit (secs. 9621 and 9626 of the subtitle)

Summary description of provisions

Section 9621, for taxable years beginning in 2021, makes certain changes to the "childless EITC" to: (1) lower the minimum age to (i) 24 for certain specified students; (ii) 18 for qualified former foster youth and qualified homeless youth; and (iii) 19 in all other cases; (2) remove the maximum age; and (3) increase (i) the credit and phaseout percentages to 15.3 percent, (ii) the earned income amount to $9,820, and (iii) the beginning of the phaseout range to $11,610. The provision directs the Secretary to develop procedures to use information returns under section 6050S to check the status of individuals as specified students.

Section 9626 permits a taxpayer to elect to calculate the taxpayer's EITC for taxable years beginning in 2021 using 2019 rather than 2021 earned income, if the taxpayer's earned income in 2021 is less than in 2019.

Number of affected taxpayers

It is estimated that sections 9621 and 9626 will affect approximately 38 million tax returns.

Discussion

The IRS will need to modify forms, instructions, and publications to reflect the changes to the EITC due to the provisions. It will also need to create new procedures to determine specified student, qualified former foster youth, and qualified homeless youth status. Regulatory or other guidance may be necessary. Taxpayers newly eligible for the "childless EITC" may have to keep records, such as information about self-employment income, necessary for the determination of the EITC. It is not otherwise anticipated that taxpayers will need to keep additional records due to the provisions, or that compliance with the provision will impose new costs on taxpayers. Determination of qualified former foster youth or qualified homeless youth status may result in an increase in disputes with the IRS. Otherwise, the provisions should not result in an increase in disputes with the IRS. In addition, the provision should not increase the tax preparation costs for most individuals.

[insert B - JCT tax complexity analysis]

F. Congressional Earmarks, Limited Tax Benefits and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of subtitle G, and states that the provisions of the subtitle do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the subtitle establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Pub. L. No. 111139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to section 6104 of title 31, United States Code.

H. Hearings

Pursuant to section 3(u) of H. Res. 8 (117th Congress), no legislative hearings were held in the 117th Congress to develop or consider Subtitle G, Budget Reconciliation Legislative Recommendations Relating to Promoting Economic Security, due to the exigent nature of the COVID-19 global pandemic and the need for immediate legislative action.

VI. CHANGES IN EXISTING LAW MADE BY THE SUBTITLE

A. Text of Existing Law Amended or Repealed by The Subtitle

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee requested but did not receive the text of changes in existing law made by the subtitle, as reported.

VII. DISSENTING VIEWS

[Insert C--Dissenting Views]

13-Feb-21 7:52AM

#20-1 012
VERY PRELIMINARY
13-Feb-21

ESTIMATED BUDGETARY EFFECTS OF THE REVENUE PROVISIONS OF THE BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS, AS REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS

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 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 [1]	**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) [1]	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 [1]	tyba 12/31/20	[2]	-12	-2	-1	-1	-1	-2	-2	-2	-2	-2	-16	-26
3. Credit allowed in case of certain separated spouses [1]	tyba 12/31/20	-1	-20	-21	-22	-23	-25	-25	-27	-28	-30	-31	-111	-252
4. Modification of disqualified investment income test [1]	tyba 12/31/20	-24	-330	-198	-200	-225	-229	-238	-233	-231	-240	-251	-1,206	-2,399
5. Application of earned income tax credit in possessions of the United States [1]	DOE	---	-738	-746	-764	-781	-798	-814	-831	-849	-867	-885	-3,828	-8,074
6. Temporary special rule for determining earned income for purposes of earned income tax credit (sunset 12/31/20) [1]	DOE	---	-3,185	---	---	---	---	---	---	---	---	---	-3,185	-3,185
Total of Earned Income Tax Credit		**-546**	**-15,646**	**-967**	**-987**	**-1,030**	**-1,053**	**-1,079**	**-1,093**	**-1,110**	**-1,139**	**-1,169**	**-20,228**	**-25,818**
IV. Dependent Care Assistance														
1. Refundability and enhancement of child and dependent care tax credit (sunset 12/31/21) [1]	tyba 12/31/20	-2,127	-5,837	---	---	---	---	---	---	---	---	---	-7,964	-7,964

Page 2

Provision	Effective	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
2. Increase in exclusion for employer-provided dependent care assistance (sunset 12/31/21) [3]	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) [1]	**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) [1]	**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) [1][4][5]	tyba 12/31/20	-4,137	-22,234	-7,964	-536	23	---	---	---	---	---	---	-34,847	-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 [6]	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 [1][4][7]	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**	---	---	---	---	---	---	**-45,624**	**-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	10,636	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**	**10,636**	**22,331**
NET TOTAL		**-451,481**	**-149,499**	**-7,850**	**40**	**651**	**560**	**972**	**981**	**917**	**824**	**835**	**-607,578**	**-603,049**

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 Neal_012.

Legend for "Effective" column:
apa = amounts paid after
cqba = calendar quarters beginning after
DOE = date of enactment
tyba = taxable years beginning after

[Footnotes for Table 21-1 012 appear on the following page]

Footnotes continued for Table 21-1 012:

[1] Estimates contain the following outlay effects:	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
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
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	---	224	141	143	165	164	162	159	159	165	173	837	1,655
Application of earned income tax credit in possessions of United States	---	738	746	764	781	798	814	831	849	867	885	3,828	8,074
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
Extension and modification of credits for paid sick and family leave (sunset 9/30/21)	3,323	431	---	---	---	---	---	---	---	---	---	3,754	3,754
Extension and modification of the employee retention credit	1,090	878	---	---	---	---	---	---	---	---	---	1,968	1,968
Improving affordability by expanding premium assistance for consumers	2,725	14,306	5,203	450	---	---	---	---	---	---	---	22,684	22,684
Application of premium tax credit in case of individuals receiving unemployment compensation during 2020	1,351	926	149	---	---	---	---	---	---	---	---	2,426	2,426

[2] Loss of less than $500,000.

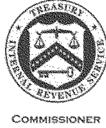
[3] Estimate includes the following budget effects:	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
Total Revenue Effect	-78	-39	---	---	---	---	---	---	---	---	---	-117	-117
On-budget effects	-27	-14	---	---	---	---	---	---	---	---	---	-41	-41
Off-budget effects	-51	-25	---	---	---	---	---	---	---	---	---	-76	-76

[4] Estimate provided by the Joint Committee on Taxation staff in collaboration with the Congressional Budget Office.

[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	-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

[6] The statute applies in the case of any taxable year beginning in 2020, so the sunset only applies to tax year 2020.

[7] 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	-1,767	-257	---	---	---	---	---	---	---	---	-4,755	-4,755
Off-budget effects	107	107	25	---	---	---	---	---	---	---	---	239	239



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

February 12, 2021

Mr. Thomas A. Barthold
Chief of Staff
Joint Committee on Taxation
Washington, D.C. 20515

Dear Mr. Barthold:

I am responding to your letter dated February 11, 2021, in which you requested a complexity analysis related to the Committee Report for "Budget Reconciliation Legislative Recommendations."

Enclosed are the combined comments of the Internal Revenue Service (IRS) and the Treasury Department for inclusion in the complexity analysis in the Committee Report for "Budget Reconciliation Legislative Recommendations."

Our analysis covers the three provisions that you preliminarily identified in your letter: 2021 Recovery Rebates to Individuals, Child Tax Credit, and Earned Income Tax Credit. Please note that for purposes of this complexity analysis, IRS staff assumed timely enactment of this legislation. If legislation is not enacted before the end of the year, there would be complexity for IRS and for taxpayers that is not addressed in this response.

Our comments are based on the description of the provision provided in your letter. This analysis does not include the administrative cost estimates for the changes that would be required. Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provisions.

Sincerely,

Charles P. Rettig

Enclosure

COMPLEXITY ANALYSIS OF BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS

1. 2021 Recovery Rebates to Individuals

For taxable years beginning in 2021, the provision creates a one-time refundable credit, called a recovery rebate, in the amount of $1,400 ($2,800 in the case of a joint return), plus $1,400 for each dependent of the taxpayer for the taxable year. The rebate is subject to an AGI phaseout. The taxpayer generally must provide an SSN for each
individual for whom a refund amount is claimed. The 2021 recovery rebates are similar in many respects to the 2020 recovery rebates and the 2020 additional recovery rebates.

The Secretary is directed to make advance payments of the rebate based on 2019 or 2020 return information by treating taxpayers as having made a payment in the amount of the advance refund amount in either 2019 or 2020. The advance refund amount is computed on the basis of the income tax return filed for 2019 or 2020. The Secretary may also make payments of the rebate to non-filers based on information available to the Secretary. The Secretary may make an additional round of payments based on newly-filed 2020 income tax returns. Taxpayers must reduce the recovery rebate credit claimed on their 2021 income tax return by any advance payments received, but excess advance payments of the credit are not subject to recapture.

Finally, under the provision, the U.S. Treasury will cover over the costs of the recovery rebates to the territories.

IRS and Treasury Comments:

- Publications 17, 5486, and the 2021 Instructions for Forms 1040 and 1040-SR, would be revised to reflect the fully refundable rebate credit.
- Internal Revenue Manuals and employee training would be updated.
- Internal communications would be shared with all employees and external communications with the public would need updating and sharing.
- Programming changes would be required to incorporate the changes into the appropriate processing and compliance systems.
- Programming changes would need to be made to calculate advance payments.
- IRS would be required to issue millions of additional notices.
- The proposed statutory changes would require taxpayers to maintain records of the advance payments received in order to properly reconcile their entitlement to a recovery rebate credit on their 2021 tax return. The proposed statutory changes could lead to additional disputes between taxpayers and the IRS over whether the taxpayers are entitled to receive the credit as an advance payment during 2021 and disputes when offsets are made against the RRC claimed on a filed return that could have been issued as an advance payment.
- Revisions to the applicable lead sheets for Examination use would be needed.
- Plans would need to be written or revised with the Territories to distribute the monies.

2. Child Tax Credit

The provision, for taxable years beginning in 2021: (1) makes the child tax credit fully refundable for taxpayers with a principal place of abode in the United States for over one-half of the taxable year (2) changes the definition of qualifying child to include 17-year old children; and (3) changes the amount of the credit to $3,600 for children younger than 6 and $3,000 for children 6 and older and adds a new phaseout for the amount of the credit increase; (4) directs the Secretary to establish a program to make advance payments of the child tax credit; and (5) requires reconciliation of advance payments on the taxpayer's tax return, subject to a safe harbor amount that is subject to an AGI phaseout.

Additionally, under the provision, the above-described changes to the child tax credit apply to bona fide residents of Puerto Rico for taxable years beginning in 2021, except that such residents are not eligible for the advance payment program. These residents will continue to receive the child tax credit from the U.S. Treasury. For taxable years beginning after 2021, bona fide residents of Puerto Rico may claim the additional child tax credit from the U.S. Treasury under the alternative formula, modified to remove the "3 or more qualifying children" limitation.

Finally, under the provision, the U.S. Treasury will cover over the costs of the child tax credit to the territories of Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa.

IRS and Treasury Comments:

- Schedule 8812 (Form 1040), Publications 972, 4012, 4491 and the Instructions for Forms 1040 and 1040-SR, would be revised to reflect the fully refundable credit and the increased amounts.
- Internal Revenue Manuals and employee training would be updated.
- Internal communications would be shared with all employees and external communications with the public would need updating and sharing.
- IRS would need to update webpages and other publicly available information.
- The statutory language would require the creation of an entirely new process for issuing advance payments to eligible taxpayers and a new portal for taxpayers to provide information and opt out of advance payment program.
- IRS would be required to issue millions of additional notices.
- The statutory language with regard to repayment of excess advance CTC payments requires the development of programming to implement the complex safe harbor rules in connection with the processing of the 2021 return.
- Programming changes would be required to incorporate the changes into the appropriate processing and compliance systems.
- The proposed statutory changes would require taxpayers to maintain records of the advance payments received in order to properly reconcile their entitlement to CTC on their 2021 tax return and could lead to additional disputes between taxpayers and the IRS about the amount of advance payments and offsets when advance payments are not made and the additional CTC is claimed on a filed return.
- Revisions to the applicable lead sheets for Examination use would be needed.
- Plans would need to be written or revised with the Territories to distribute the monies.

3. Earned Income Tax Credit

The provision, for taxable years beginning in 2021, makes certain changes to the "childless EITC" to: (1) lower the minimum age to (i) 24 for certain specified students; (ii) 18 for qualified former foster youth and qualified homeless youth; and (iii) 19 in all other cases; (2) remove the maximum age; and (3) increase (i) the credit percentage to 15.3 percent, (ii) the earned income amount to $9,820, and (ii) the beginning of the phaseout range to $11,610. The provision directs the Secretary to develop procedures to use information returns under section 6050S to check the statute of individuals as specified students.

Finally, 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.

IRS and Treasury Comments:

- The 2021 Instructions for Forms 1040 and 1040-SR, Form 886-H-EIC, Schedule EIC and Publications 596, 596(SP), 962, 3211, 4933, 4935, and Notice 797, would be revised to fully reflect the new law.
- Internal Revenue Manuals and employee training would be updated.
- Internal communications would be shared with all employees and external communications with the public would need updating and sharing.
- IRS would need to update webpages and other publicly available information.

- The proposal could require the IRS to enter into multiple/countless agreements to obtain information about former foster children and qualified homeless youth; and may require programming to accept and integrate that information into processing systems.
- Programming changes would be required to incorporate the changes into the appropriate processing and compliance systems.
- The proposed statutory changes could require additional taxpayer record keeping relative to current law for former foster children, qualified homeless youth and certain students, and could lead to additional disputes between taxpayers and the IRS, especially with regard to these new categories of eligible recipients.
- Revisions to the applicable lead sheets for Examination use would be needed.
- Plans would need to be written or revised with the Territories to distribute the monies.

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

February 16, 2021

MINORITY VIEWS ON SUBTITLE G.
BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO PROMOTING ECONOMIC SECURITY

In light of the new administration's call for unity, it is unfortunate that our colleagues chose to reject Republican input and pursue partisan tax priorities under the guise of COVID-19 response. We should unite around the goals of crushing the virus, reopening Main Street safely, getting unemployed Americans back to work, and targeting aid to American families most in need.

Instead, the Democrats produced legislation that lacks meaningful investment in vaccines or America's medical supply chains, offers nothing to help Main Street reopen, and fails to get unemployed workers off the sidelines. In fact, this legislative package targets small business with an expensive minimum wage mandate, and the new administration has already issued job-crushing edicts. These actions will only deepen and prolong our unemployment crisis.

It should be no surprise that the nonpartisan Congressional Budget Office reported last week that we will not return to our pre-pandemic labor market strength—which was built on Republican tax and regulatory policies—for more than a decade.

This subtitle also contains three provisions expanding the current-law entitlement for the subsidized purchase of private health insurance. Together, these provisions increase the deficit by $45 billion, create a staggering fiscal cliff in 2022, disincentivize work, and most critically, do nothing to lower the cost of health care. The cost of health care and health insurance is an issue that Congress can and should tackle on a bipartisan basis. However, this bill uses the COVID-19 pandemic as a trojan horse to push for an incredibly costly campaign to expand a failed health care law while doing nothing to truly lower the cost of care.

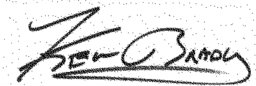
Trying to be constructive, we offered amendments to improve this legislation. At every turn, we were rebuffed by our colleagues on the other side, who defeated our efforts on technicalities or with prearranged party-line votes.

Here are some of the common-sense amendments that were opposed by our colleagues:

- Economic impact payments to families who—through no fault of their own—are losing their livelihoods due to unilateral actions by the Biden administration.
- Aid to small businesses to help them keep their doors open and their employees and customers safe.
- Protection for small businesses and families from Democrats' costly minimum wage mandate, which the Congressional Budget Office says will result in 1.4 million jobs lost.
- Permanent extension of the $2,000 per child tax credit, to prevent it from being slashed in half in coming years.

- Measure to prevent abuse of the new, expanded refundable credits proposed by the Democrats.
- Targeted economic impact payments to families who have experienced real economic harm during the pandemic.
- Incentives for innovative American companies to find and develop cures and therapies to treat and defeat infectious diseases like COVID-19.
- Hiring incentives for employers, and especially small businesses, to bring long-term unemployed Americans back into the workforce.
- Help for businesses that reopen while keeping their workers and customers safe.
- Help for families with the costs of educating their children, in light of school closures and the challenges of remote learning.
- Measures to lower the cost of health care by empowering consumers to save more and shop for services, replacing the Democrats' plan to chase ever-increasing health care costs with ever-increasing subsidies.
- Better customer assistance by the IRS for Americans who are still waiting for their economic impact payments.
- Assistance to victims of domestic violence in accessing their economic impact payments without having to deal directly with their abuser.

In Democrats' rush to spend nearly $2 trillion, they missed a major opportunity to enact bipartisan solutions to help Americans return to work, reopen our economy safely, and ensure that another pandemic never sets our country back like this again.



Kevin Brady
Republican Leader
Committee on Ways and Means

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SUBTITLE H – LEGISLATIVE RECOMENDATIONS RELATED TO PENSIONS

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

Budget Reconciliation Legislative Recommendations Relating to Pensions, the "Butch Lewis Emergency Pension Relief Act of 2021," as ordered transmitted to the Committee on the Budget by the Committee on Ways and Means on February 11, 2021, amends the Internal Revenue Code of 1986 and the Employee Retirement Income Security Income Act to establish a special financial assistance program for financially troubled multiemployer pension plans, and for other purposes.

B. Legislative History

Budget Resolution

On February 5, 2021, the House of Representatives approved Senate Concurrent Resolution 5, setting forth the congressional budget for the United States Government for fiscal year 2021 and setting forth the appropriate budgetary levels for fiscal years 2022 through 2030. Pursuant to section 2002(l) of S. Con. Res. 5, the Committee on Ways and Means was directed to submit to the Committee on the Budget changes in laws within its jurisdiction to increase the deficit by not more than $940,718,000,000 for the period of fiscal years 2021 through 2030.

Committee hearings

In light of the emergency presented by the Covid 19 global pandemic and the need for immediate legislative action, no hearings were held in the 117th Congress prior to consideration of Subtitle H.

Committee action

Beginning on February 10, 2021, in response to its instructions under S. Con. Res. 5, the Committee on Ways and Means met to consider budget reconciliation legislative recommendations. On February 11, 2021, Subtitle H, Legislative Recommendations Relating to Pensions, was ordered favorably transmitted, as amended, to the House Committee on the Budget by a record vote of 25 to 18.

EXPLANATION OF THE SUBTITLE

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 (sec. 9701 of the subtitle, sec. 432 of the Code, and sec. 305 of ERISA)

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.[1] 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,[2] multiemployer defined benefit plans are subject to minimum funding requirements under the Code and the Employee Retirement Income Security Act of 1974 ("ERISA").[3] An excise tax may be imposed on the employers maintaining the plan if the funding requirements are not met.[4] 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).[5]

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

[1] Sec. 414(f) and ERISA section 2(37). All section references herein are to the Internal Revenue Code of 1986, as amended (herein "Code"), unless otherwise stated.

[2] Sec. 414(j).

[3] 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.

[4] Sec. 4971.

[5] 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).[6] 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

[6] Sec. 432(b)(1) and ERISA sec. 305(b)(1).

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).[7]

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.[8] 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.[9] Moreover, 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.[10]

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[7] Sec. 432(b)(2) and ERISA sec. 305(b)(2).

[8] 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.

[9] Sec. 4971(g)(1)(A).

[10] 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).

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.[11]

Reasons for Change

Nearly one-third of multiemployer defined benefit plans are in critical or critical and declining funding status, and approximately another ten percent are in endangered status. Many of these troubled multiemployer plans cover workers who are on the front lines of the COVID-19 public health crisis, such as trucking, food processing, grocery store workers, and others. The economic catastrophe resulting from COVID-19 has exacerbated the multiemployer pension crisis and threatened the hard-earned pensions of workers and retirees. Plans that are in endangered, critical, or critical and declining status are subject to additional funding and other requirements contained in funding improvement and rehabilitation plans.

The Committee believes that providing multiemployer plan sponsors temporary relief from having to update their funding improvement or rehabilitation plan and allowing them to maintain their prior year's funding status will provide them with some flexibility and ease an administrative burden during the economic and financial turmoil resulting from the COVID-19 public health emergency.

Explanation of Provision

Under the provision, 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[12] 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 provision 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 provision 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

[11] 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.

[12] For purposes of sec. 432 and sec. 305 of ERISA.

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 provision is effective on the date of enactment.

B. Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status for 2020 or 2021 (sec. 9702 of the subtitle, sec. 432 of the Code, and sec. 305 of ERISA)

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.

Reasons for Change

Nearly one-third of multiemployer defined benefit plans are in critical or critical and declining funding status, and approximately another ten percent are in endangered status. Many of these troubled multiemployer plans cover workers who are on the front lines of the COVID-19 public health crisis, such as trucking, food processing, grocery store workers, and others. The economic catastrophe resulting from COVID-19 has exacerbated the multiemployer pension crisis and threatened the hard-earned pensions of workers and retirees. Plans that are in endangered, critical, or critical and declining status are subject to additional funding and other requirements contained in funding improvement and rehabilitation plans.

The Committee believes that providing multiemployer plan sponsors in endangered, critical, or critical and declining status the opportunity to extend the plan's funding improvement or rehabilitation period by five years would provide a plan additional time to improve its

contribution rates, limit benefit accruals and maintain plan funding during the economic and financial turmoil resulting from the COVID-19 public health emergency.

Explanation of Provision

Under the provision, 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 provision is effective for plan years beginning after December 31, 2019.

C. Adjustments to Funding Standard Account Rules (sec. 9703 of the subtitle, sec. 431 of the Code, and sec. 304 of ERISA)

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.[13] 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.[14]

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 period applicable to a multiemployer plan for most credits and charges is 15 years.[15] Past

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[13] 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.

[14] Sec. 414(f) and sec. 3(37) of ERISA.

[15] 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.

service liability under the plan is amortized over 15 years;[16] 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.[17] 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")[18] minimum funding rules.[19]

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 permitted under regulations prescribed by the Secretary.[20] 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

[16] 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.

[17] Sec. 431(d)(1) and sec. 304(d)(1) of ERISA.

[18] Pub. L. No. 109-280.

[19] Sec. 431(d)(2) and sec. 304(d)(2) of ERISA.

[20] Sec. 431(c)(2) and sec. 304(c)(2) of ERISA.

percent of the current fair market value of the assets and not more than 120 percent of the current fair market value.[21] 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.[22]

Additional funding rules for plans in endangered or critical status

Under section 432,[23] 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.[24] 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 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.

Reasons for Change

Multiemployer defined benefit plans that incur a funding shortfall as a result of investment losses are generally required to amortize such shortfall over a period of 15 years. Following the financial crisis of 2008, multiemployer plans were allowed to amortize investment losses incurred during 2008 or 2009 over a period of 30 years.

[21] 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.

[22] Sec. 412(d)(1) and sec. 302(d)(1) of ERISA.

[23] Parallel rules apply under ERISA.

[24] Sec. 4971. Special rules apply under section 4971 for multiemployer plans in endangered or critical status.

The Committee believes that as a result of the economic crisis resulting from the COVID-19 pandemic, similar relief should be provided to multiemployer defined benefit plans for plan years ending on or after February 29, 2020.

Explanation of Provision

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.[25]

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 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.

[25] Pursuant to section 4262 of ERISA, as added by Part D of this provision.

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 provision 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 provision.

D. Special Financial Assistance Program for Financially Troubled Multiemployer Plans (sec. 9704 of the subtitle and secs. 4005, 4006, and 4262 of ERISA)

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.[26] 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,[27] multiemployer defined benefit plans are subject to minimum funding requirements under the Code and ERISA.[28] An excise tax may be imposed on the employers maintaining the plan if the funding requirements are not met.[29] 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).[30]

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 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

[26] Sec. 414(f) and ERISA section 2(37).

[27] Sec. 414(j).

[28] 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.

[29] Sec. 4971.

[30] Sec. 4971(g)(1).

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

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).[31] 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, 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

[31] Sec. 432(b)(1) and ERISA sec. 305(b)(1).

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).[32]

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.[33] 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.[34] Moreover, 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.[35]

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.[36]

Anti-cutback exceptions for multiemployer plans

Under the anticutback rules, generally applicable to defined benefit plans, a plan amendment generally may not reduce accrued benefits or reduce or eliminate an optional form of

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[32] Sec. 432(b)(2) and ERISA sec. 305(b)(2).

[33] 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.

[34] Sec. 4971(g)(1)(A).

[35] 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).

[36] 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.

benefit, early retirement benefit, or retirementtype 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[37] or critical and declining status,[38] or is insolvent,[39] 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 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[40] if the plan (1) is in critical status and (2) is projected to become insolvent[41] 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

[37] Sec. 432(b)(2) and sec. 305(b)(2) of ERISA.
[38] Sec. 432(b)(6) and sec. 305(b)(6) of ERISA.
[39] Sec. 418E of ERISA and sec. 4245 of ERISA.
[40] Sec. 432(b)(6) and sec. 305(b)(6) of ERISA.
[41] As defined in sec. 418E and sec. 4245 of ERISA.

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,[42] that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including 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.[43]

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

[42] Established under section 4004 of ERISA.

[43] Thus, other Federal funds, including funds from the PBGC single employer plan program, may not be used for this purpose.

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.

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.[44] 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.[45] 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.

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.

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[44] ERISA secs. 4201-4225.

[45] 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.

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").[46]

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.[47] If a multiemployer plan that 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.

Reasons for Change

About 10 million Americans participate in multiemployer pension plans and about 1.3 million of them are in plans that are quickly running out of money. Approximately 12 percent of multiemployer plans covering over one million workers, retirees, and beneficiaries are projected to become insolvent within the next 20 years, and many of these plans are projected to run out of funds in the next 10 years. Many of these troubled multiemployer plans cover workers who are on the front lines of the COVID-19 public health crisis, such as trucking, food processing, grocery store workers, and others. Even before the pandemic, workers, businesses, and retirees faced a crisis and were in dire need of help. The economic catastrophe resulting from COVID-19 has exacerbated the multiemployer pension crisis and threatened the hard-earned pensions of even more workers and retirees. This threatens to bankrupt the PBGC, impose damaging liabilities on thousands of businesses, and devastate communities across the country.

The Committee believes that implementing a special financial assistance program for the most financially troubled multiemployer plans and increasing PBGC premiums for multiemployer plans will (1) permit these plans to restore their solvency; (2) protect pension benefits of the participants and beneficiaries in these plans; and (3) lessen the financial impact of these plans upon the PBGC's multiemployer plan program.

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[46] 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.

[47] ERISA secs. 4261 and 4281.

The legislation generally would create a special financial assistance program under which cash payments would be made by the PBGC to financially troubled multiemployer pension plans to ensure that such plans can continue paying retirees' benefits.

Explanation of Provision

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[48] 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;[49]
- In any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status,[50] has a modified funded percentage of less than 40 percent,[51] and has a ratio of active to inactive participants which is less than two to three; or
- The plan became insolvent[52] after December 16, 2014, has remained insolvent, and has not been terminated as of the date of enactment of this provision;[53]

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[48] Within the meaning of section 305(b)(6) of ERISA.

[49] Sec. 432(e)(9) and sec. 305(e)(9) of ERISA.

[50] Within the meaning of section 305(b)(2) of ERISA.

[51] 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).

[52] For purposes of section 418E.

[53] Pursuant to section 4041A of ERISA.

Application for special financial assistance

The provision 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[54] 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[55] that exceeds $1,000,000,000 if the special financial assistance is not ordered;
- The plan has implemented benefit suspensions[56] 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 provision 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 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

[54] Sec. 4233 of ERISA.
[55] As defined in sec. 4261 of ERISA.
[56] As described in sec. 432(e)(9) and sec. 305(e)(9) of ERISA.

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[57] 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.

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

[57] Sec. 303(h)(2)(C)(iii) of ERISA disregarding modifications made under clause (iv) of such section.

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,[58] with no reduction in a participant's or beneficiary's accrued benefit as of the date of enactment of this provision, except to the extent of benefit adjustments[59] 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.[60]

Reinstatement of suspended benefits

An eligible multiemployer plan that receives special financial assistance must reinstate any benefits that were suspended61 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.

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;[62]

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[58] The funding projections will be performed on a deterministic basis.
[59] Made in accordance with section 305(e)(8) of ERISA.
[60] Sec. 4022A of ERISA.
[61] Sec. 305(e)(9) or sec. 4245(a) of ERISA.
[62] Sec. 305(e)(8) of ERISA.

- 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 provision 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 provision (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,[63] 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.

Appropriations

The provision 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 provision 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.

Pension Benefit Guaranty Corporation premiums

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[63] As described in sec. 418E and sec. 4245 of ERISA.

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 provision shall be effective on the date of enactment.

E. Extended Amortization for Single Employer Plans (sec. 9705 of the subtitle, sec. 430 of the Code, and sec. 303 of ERISA)

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.[64] The minimum funding rules for single employer defined benefit plans were substantially revised by the Pension Protection Act of 2006 ("PPA").[65]

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"),[66] 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.[67]

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[64] Secs. 412 and 430; secs. 302-303 of 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.

[65] 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.

[66] 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.

[67] 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 of the plan year for which the "at-risk funding target" and "at-risk normal cost" are being determined. Also, all

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).[68] 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.[69] 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") over a seven-year period beginning with the current plan year and using the segment interest rates (discussed below).[70]

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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.

[68] 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.

[69] 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.

[70] 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

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.[71] 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.[72]

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;[73] 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" 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.[74] The Internal Revenue Service ("IRS") publishes the segment rates each month.

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employee compensation exceeding $1 million, extraordinary dividends, or stock redemptions within a certain period of the eligible plan year.

[71] Any amortization base relating to a funding waiver for a previous year is also eliminated.

[72] Sec. 430(h)(2) and ERISA sec. 303(h)(2).

[73] 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.

[74] 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

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"),[75] 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.

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 PBGC.[76] 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

described above) ("monthly yield curve"). If an election to use a monthly yield curve is made, it cannot be revoked without IRS approval.

[75] Pub. L. Nos. 112-141, 113-159 and 114-74.

[76] ERISA sec. 101(f). Annual funding notice requirements, with some differences, apply also to multiemployer and multiple-employer plans.

funding rules) and, in computing benefit liabilities, the interest rates used in computing variable-rate PBGC premiums.[77]

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.

Reasons for Change

As a result of the ongoing pattern of interest rate and market volatility due to the COVID-19 public health emergency, the current law requirement to amortize funding shortfalls over seven years does not provide enough stability and sufficient time over which to pay for long-term liabilities.

The Committee believes that for plan year 2019 or plan year 2020 (at the election of the plan sponsor), all shortfall amortization bases for all plan years preceding such plan year should be reduced to zero. In addition, for all plan years beginning after December 31, 2019 or 2020 (i.e., the plan year the plan sponsor elected), all shortfalls should be amortized over 15 years, rather than seven years.

Explanation of Provision

Under the provision, 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 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

[77] 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.

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 provision is effective for plan years beginning after December 31, 2018.

F. Extension of Pension Funding Stabilization Percentages for Single Employer Plans (sec. 9706 of the subtitle, sec. 430 of the Code, and secs. 101 and 303 of ERISA)

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.[78] For background relating to these rules, see Present Law under section E. above.

Reasons for Change

In 2012, 2014, and 2015, Congress provided for pension interest rate smoothing in order to address concerns that historically low interest rates were creating inflated pension funding obligations, diverting corporate assets away from jobs and business recovery. Under interest rate smoothing, the interest rates used to value pension liabilities must be within 10% of 25-year interest rate averages. The smoothed interest rates would begin phasing out in 2021, with the 10% corridor around the 25-year interest rate averages increasing five percentage points each year until interest rates need only be within 30% of the 25-year averages. Because of this phaseout, smoothing would soon cease to have much effect.

The Committee believes that in order to preserve the stabilizing effects of smoothing, especially in light of the current COVID-19 pandemic, an interest rate corridor should be retained but reduced from a 10% interest rate corridor to 5%, effective in 2020 and the phase-out of the 5% corridor would be delayed until 2026, at which point the corridor would, as under current law, increase by five percentage points each year until it attains 30% in 2030, where it would stay. A 5% floor would be put on the 25-year interest rate averages. This floor would establish stability and predictability on a longer-term basis, so that interest rate variations do not create excessive volatility. In addition, this floor would protect funding rules from the extremes of interest rate movements.

Explanation of Provision

The provision 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 provision, the specified percentage range for a plan year is determined by reference to the calendar year in which the plan year begins as follows:

[78] Secs. 412 and 430; secs. 302-303 of 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.

- 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 provision 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.

Effective Date

The provision applies to plan years beginning after December 31, 2019.

G. Modification of Special Rules for Minimum Funding Standards for Community Newspaper Plans (sec. 9707 of the subtitle, sec. 430 of the Code, and sec. 303 of ERISA)

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.

Special rules for community newspaper plans

Under the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act"), Congress enacted special funding rules that apply to community newspaper plans.[80] 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.[81] 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.[82]

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, over 30 years, rather than over seven years. The shortfall amortization bases determined[83] for all plan years preceding the first plan year to which the election applies (and all related shortfall

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[79] Secs. 412 and 430; secs. 302-303 of 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.

[80] Sec. 430(m), as added by the SECURE Act, Pub. L. No. 116-94, Div. O.

[81] 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 SECURE Act.

[82] The IRS has provided guidance on such elections in Notice 2020-60, 2020-36 I.R.B. 514, August 31, 2020.

[83] Under section 430(c)(3).

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[84] 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;[85]
- 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.

Reasons for Change

The special funding rules enacted under the SECURE Act provided relief to many sponsors of community newspaper pension plans. The Committee believes that this relief should be extended to certain community newspaper pension plans that did not qualify under the eligibility rules in the SECURE Act, and that eligibility for such relief should also be refined to best target the plans most in need of relief.

Explanation of Provision

The provision modifies the eligibility rules that apply to the special rules for minimum funding standards for community newspaper plans. Under the provision, an eligible newspaper

[84] The plan must also be a plan to which section 430(m) applies.

[85] 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).

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 provision 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 provision 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 provision;
- 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 provision 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 provision 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 provision 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 provision applies to plan years ending after December 31, 2017.

H. Cost-of-Living Adjustment Freeze (sec. 9708 of the subtitle and secs. 401(a) and 415 of the Code)

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.[86] The $40,000 amount is adjusted annually for cost-of-living increases in $1,000 increments.[87] 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,[88] 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,[89] 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.[90]

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.[91] For 2021, the limit on annual compensation that may be taken into account is $290,000.

Reasons for Change

The Committee believes it is important to encourage retirement savings by providing favorable tax treatment to qualified retirement plans and participants. However, the Committee also believes that such favorable tax treatment should be limited so as not to disproportionately benefit high-income individuals when compared with middle- and low-income individuals. For this reason, the Committee believes that it is appropriate to freeze the cost-of-living adjustments that apply to certain limits under qualified plans so that such limits are not adjusted for cost-of-living increases in calendar years after 2030.

Explanation of Provision

Under the provision, the $40,000 amount applicable to the contribution limit for defined contribution plans and the $160,000 amount applicable to the maximum annual 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

[86] 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).

[87] Secs. 415(d)(1)(C) and 415(d)(4)(B).

[88] Sec. 415(b)(1).

[89] Secs. 415(d)(1)(A) and 415(d)(4)(A).

[90] 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.

[91] 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. (For 2021, the annual contribution limit for defined contribution plans[92] is $58,000, the limit on the annual benefit under a defined benefit plan[93] is $230,000, and the annual compensation limit[94] is $290,000.)

The modifications to the rules applicable to cost-of-living adjustments under this provision do not apply to a plan maintained pursuant to one or more collective bargaining agreements. In addition, the provision does not change the cost-of-living adjustments that apply to individual retirement accounts,[95] certain deferred compensation plans maintained by state and local governments and tax-exempt organizations,[96] and simplified employee pension ("SEP") plans.[97]

Effective Date

The provision is effective on the date of enactment.

[92] Under sec. 415(c)(1)(A).
[93] Under sec. 415(b)(1)(A).
[94] Under sec. 401(a)(17).
[95] Sec. 408(a). The provision also does not apply to individual retirement annuities under section 408(b).
[96] Sec. 457(b).
[97] Sec. 408(k).

IV. VOTES OF THE COMMITTEE

Pursuant to clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of Budget Reconciliation Legislative Recommendations Relating to Pensions, the "Butch Lewis Emergency Pension Plan Relief Act of 2021," on February 11, 2021.

An amendment to the amendment in the nature of a substitute to Subtitle H that would provide appropriate federal oversight of plans receiving federal assistance under Section 9704 of subtitle H was offered by Mr. Buchanan.

An amendment to the amendment in the nature of a substitute to Subtitle H that would limit assistance to plans that are currently in critical and declining status and to the amount necessary to allow plans to pay at least as much as the PBGC guaranteed benefit through 2051 was offered by Mr. Arrington.

The amendments offered by Mr. Buchannan and Mr Arrington were considered and voted en bloc and were defeated by a vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT				MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS		X		MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT		X					
CHAIRMAN NEAL		X					
TOTALS		24		**TOTALS**	18		

An amendment in the nature of a substitute to Subtitle H was agreed to by a voice vote (with a quorum being present).

Subtitle H was ordered favorably transmitted to the House Committee on the Budget as amended by an amendment in the nature of a substitute offered by Chairman Neal by a vote of 25 yeas to 18 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE	X			MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS	X			MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT	X						
CHAIRMAN NEAL	X						
TOTALS	25					18	

V. BUDGET EFFECTS OF THE SUBTITLE

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the subtitle.

Subtitle H is estimated to increase Federal fiscal year budget receipts by $23.2 billion for the period 2021 through 2031.

[Insert A -Revenue Table]

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that subtitle H involves no new or increased budget authority. The Committee further states that the following sections of the subtitle include new tax expenditures: 9704 (Special Financial Assistance Program for Financially Troubled Multiemployer Plans), 9705 (Extended Amortization for Single Employer Plans), 9706 (Extension of Pension Funding Stabilization Percentages for Single Employer Plans), and 9707 (Modification of Special Rules for Minimum Funding Standards for Community Newspaper Plans).

C. Cost Estimate Prepared by the Congressional Budget Office

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, please refer to Subtitle A for an estimate for the Reconciliation Recommendations of the Committee on Ways and Means as prepared by CBO.

VI. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the subtitle contains no measure that authorizes funding, so no statement of general performance goals and objectives is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that subtitle H contains Federal mandates on the private sector with respect to the cost-of-living adjustment freeze. The Committee has determined that the subtitle does not impose a Federal intergovernmental mandate on State, local, or tribal governments. Refer to subtitle A for CBO analysis of mandates contained in the Reconciliation Recommendations of the Committee on Ways and Means.

D. Applicability of House Rule XXI, Clause 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that "It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase." The Committee, after careful review, states that the subtitle does not involve any retroactive Federal income tax rate increase within the meaning of the rule.

E. Tax Complexity Analysis

Section 4022(b) of Pub. L. No. 105-266, the Internal Revenue Service Restructuring and Reform Act of 1998 (the "RRA"), requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the RRA because the subtitle contains no provision that

amends the Code and has "widespread applicability" to individuals or small businesses within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the subtitle H, and states that the provisions of the subtitle do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the subtitle establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Pub. L. No. 111139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to section 6104 of title 31, United States Code.

H. Hearings

Pursuant to section 3(u) of H.Res. 8 (117th Congress), no legislative hearings were held in the 117th Congress to develop or consider Subtitle H due to the exigent nature of the Covid 19 global pandemic and the need for immediate legislative action.

VII. CHANGES IN EXISTING LAW MADE BY THE SUBTITLE

A. Text of Existing Law Amended or Repealed by the Subtitle

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee requested but did not receive the text of changes in existing law made by the subtitle, as reported.

VIII. DISSENTING VIEWS

[Insert B--Dissenting Views]

ESTIMATED BUDGETARY EFFECTS OF THE REVENUE PROVISIONS OF THE BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS, AS REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS

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 H - PENSIONS														
A. Relief for Multiemployer Pension Plans [1]	various	*Estimate To Be Provided by the Congressional Budget Office*												
B. Relief for Single Employer Pension Plans														
1. Extended amortization for single employer plans [2][3]	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]	pyba 12/31/19	*Estimate Included In Item B.1. Above*												
3. Modification of special rules for minimum funding standards for community newspaper plans [1][2][4]	pyea 12/31/17	25	19	24	27	28	31	33	33	32	30	30	154	311
C. Reconciliation Offsets - Cost of Living Adjustment Freeze [5]	cyba 12/31/30	---	---	---	---	---	---	---	-3	-9	-17	58	---	29
NET TOTAL		**386**	**527**	**850**	**1,218**	**2,363**	**1,709**	**2,852**	**3,264**	**3,500**	**3,359**	**3,156**	**7,053**	**23,181**

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 Neal_014.

Legend for "Effective" column:
cyba = calendar years beginning after
pyba = plan years beginning after
pyea = plan years ending after

[1] Estimate provided by the Congressional Budget Office.

[2] Estimates contain the following outlay effects:	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
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
Modification of special rules for minimum funding standards for community newspaper plans [6]	-7	-7	-11	-15	-18	-21	-24	-27	-30	-32	-35	-79	-227

[3] 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

[Footnotes for Table 21-1 013 continued on the following page]

Footnotes continued for Table 21-1 013:

[4] 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	[7]	-3	-5	61	63
Off-budget effects	2	2	3	3	3	3	3	2	1	1	[7]	14	21
[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	---	---	---	---	---	---	---	-3	-9	-17	58	---	29
On-budget effects	---	---	---	---	---	---	---	-2	-7	-13	38	---	16
Off-budget effects	---	---	---	---	---	---	---	-1	-2	-4	20	---	13

[6] 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.

[7] Gain of less than $500,000.

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

February 16, 2021

**DISSENTING VIEWS ON SUBTITLE H.
BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS
RELATING TO PENSIONS**

We are disappointed that the Democrats opted to include an unprecedented bailout of union- and employer-run pension plans in a legislative package that should be focused on crushing the virus and reopening the economy. The condition of multiemployer pensions is serious, and improving it requires thoughtful consideration and long-term solutions. We should be clear: this taxpayer-funded bailout has nothing to do with COVID-19.

Many multiemployer pensions are in trouble due to unfunded pension promises and decades of mismanagement. The Congressional Research Service reported that that multiemployer pensions were already underfunded by more than $650 billion before the impact of the COVID-19 pandemic. The Democrats' costly bailout sets a dangerous precedent and will exacerbate our future challenges. Though we did not know the total cost when the Committee approved the proposal along party lines, the Congressional Budget Office has since estimated that the bailout will cost $84 billion. That staggering amount is significantly higher than the cost of the partition plan passed by the House twice in 2020, and it will be allocated to a relatively small number of plan participants. According to the Pension Benefit Guarantee Corporation (PBGC), the bailout will benefit only about 2 million of the roughly 11 million participants in multiemployer plans. The $84 billion bailout amount equals more than $35,000 for each participant in a qualifying plan, and $319,000 per active participant in such plans. American taxpayers are being asked to cover promises that pension trustees never should have been allowed to make.

As Republicans emphasized, workers and retirees should not be blamed for the poor, and sometimes corrupt, management of multiemployer pension plans. It is troubling that Democrats would dismiss the opportunity to protect millions of other plan participants by adopting reforms recommended by experts and bipartisan members of Congress who have studied this issue in recent years.

Republicans offered amendments to improve the management and solvency of multiemployer pension plans, including appointing independent trustees, strengthening governance rules, and targeting assistance to plans currently in critical and declining status. Republicans sought to repeal a provision that prohibits PBGC from governance oversight of plans receiving taxpayer assistance and a provision that would allow plan trustees to artificially worsen the financial condition of their plan to qualify for federal assistance. All of these reasonable improvements were rejected by the Democrats.

American workers and families would be better served by pandemic response legislation centered around measures to defeat the virus and get the economy back on track, and by bipartisan, long-term solutions to the significant multiemployer pension challenge.

Kevin Brady
Republican Leader
Committee on Ways and Means

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SUBTITLE I – CHILD CARE FOR WORKERS

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

Subtitle I, "Child Care for Workers" as ordered reported by the Committee on Ways and Means on February 10, 2021, permanently increases annual funding for the Child Care Entitlement to States to $3.55 billion, with $100 million to be provided to tribes and tribal organizations, $75 million to be provided to U.S. Territories, and $3.375 billion allocated among states and the District of Columbia. The Subtitle also waives state matching requirements on funds provided to states in excess of what they would have received under prior law, for fiscal years 2021 and 2022 only.

B. Background and Need for Legislation

As of February 2021, COVID-19 has led to more than 27 million confirmed cases resulting in over 466,000 deaths,[1] with Black, Latino, and Native Americans accounting for a disproportionate number of cases and deaths. Weekly applications for unemployment benefits hit a recorded-history high in March of 2020, continued to climb, and remain at levels never seen before this pandemic.[2] Real Gross Domestic Product declined by 3.5 percent in 2020, the largest drop since 1946.[3] The impact of COVID-19 was disproportionately felt by families with children, who have experienced disproportionate levels of material hardship,[4] and by communities of color, where rates of infection, unemployment, and death were disproportionately high.[5]

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[1] *COVID Data Tracker*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited Feb. 11, 2021).

[2] Unemployment insurance weekly claims data. (n.d.). Retrieved February 12, 2021, from https://oui.doleta.gov/unemploy/claims.asp

[3] Bureau of Economic Analysis. (n.d.). Gross Domestic Product, 4th Quarter and Year 2020 (Advance Estimate). Retrieved February 12, 2021, from https://www.bea.gov/news/2021/gross-domestic-product-4th-quarter-and-year-2020-advance-estimate

[4] Cooney, P., & Shaefer, H. (2021, February). Trends in hardship and mental health in the United States at the end of 2020. Available at https://poverty.umich.edu/files/2021/02/PovertySolutionsMaterialHardshipEndof2020-Feb2021.pdf

[5] Mazure, C. M., PhD. (2020, September 03). Health notes: People of color suffer disproportionate impact of covid-19 pandemic. Retrieved February 12, 2021, from https://medicine.yale.edu/news-article/27086/;

Swagel, P. L. (2020). *Characteristics of People Receiving Regular Unemployment Benefits in July 2020* (USA, Congressional Budget Office). Washington, DC: CBO. Available at https://www.cbo.gov/publication/56447

Pandemic restrictions forced 65 percent of child care providers to operate below 25 percent capacity,[6] stressing their already thin operating budget margins.[7] The public health restrictions associated with the pandemic have caused at least 37 percent of providers to reduce their workforce,[8] which is a rate surpassed only by restaurant and hotel industries.[9] Pandemic child care shortages have, in turn, reduced workforce participation among women who are parents. According to a USA Today analysis, "[t]he number of women with child care-related absences in any month more than doubled from 2019 to 2020. Women accounted for 84 percent of all workers who missed work in the average month last year due to child care issues -- a five-year high."[10]

The Child Care Entitlement to States (CCES), which provides guaranteed annual funding for child care to states, tribes and tribal organizations, and the District of Columbia, has been funded at $2.917 billion per year since 2006. Between 1 and 2 percent of total funding is set aside for tribes and tribal organizations. The remainder is allocated to states and the District of Columbia in two parts. First, each receives a fixed amount equal to the federal funds the state received for welfare-related child care programs in the mid-1990s. Those funds are not subject to maintenance of effort (MOE) or matching requirements. Second, the remainder of funding is allocated to states based on their share of children under age 13. To receive these funds, states must meet a child care MOE requirement and match the federal funds with state dollars at the Federal Medical Assistance Percentage (FMAP) rate.

The federal government administers CCES funds jointly with the Child Care and Development Block Grant (CCDBG), which funds child care through annual appropriations. The combined funding is known as the Child Care and Development Fund (CCDF) and provides a cohesive federal child care program. Eligibility for direct assistance is limited to families with income at or below 85 percent of the state's median income, but funds used to improve child care quality may benefit children of all income levels. In the most recent year for which we have data,

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[6] National Association for the Education of Young Children. (2020). From the Front Lines: The Ongoing Effect of the Pandemic on Child Care. Available at https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDFs/resources/topics/naeyc_coronavirus_ongoingeffectsonchildcare.pdf

[7] Workman, S. (2018, February 14). Where does your child care dollar go? Retrieved February 12, 2021, from https://www.americanprogress.org/issues/early-childhood/reports/2018/02/14/446330/child-care-dollar-go/

[8] National Association for the Education of Young Children. (2020). From the Front Lines: The Ongoing Effect of the Pandemic on Child Care. Available at https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDFs/resources/topics/naeyc_coronavirus_ongoingeffectsonchildcare.pdf

[9] Wire, S. D. (2020, June 08). Child care is still the missing ingredient for a fast economic recovery. Retrieved February 12, 2021, from https://www.latimes.com/politics/story/2020-06-08/lack-of-childcare-options-missing-ingredient-fast-economic-recovery

[10] Wynn, M. (2021, January 29). Child care problems skyrocketed under COVID. Women paid the price. Retrieved February 12, 2021, from https://www.usatoday.com/story/news/investigations/2021/01/29/coronavirus-childcare-burden-fell-womens-shoulders/4279673001/

CCDF served approximately 1.3 million children. Nearly two-thirds of the children served were under age 6. Current CCDF funding is sufficient to serve about 1 in 6 eligible children.

The pandemic has exacerbated existing serious problems with access to affordable, good-quality child care for workers who need it. In 2018, about 51 percent of Americans lived in a child care desert, meaning that their census tract had more than three young children for every one licensed child care slot.[11] In 2016, when unemployment was very low, an estimated 2 million parents were forced to reduce work hours or leave the workforce entirely[12] due to child care barriers. Before the pandemic, the annual economic burden of inadequate child care was approximately $57 billion.[13] For low wage earners, work is impossible without child care subsidies, and difficult even with assistance. Low-wage workers are also more likely to have jobs with unpredictable, variable, or inflexible schedules that require them to work outside of typical business hours, making child care more expensive and harder to obtain.[14]

The child care crisis is not restricted to just the states and District of Columbia. For example, in the Commonwealth of Puerto Rico, the average cost of both infant and toddler child care for a licensed child care facility was 52 percent of total median income for a single parent.[15]

Addressing the child care crisis that has only worsened during the pandemic requires not only an emergency response but an investment in permanent, guaranteed funding so that states can ensure that the industry remains stable. In a letter to Congress after the pandemic began, 41 Chambers of Commerce wrote: "For millions of Americans, returning to work is not just contingent on the lifting of stay-at-home orders and their employer reopening, but on securing care for their children."[16] For the economy to fully recover and remain strong, workers and employers will need more certainty that they will be able to find and purchase child care now and in future years.

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[11] Hamm, K., & Malik, R. (2018, June 12). America's child Care deserts in 2018. Retrieved February 12, 2021, from https://www.americanprogress.org/issues/early-childhood/reports/2018/12/06/461643/americas-child-care-deserts-2018/

[12] Schochet, L., & Malik, R. (2017, September 13). 2 million parents forced to make Career sacrifices due to problems with child care. Retrieved February 12, 2021, from https://www.americanprogress.org/issues/early-childhood/news/2017/09/13/438838/2-million-parents-forced-make-career-sacrifices-due-problems-child-care/

[13] Bishop-Josef, S., PhD, Beakey, C., Watson, S., & Garrett, T. (2019). *Want to Grow the Economy? Fix the Child Care Crisis.* (Rep.). Washington, DC: Council for a Strong America.

[14] Georgetown University Law Center. (2010). Scholarship @ Georgetown law. Retrieved February 12, 2021, from https://scholarship.law.georgetown.edu/flexibility

[15] Child Care Aware. (2020). *2020 Child Care State Fact Sheet Puerto Rico* (Issue brief). Child Care Aware. Available at https://info.childcareaware.org/hubfs/2020%20State%20Fact%20Sheets/PuertoRico-2020StateFactSheet.pdf?

[16] State Chambers of Commerce. Letter to Members of Congress (June 10, 2021). Retrieved February 14, 2021, from https://www.uschamber.com/sites/default/files/200610_childcare_congress.pdf

C. Legislative History

Budget Resolution

On February 5, 2021, the House of Representatives approved Senate Concurrent Resolution 5, setting forth the congressional budget for the United States Government for fiscal year 2021 and setting forth the appropriate budgetary levels for fiscal years 2022 through 2030. Pursuant to section 2002(l) of S. Con. Res. 5, the Committee on Ways and Means was directed to submit to the Committee on the Budget changes in laws within its jurisdiction to increase the deficit by not more than $940,718,000,000 for the period of fiscal years 2021 through 2030.

Committee hearings

In light of the emergency presented by the Covid 19 global pandemic and the need for immediate legislative action, no hearings were held in the 117th Congress prior to consideration of Subtitle I.

Committee action

Beginning on February 10, 2021, in response to its instructions under S. Con. Res. 5, the Committee on Ways and Means met to consider budget reconciliation legislative recommendations. On February 10, 2021, Subtitle I, Legislative Recommendations Relating to Child Care for Workers, was ordered favorably transmitted, as amended, to the House Committee on the Budget by a record vote of 22 to 18.

II. EXPLANATION OF SUBTITLE

A. Subtitle I – Child Care for Workers

Current Law

The Child Care Entitlement to States directly appropriates $2.917 billion to states, tribes and tribal organizations, and the District of Columbia in fiscal year 2021, for the purpose of providing child care assistance to families. Tribes and tribal organizations receive between 1 and 2 percent of total funding. States receive a portion of their funds (roughly $1.2 billion) based on historical allotments and remaining funds based on a formula. To receive their full allotment under the formula, states must meet a child care Maintenance of Effort (MOE) requirement and match these federal funds with state dollars at the Federal Medical Assistance Percentage (FMAP) rate. U.S. Territories are excluded from the CCES.

Reasons for Change

Current funding levels are insufficient to address the child care crisis facing workers and employers, which has been exacerbated by the pandemic. To fully support the economic recovery in the wake of the COVID-19 pandemic, both short-term funding and long-term guarantees are needed to provide confidence to parents and caregivers returning to work, and also to the employers who hire them.

Explanation of Provisions

Section 9801. Child Care Assistance. This section provides additional funding for the Child Care Entitlement to States and makes changes to eligibility and conditions of funding.

Paragraph (a). Appropriation. This section increases annual funding for the Child Care Entitlement to States (CCES) to $3,550,000,000 per year, of which $3,375,000,000 is for the states and the District of Columbia, $100,000,000 is for American Indian tribes and tribal organizations, and $75,000,000 is for U.S. territories.

Paragraph (b). Suspension of State Match Requirement in Fiscal Years 2021 and 2022. This section waives the required state match on funding above $2.917 billion for fiscal year 2021 and fiscal year 2022.

Paragraph (c). Funding for the Territories. This section makes U.S. territories eligible to receive CCES funding, which shall be allotted to them in the same proportions in which they currently receive discretionary child care funds through the Child Care and Development Block Grant, provides for redistribution of unused funds, and exempts funds provided under Section 418 from the overall cap on funding to U.S. Territories. Eligible territories are Commonwealth of Puerto Rico, United States Virgin Islands, Guam, American Samoa, and Commonwealth of the Northern Mariana Islands.

Effective Date

Provisions of this subtitle are effective on enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of Subtitle I, Child Care for Workers, on February 10, 2021.

An amendment to the amendment in the nature of a substitute to Subtitle I that would make waiving the match for the additional childcare dollars conditional on states having a plan to safely re-open schools with in-person learning was offered by Mrs. Walorski. The amendment was defeated by a vote of 18 yeas to 23 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS				MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		23		**TOTALS**	18		

An amendment to the amendment in the nature of a substitute to Subtitle I that would make waiving the match for additional childcare dollars conditional on states submitting a plan within 30 days on how they will make funding available to local childcare providers was offered by Mr. Reed. The amendment was defeated by a vote of 18 yeas to 23 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT		X		MR. BRADY	X		
MR. THOMPSON		X		MR. NUNES	X		
MR. LARSON		X		MR. BUCHANAN	X		
MR. BLUMENAUER		X		MR. SMITH (NE)	X		
MR. KIND		X		MR. REED	X		
MR. PASCRELL		X		MR. KELLY	X		
MR. DAVIS		X		MR. SMITH (MO)	X		
MS. SANCHEZ		X		MR. RICE	X		
MR. HIGGINS		X		MR. SCHWEIKERT	X		
MS. SEWELL		X		MS. WALORSKI	X		
MS. DELBENE		X		MR. LAHOOD (IL)	X		
MS. CHU		X		DR. WENSTRUP	X		
MS. MOORE		X		MR. ARRINGTON	X		
MR. KILDEE		X		DR. FERGUSON	X		
MR. BOYLE		X		MR. ESTES	X		
MR. BEYER		X		MR. SMUCKER	X		
MR. EVANS				MR. HERN	X		
MR. SCHNEIDER		X		MS. MILLER	X		
MR. SUOZZI		X					
MR. PANETTA		X					
MS. MURPHY		X					
MR. GOMEZ		X					
MR. HORSFORD		X					
MS. PLASKETT							
CHAIRMAN NEAL		X					
TOTALS		23		**TOTALS**	18		

An amendment in the nature of a substitute to Subtitle I was agreed to by a voice vote. (with a quorum being present).

Subtitle I was ordered favorably transmitted to the House Committee on the Budget as amended by an amendment in the nature of a substitute offered by Chairman Neal by a roll call vote of 22 yeas to 18 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
MR. DOGGETT	X			MR. BRADY		X	
MR. THOMPSON	X			MR. NUNES		X	
MR. LARSON	X			MR. BUCHANAN		X	
MR. BLUMENAUER	X			MR. SMITH (NE)		X	
MR. KIND	X			MR. REED		X	
MR. PASCRELL	X			MR. KELLY		X	
MR. DAVIS	X			MR. SMITH (MO)		X	
MS. SANCHEZ	X			MR. RICE		X	
MR. HIGGINS	X			MR. SCHWEIKERT		X	
MS. SEWELL	X			MS. WALORSKI		X	
MS. DELBENE	X			MR. LAHOOD (IL)		X	
MS. CHU	X			DR. WENSTRUP		X	
MS. MOORE				MR. ARRINGTON		X	
MR. KILDEE	X			DR. FERGUSON		X	
MR. BOYLE	X			MR. ESTES		X	
MR. BEYER	X			MR. SMUCKER		X	
MR. EVANS				MR. HERN		X	
MR. SCHNEIDER	X			MS. MILLER		X	
MR. SUOZZI	X						
MR. PANETTA	X						
MS. MURPHY	X						
MR. GOMEZ	X						
MR. HORSFORD	X						
MS. PLASKETT							
CHAIRMAN NEAL	X						
TOTALS	22			**TOTALS**		18	

IV. BUDGET EFFECTS OF THE SUBTITLE

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the subtitle, Child Care for Workers, as ordered transmitted. The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO).

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimates of new budget authority, budget outlays, tax expenditures, or revenues contained in the cost estimate prepared by the CBO.

C. Cost Estimate Prepared by the Congressional Budget Office

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, please refer to Subtitle A for an estimate for the Reconciliation Recommendations of the Committee on Ways and Means as prepared by CBO.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of Rule XIII and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee advises that the general performance goal or objective for which this subtitle authorizes funding is to increase access to child care for low-income families in the 50 states, tribal communities, and the U.S. Territories.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the subtitle does not contain Federal mandates on the private sector. The Committee has determined that the subtitle does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of Rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the subtitle, and states that the provisions of the subtitle do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

In compliance with clause 3(c)(5) of Rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the subtitle establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant section 6104 of title 31, United States Code.

F. Hearings

Pursuant to section 3(u) of H.Res. 8 (117th Congress), no legislative hearings were held in the 117th Congress to develop or consider Subtitle I due to the exigent nature of the Covid 19 global pandemic and the need for immediate legislative action.

VI. CHANGES IN EXISTING LAW MADE BY THE SUBTITLE

A. Text of Existing Law Amended or Repealed by The Subtitle

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee requested but did not receive the text of changes in existing law made by the subtitle, as reported.

VII. DISSENTING VIEWS

[Insert A – Dissenting Views]

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

February 16, 2021

DISSENTING VIEWS ON SUBTITLE I.
BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS
RELATING TO CHILD CARE FOR WORKERS

Committee Republicans oppose Subtitle I. In the past, Republicans and Democrats have worked together to increase access to affordable, high quality child care. In the last five years, Congress has doubled funding for the Child Care and Development Block Grant (CCDBG). Last March, Congress took bipartisan action in the CARES Act to provide $3.5 billion in dedicated resources to address child care. Most recently, the bipartisan $900 billion COVID relief package passed in December included another $10 billion in emergency funding to help child care programs and providers safely reopen. All told, in 2020, states received nearly $22 billion in federal funding for child care. In Subtitle I, the Majority proposes to increase mandatory funding for the child care entitlement to states by another $600 million permanently.

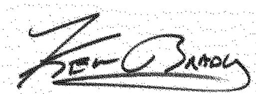
Meanwhile, the Majority at the Committee on Education and Labor simultaneously marked up a COVID-19 reconciliation package that would increase funding for child care by another $39 billion.[33] There does not appear to be a justification for this additional mandatory increase – aside from a false pretense the Majority clung to during the mark-up that these particular dollars would be for families and the other resources for child care providers. This is not true. Resources from CCDBG, of which Committee on Education and Labor has primary jurisdiction, and funds from the child care entitlement to states, of which this Committee has jurisdiction – are combined and operated as a single block grant to states as the Child care and Development Fund. Uses and purposes of funds do not differ – they may go to families or child care providers at the state's discretion. At no point in the mark-up did the Majority speak to the level of funding being considered by the Committee on Education and Labor. Yet, would scold Republicans for opposing the funding considered in Subtitle I.

Committee Republicans offered two amendments to ensure any additional funding for child care is provided with reasonable assurances from states that they would re-open schools and that they would provide a plan for distributing funds to local providers in a timely manner. The first amendment would have made waiving the match for additional child care dollars in FY 2021 and 2022, conditional on states having a plan to safely re-open schools with in-person learning. The re-opening of child care and schools goes hand-in-hand. Schools can return to in-person learning and operate safely with some basic precautions. Just last week, CDC Director Rochelle

[33] Section 2203 provides $14.99 billion for the Child Care and Development Block Grant (CCDBG) and an additional $23.98 billion for child care stabilization in accordance with requirements of CCDBG: https://edlabor.house.gov/imo/media/doc/2021-02-08%20FY21%20Budget%20Reconciliation%20Section%20by%20Section.pdf

Walensky said that "vaccination of teachers is not a prerequisite for safe reopening of schools" and that it is clear "that there is increasing data to suggest that schools can safely reopen."[34]

By re-opening schools, we can start to combat many of the issue's children face with social isolation, loneliness, and anxiety. Access to education is fundamental in allowing children to achieve the American Dream. This amendment would have leveraged additional child care dollars to incentivize states to re-open schools. Democrats falsely claimed the amendment would condition new funding on re-opening schools, in fact the amendment would solely apply as a condition of waiving the state match requirement. The second amendment would have required states to submit a plan within 30 days of enactment on how they will make any supplemental child care money available to local providers in a timely manner, again as a condition of waiving the state match requirement. The amendment would have simply asked states to formally commit to a plan and a timetable to ensure there is an urgency to getting additional money down to local communities. Both amendments were unanimously rejected by Committee Democrats.



Kevin Brady
Republican Leader
Committee on Ways and Means

[34] "CDC Director says it's not necessary for teachers to be vaccinated in order to reopen schools," February 3, 2021, ABC News.

MINORITY VIEWS

Committee approval of this bill is misguided and irresponsible. After more than 700 days of failing to write a budget, Democrats have now moved quickly to adopt a fiscal year (FY) 2021 "shell" budget resolution even though all funding for FY 2021 has been appropriated. They have done so in order to set up a partisan reconciliation process to push through a bill that incentivizes state lockdowns, harms America's working-class, and prioritizes enacting a political agenda over the COVID-19 response. Congress has already enacted almost $4 trillion (including higher interest payments on the debt) in stimulus-related funding. Of this nearly $4 trillion, about $1 trillion remains to be spent. That is why Committee Republicans offered a motion to postpone the markup—to give the Biden Administration ample time to provide a full and transparent accounting of what stimulus funds have been spent, what stimulus funds remain unspent, and a timeline for when the Administration anticipates that the remaining unspent funds will be disbursed.

This bill is harmful to workers and provides inappropriate and unnecessary spending at the expense of working-class Americans, seniors, and small businesses. Only nine percent of the spending in this bill is actually allocated to crushing the COVID-19 virus. For this reason and others, this bill is the wrong plan, at the wrong time, and for all the wrong reasons.

Spending billions of dollars to bailout state and local governments incentivizes the continuation of state and local lockdowns. These lockdowns have caused many hard-working Americans to lose their jobs, forced small businesses to shut down, and kept kids out of school – all of which can have a terrible effect on the financial, physical, and mental health of individuals in a community.

Moreover, the bill chooses a different funding formula than what was used in previous COVID-19 related laws for state and local governments. Previous legislation used a population-based formula, but this bill changes it to be based on both population and unemployment. This formula change punishes states that have actually reopened and let businesses and Americans return to work. Under this new formula, states like Georgia, Virginia, North Carolina, South Carolina, and Florida get billions of dollars less than they would have received under the previous population-based formula.

At a time when President Biden is promulgating executive orders that have destroyed jobs and will increase the cost of living for all Americans, this bill spends $471 billion on policies which will further reduce employment. Expanding unemployment insurance will result in more than half of Americans earning more from this benefit than from actual work. Expanding Obamacare subsidies and establishing a form of universal basic income will reduce the number of hours worked in our economy.

Further, the Congressional Budget Office (CBO), estimates that the $15 Washington Mandate in this bill will destroy 1.4 million jobs (this figure could be as high as 2.7 million jobs), and the removal of the 14(c) wage would limit employment opportunities for disabled workers. Additionally, this bill comes at the wrong time. CBO has already projected that by the middle of this year, our economy will return to a pre-pandemic level of real gross domestic product (GDP),

even without any additional stimulus spending. Furthermore, a prominent Democrat and former senior government official has publicly criticized the timing of this relief bill, suggesting that this proposed stimulus is at least three times the size of the output shortfall. When combined with already enacted legislation, the total COVID-19 stimulus price tag, at almost $6 trillion, would be more than the GDP of every country other than China and the United States.

This bill is being rushed through a partisan process for all the wrong reasons. Less than nine percent of the $1.9 trillion in funding is allocated for combating COVID-19. Among the non-COVID-19-related provisions are an additional $12 billion in foreign aid, on top of the more than $30 billion enacted just last December, and millions of dollars for the National Endowment for the Arts and the National Endowment for the Humanities. Furthermore, while Democrats claim the $130 billion in K-12 public school funding is necessary to expeditiously reopen schools, according to CBO, only five percent of this funding will be spent this fiscal year.

Lastly, under the Statutory Pay-As-You-Go (PAYGO) law, the deficit spending in this bill will cause a dramatic cut to the Medicare program over the next ten years, starting in January 2022. Such a cut poses a direct threat to America's seniors.

Committee Republicans offered 12 motions to instruct to ensure protections for working-class Americans, seniors, families, and combating the COVID-19 virus, including:

A motion offered by Representative Hinson (IA) and Representative Feenstra (IA) to stop the legislation from harming America's working class.

A motion offered by Representative Donalds (FL) and Representative Grothman (WI) to stop the legislation from harming America's seniors and low- and middle-income working-class Americans.

A motion offered by Representative Feenstra (IA) and Representative Boebert (CO) to stop the legislation from using the COVID-19 pandemic to advance a political agenda.

A motion offered by Representative Boebert (CO) and Representative Obernolte (CA) to stop the legislation from rewarding politicians who harm workers, small businesses, and students.

A motion offered by Representative Obernolte (CA) and Representative Good (VA) to stop the legislation from harming rural America.

A motion offered by Ranking Member Smith (MO) and Representative Carter (GA) to stop the Administration from harming union and working-class Americans, to benefit President Biden's campaign supporters.

A motion offered by Representative Grothman (WI) and Representative Donalds (FL) to put American working families' needs, protection, and support ahead of illegal immigrants and globalism.

A motion offered by Representative Jacobs (NY) and Representative Smucker (PA) to stop bailing out states that cannot or will not protect their nursing home residents and staff.

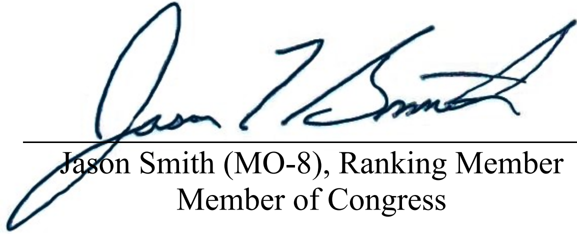
A motion offered by Ranking Member Smith (MO) and Representative Smucker (PA) to protect America's seniors from President Biden's agenda.

A motion offered by Representative Burgess (TX) and Ranking Member Smith (MO) to protect American families from the COVID-19 virus by testing and providing personal protective equipment to illegal immigrants at the southern border as a result of President Biden's border crisis.

A motion offered by Representative Good (VA) and Representative Cline (VA) to support Americans harmed by lockdowns.

A motion offered by Representative Donalds (FL) and Representative Hinson (IA) to put America's children ahead of politicians.

All of these motions were rejected by Committee Democrats. Congress should work in a bipartisan manner to provide relief and support, as needed, to working-class Americans, seniors, and families while combating the COVID-19 virus. This bill is the wrong plan for the American people, it comes at the wrong time, and it's for all the wrong reasons, we urge the House to reject it.



Jason Smith (MO-8), Ranking Member
Member of Congress

Tom McClintock (CA-04)
Member of Congress

Glenn Grothman (WI-06)
Member of Congress

Lloyd Smucker (PA-11)
Member of Congress

Chris Jacobs (NY-27)
Member of Congress

Michael C. Burgess, M.D. (TX-26)
Member of Congress

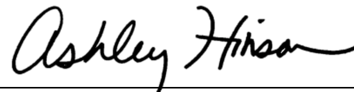
Buddy Carter (GA-01)
Member of Congress

Ben Cline (VA-06)
Member of Congress

Lauren Boebert (CO-03)
Member of Congress

Byron Donalds (FL-19)
Member of Congress

Randy Feenstra (IA-04)
Member of Congress



Ashley Hinson (IA-01)
Member of Congress