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News

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Democrats Unveil COVID-19 Bill Text Ahead of Markup

On Feb. 8, House Ways and Means Committee Chair Richard Neal (D-MA) released text representing its portion of Democrats' $1.9 trillion COVID-19 stimulus legislation, modeled after President Joe Biden's American Rescue Plan.

The legislation includes the following priorities:

- Employee Retention Tax Credit
- $1,400 Economic Impact Payments
- Enhanced Child Tax Credit (CTC), Child and Dependent Care Tax Credit (CDCTC), and Earned income Tax Credit (EITC)
- Expanded sick leave and paid leave credits
- COBRA Subsidies
- Increase in the Premium Tax Credit
- Repeal of election to allocate interest on a worldwide basis

A minimum wage increase is included in the Education and Labor Committee's section of the bill. The provision would gradually increase the minimum wage by 2025. It is unclear whether it will be able to survive procedural tests in the Senate.

The Ways and Means Committee began marking up the legislation today, and it is expected to last through Friday although the Republicans have said they do not intend to offer so many amendments that it consumes all of that time. The committee will only meet and conduct business during regular hours—ending each day at 6 p.m.

Once markups are complete, the House Budget Committee will combine the bills for a final vote. House Majority Leader Steny Hoyer (D-MD) said the House is aiming to pass the measure during the week of Feb. 22, so the Senate can vote on the measure before extended unemployment benefits expire on March 14.

On the Senate side, a markup of the bills is not expected due to the impeachment trial. The bills will instead receive a floor vote.

Congressional leaders kicked off the weeks-long budget reconciliation process last Monday when

H.Con.Res. 11 and S.Con.Res. 5 were introduced in the House and Senate, respectively. The resolutions issued instructions to House and Senate committees responsible for drafting components of Biden's ARP. They also establish spending, revenue and deficit targets for fiscal year 2021 through fiscal year 2030. On Feb. 3, the House adopted H.Con.Res. 11 by a vote of 218 to 212. The Senate similarly approved its budget resolution 51-50.

Below are five key takeaways from this bill:

1. **Have a Child in 2021.** The bill provides several benefits for households with children in 2021, including an increase in the Child Tax Credit to $3,600 for children under the age of 6 and to $3,600 to children ages 6 to 17. When combined with $1,400 Economic Impact Payments per dependent, taxpayers could receive up to $5,000 per child. Additionally,

for working families with child care expenses, the bill increases the Child and Dependent Care Tax Credit, allowing for a 20% to 50% credit on $8,000 to $16,000 of qualifying child care expenses. The credit begins to phase out at $125,000 and is eliminated for Adjusted Gross Incomes (AGI) of $500,000 and over. Therefore, low- and middle-income working families could receive up to $9,000 in credits per child—about 75% of the average national cost of child care.

The bill also provides for advance payments of the CTC starting on July 1. Monthly payments can be no more than 1/12 of the total value of the credit and families may opt-out. The bill leaves it at the discretion of the secretary of the Treasury to determine whether a monthly credit is feasible, or whether less frequent payments might be more practical. It is unclear whether advance payments will survive the Senate Byrd Rule.

2. **Many Americans Will See a Major Tax Cut.** If the bill is enacted without significant changes to the Economic Impact Payment amount of $1,400 and other refundable tax credits, it will implement a large tax cut for low- and middle-income taxpayers. Married taxpayers with AGIs less than $150,000 and individuals with AGIs less than $75,000 will largely have no income tax obligation.

   For example, a family of four (a couple that is married filing jointly and two children ages 2 and 5) with AGI of $100,000 would receive $5,600 in economic impact payments, $7,200 in CTC. Assuming at least $16,000 in child care expenses, the taxpayer could receive up to an $8,000 credit. This totals about $20,800 in credits and rebates. This is before calculating additional benefits that taxpayers might now be entitled to, such as the Premium Tax Credit.

3. **Where There Is a Will, There Is a Way.** While Democrats wanted to extend the Employee Retention Tax Credit and the Families First Coronavirus Response Act's (FFCRA) sick and paid leave tax credits, both were previously structured as payroll taxes creditable against OASDI. As such, these credits flow to employers principally by allowing businesses to withhold Social Security taxes rather than making payments to the IRS. However, the Byrd Rule, which governs budget reconciliation legislation in the Senate, prohibits the inclusion of any provision that impacts Social Security. To circumvent a Byrd Rule challenge, drafters no longer allow taxpayers to credit wages for all three provisions against the 6.2% OASDI, instead only including a credit against the Medicare Hospital Insurance Tax of 1.45%. For most companies, it will take much longer to monetize the credit. Instead of simply withholding taxes, most businesses will have to file Form 7200 to receive payment since the amount of the credit will be more than the federal employment taxes the employer owes. It is unclear whether the Treasury Department will release guidance allowing a credit against income tax withholding.

4. **Surprise!** At the very end of the Ways and Means section is a provision repealing the U.S. affiliated group election for the allocation of interest expenses on a worldwide basis for 2021 onwards. The provision raises $22 billion over 10 years, according to the Joint Committee on Taxation, though the provision never actually took effect, despite being passed in 2004. The offset is needed to cover the cost of the out-years under various tax provisions included in the reconciliation bill—mostly permanent earned income tax credit provisions.

5. **Health Care Is Important During a Pandemic.** In addition to direct relief for individuals, Democrats prioritize providing or subsidizing various support systems for individuals as well. The bill would bolster the availability of Premium Tax Credits (PTC) for lower- and middle-income individuals, reducing premiums significantly. Specifically, it would expand the availability of the PTC to individuals with AGIs above 400% of the federal poverty level. It also eliminates the income cap on for PTC eligibility. As long as premiums exceed 8.5% of household income, individuals could qualify for the PTC.

   The bill would also subsidize up to 85% of the cost of COBRA premiums for workers who have lost a job or have lost health insurance due to a reduction in hours.

Below is a summary of the bill's provisions:

<u>Subtitle A – Budget Reconciliation Legislative Recommendations Relating to Crisis Support for Unemployed Workers</u>

PART 1—EXTENSION OF CARES ACT UNEMPLOYMENT PROVISIONS

- **Section 9011. Extension of Pandemic Unemployment Assistance.**
- Extends the Pandemic Unemployment Assistance (PUA) program, from March 14, 2021, to Aug. 29, 2021, and increases the total number of weeks the benefit is available to individuals from 50 weeks to 74 weeks. This section will apply as if included in the enactment of the CARES Act (P.L. 116-136).
- PUA provides state unemployment benefits to individuals who do not traditionally qualify. For example, self-employed individuals and gig economy workers will benefit from this extension.
- Provides administrative guidance to the states on coordinating with other unemployment benefits.
- **<u>Impact</u>:** Allows for the payment of Unemployment Insurance (UI) benefits to those not traditionally eligible for UI, who are unable to work, partially unemployed or unemployed as a direct result of the coronavirus public health emergency. The extension through Aug. 29 should cover individuals until vaccinations ramp up and businesses are able to reopen.

Section 9012. Extension of Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations.

- Provides payments to states to reimburse nonprofits, government agencies and Indian tribes for 75% of the costs they incur from March 13 through Oct. 3 to pay unemployment benefits.
- **<u>Impact</u>:** Provides monies to states for claims made by those who are employed by nonprofits, government agencies and Indian tribes

Section 9013. Extension of Federal Pandemic Unemployment Compensation.

- Extends both the FPUC payments through Aug. 29, 2021, and increases the amount from $300 to $400 between March 14 and Aug. 29.
- Clarifies that FPUC and Mixed Earner Unemployment Compensation are disregarded for the purposes of determining Medicaid and Children's Health Insurance Program eligibility.
- **<u>Impact</u>:** The CARES Act provided $600 FPUC payments to supplement traditional state UI benefits through July 31, 2020. The Consolidated Appropriations Act provided $300 payment from Dec. 26, 2020, through March 14. This provision will increase the FPUC amount by a $100 and extend it through Aug. 29.

Section 9014. Extension of Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week.

- Provides full funding to pay the cost of the first week of unemployment benefits from Dec. 26, 2020, through Aug. 29 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive unemployment benefits.
- **<u>Impact</u>:** The Consolidated Appropriations Act only funded this benefit at 50%. This provision would restore full funding to waive the waiting week, allowing states to provide benefits more rapidly.

Section 9015. Extension of Emergency State Staffing Flexibility.

- Provides states with limited flexibility to hire temporary staff, rehire former staff or take other steps to quickly process unemployment claims through Aug. 29, 2021.

- **Impact:** Provides states with staffing to process claims.

Section 9016. Extension of Pandemic Emergency Unemployment Compensation.

- Increases the number of weeks of benefits an individual worker may receive in the PEUC program from 24 to 48, to help those who remain unemployed after exhausting their state unemployment benefits.
- These benefits are paid before permanent extended benefits, according to the rules for the order in which various types of unemployment benefits should be paid.
- The provision is extended through Aug. 29, 2021.
- **Impact:** Provides additional monies for those who are most displaced from pandemic.

Section 9017. Extension of Temporary Financing of Short-Time Compensation Payments in States with Programs in Law.

- Provides full federal financing through Aug. 29 to support existing state "short-time compensation" programs, where employers reduce employee's hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit.
- The benefit amount is equal to the weekly amount authorized under state law plus an additional $400 in FPUC payments.
- **Impact:** Provides "bridge" compensation for employees where employers keep employees on payroll but reduce their hours.

Section 9018. Extension of Temporary Financing of Short-Time Compensation Agreements for States without Programs in Law.

- Provides funding to support states that begin a "short-time compensation" program by providing 50% of the costs a state incurs in providing short-time compensation through Aug. 29.
- **Impact:** Encourages states to offer programs that provide "bridge" compensation for employees where employers keep employees on payroll but reduce their hours

PART 2—EXTENSION OF FFCRA UNEMPLOYMENT PROVISIONS

Section 9021. Extension of Temporary Assistance for States with Advances.

- Families First Coronavirus Response Act (FFCRA) provided states with interest-free loans to assist with the payment of unemployment compensation benefits through Dec. 31, 2020. The Consolidated Appropriations Act extended this provision through March 14. This provision provides a further extension through Aug. 29.
- **Impact:** Given that unemployment numbers are expected to remain high through the end of 2021, this provides states with additional resources to help pay unemployment compensation benefits to those who have been furloughed or laid off due to COVID-19.

Section 9022. Extension of Full Federal Funding of Extended Unemployment Compensation.

- The FFCRA increased federal reimbursement for extended unemployment compensation from 50% to 100% for states that experience a 10% or higher unemployment rate compared to the previous year and comply with other beneficiary access requirements through Dec. 31, 2020. The Consolidated Appropriations Act extended this provision through March 14. This provision provides a further extension through Aug. 29.

- **Impact:** Given that unemployment numbers are expected to remain high through the end of 2021, this provides states experiencing particularly high unemployment rates with additional resources to help pay benefits to those who have been furloughed or laid off due to COVID-19.

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

Section 9031. Department of Labor Funding.

- Provides $8 million in funding to the Department of Labor's Employment and Training Administration for costs related to day-to-day administration of unemployment insurance, including the temporary pandemic programs.
- **Impact:** Funding for administrative functions to ensure proper program implementation.

Section 9032. Fund for Fraud Prevention, Equitable Access, and Timely Payment to Eligible Workers.

- Provides $2 billion to the Department of Labor to support program integrity and timely and equitable access to benefits.
- **Impact:** Ensure proper and equitable program implementation.

Subtitle C – Emergency Assistance to Children and Families

Section 9201. Pandemic Emergency Fund.

- This provision establishes a Pandemic Emergency Fund within Section 403 of the Social Security Act, into which it deposits $1 billion, and provides rules for how funds may be used.
- Two million dollars of the funding is to be reserved for administrative assistance and the provision of technical assistance to states, territories and Indian tribes.
- The remainder of the funding is to be allocated as follows:
- 92.5% of funds are to be distributed to the states and D.C. through an allotment formula that is 50% based on the population of children in the state and 50% based on prior state expenditures on direct cash assistance and non-recurrent short-term benefits to low-income families with children; and
- 7.5% of funds are to be set aside for tribal Temporary Assistance for Needy Families (TANF) programs and all five U.S. territories, to be distributed in a manner deemed appropriate by the HHS secretary.
- To receive the full amount of funding, recipients must inform HHS whether they intend to use all of their allotted funds within 45 or 90 days of enactment, dependent on whether the recipient is a state or a territory or tribe. The HHS secretary is required to reallocate unspent funds among states, tribes and territories willing to use them in the same proportions as provided by the original funding.
- No more than 15% of the fund dollars may be spent on administrative costs, and the remainder may only be spent on nonrecurring short-term cash and other nonrecurring short-term benefits.
- Funds may not supplant other federal, state or tribal funds, and funds must be spent by the end of FY 2022.
- States are required to submit an expenditure report within 90 days after expenditure of funds, and territories and tribes must submit a report within 120 days after expenditure, and the HHS secretary is granted the authority to collect and adjust expenditure data. Funds are exempted from the overall cap on funding to U.S. territories in Sec. 1108 of the Social Security Act.
- The HHS secretary is directed to implement the Pandemic Emergency Assistance Fund as soon as practicable,

pursuant to appropriate guidance to states.

- **Impact:** This section provides $1 billion in additional funding to states, territories and tribes for expenditures on nonrecurring, short-term benefits under the TANF program. These are benefits that are designed to deal with a specific crisis situation or episode of need; are not intended to meet recurrent or ongoing needs; and will not extend beyond four months. Examples include utilities and energy assistance, housing assistance, job support and readiness, child care, family support services and educational assistance, among others.

Subtitle F – Preserving Health Benefits for Workers

Section 9500. Short title.

- This section provides a short title of the "Worker Health Coverage Protection Act."
- **Impact:** Provides the short title.

Section 9501. Preserving Health Benefits for Workers.

- Provides premium assistance coverage under a group health plan from the first of the month after enactment through Sept. 30, 2021, for eligible individuals who pay 15% of their premium. Premium assistance provided is excludible from the gross income of the individual.
- Permits a group health plan to provide a special plan enrollment option to premium assistance-eligible individuals to allow them to change coverage options under the plan ***in conjunction*** with electing COBRA ("Act") requirements. The assistance eligible individual may elect to enroll in different coverage within 90 days of the date of notice of the enrollment option. The different coverage may not include: (i) a coverage option that provides only accepted benefits; (ii) a qualified small employer health reimbursement arrangement; or (iii) a flexible spending arrangement.
- A premium assistance-eligible individual must notify the group health plan providing the COBRA continuation coverage if they cease to be eligible for the benefit.
- A special election period is provided for a qualified beneficiary who either (i) 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 Act but who would be an assistance-eligible individual were such an election in effect; or (ii) 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 enactment of the Act and ends 60 days after the date on which notice if provided to the individual regarding the availability of premium assistance.
- Provides for 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 of the Treasury Department), for an individual's request for review of a denial of treatment as an assistance eligible individual by a group health plan.
- A refundable payroll tax credit is provided to reimburse employers and plans that paid the subsidized portion of the premium to COBRA assistance-eligible individuals.
- **Impact:** This provides a retroactive, subsidized COBRA option for individuals who have lost group health plan coverage, such that those individuals pay only 15% of the premium. Employers providing group health coverage must give notice of the eligibility of such premium assistance and will receive a refundable payroll tax credit for the subsidized portion of the premium.

Section 9502. Implementation Funding.

- Provides $10 million for the Department of Labor for implementation funding.

- **<u>Impact</u>:** Provides implementation funding for the Department of Labor.

Section 9601. 2021 Recovery Rebates to Individuals.

- Provides a one-time $1,400 payment to individuals ($2,800 for joint filers) and begins to phase out the amount of payment when the adjusted gross income exceeds $75,000 and $150,000, respectively. Taxpayers are eligible for an additional $1,400 per dependent, which includes both children and non-child dependents.
- A mixed-status household, where at least one spouse has a valid Social Security Number (SSN), will be eligible for a $1,400 payment, rather than the $2,800. A dependent will not be accounted for unless the taxpayer files their return with a valid SSN.
- A valid identification number includes the adoption taxpayer identification number of a qualifying child.
- Amounts are based on taxpayers' 2019 tax return unless the taxpayer filed their 2020 tax return.
- **<u>Impact</u>:** Provides immediate cash relief for working-class Americans and expands eligibility so that more families get access to this relief.

PART 2—CHILD TAX CREDIT

Section 9611. Child Tax Credit improvements for 2021.

- Makes the CTC fully refundable for 2021 and increases the amount to $3,000 per child, for children ages 6 to 17. The credit amount increases to $3,600 for a child under age 6.
- The additional credit for 2021 ($1,000 or $1,600) is reduced by $50 for each $1,000 in additional earnings by which the taxpayer's Adjusted Gross Income (AGI) exceeds the applicable threshold amount.
- Applicable threshold amounts are:
- $150,000 for joint filers
- $112,500 for head of household filers
- $ 75,000 for all other filers
- Once the excess credit amount is so reduced, the credit plateaus at $2,000, and then phases out at the present law levels established in the Tax Cuts and Jobs Act—($400,000 for joint filers, $200,000 for other filers).
- Establishes a program for making monthly advance payments of the tax credit that is equal to 1/12 of the annual advance amount for the taxpayer. Up to half of the credit may be advanced, but such payments do not begin until July 1.
- The payments are intended to be delivered on a monthly basis, but if the Treasury Department secretary determines that this is not possible, then the payments shall be made as frequently as is feasible.
- Advance payment of the credit is based on 2019 or 2020 tax return information.
- Advance payments are not mandatory. Taxpayers will be able to opt out using an online portal that will also capture taxpayer information regarding changes in income, marital status and number of qualifying children for purposes of determining each taxpayer's maximum eligible credit.
- **<u>Impact</u>:** Significantly increases the amount of the credit—when combined with economic impact payments, families could receive anywhere between $4,400 to $5,000 per child.

Section 9612. Application of Child Tax Credit in Territories.

- Directs the Treasury Department to fund "mirror code" territories for the cost of its CTC.
- Puerto Rico, which does not have a mirror code, will receive the refundable credit by having its residents file for the CTC directly with the IRS, as they do currently for those residents of Puerto Rico with three or more children.
- For American Samoa, which does not have a mirror code, the Treasury Department is instructed to make payments in an amount estimated by the Treasury Department as being equal to the aggregate number of benefits that would have been provided if American Samoa had a mirror code in place.
- **Impact:** Provides the increased credit for families living in the territories.

PART 3—EARNED INCOME TAX CREDIT

Section 9621. Strengthening the Earned Income Tax Credit for Individuals with No Qualifying Children.

- For taxable years beginning in 2021, lowers the minimum age for taxpayers with no qualifying children from 25 to 19 and to 24 for specified students and 18 for qualified former foster youth or qualified homeless youth.
- Instructs the Department of the Treasury to implement procedures to use returns relating to higher education tuition to check the status of qualifying students.
- Increases the credit and phaseout percentage from 7.65% to 15.3%.
- Raises the earned income amount from $4,220 to $9,820 and the phaseout amount from $5,280 to $11,610 for individuals without qualifying children.
- **Impact:** Expands the number of individuals able to receive the credit by lowering the age requirements and increases the amount of earned income before phaseout begins.

Section 9622. Taxpayer Eligible for Childless Earned Income Credit in Case of Qualifying Children Who Fail to Meet Certain Identification Requirements.

- Taxpayers with qualifying children who do not provide the Taxpayer Identification Number (TIN) of such children are eligible to receive the childless EITC.
- Applies to tax years beginning after Dec. 31, 2020.
- **Impact:** Permanently expands the childless EITC to individuals with qualifying children who do not provide identification for their children.

Section 9623. Credit Allowed in Case of Certain Separated Spouses.

- Individuals shall not be treated as married if they (1) are married and do not file a joint return, live with a qualifying child for more than six months and did not have the same principal place of abode as their spouse during the preceding six months or (2) has an agreement with the spouse and is not a member of the same household by the end of the taxable year.
- Applies to tax years beginning after Dec. 31, 2020.
- **Impact:** Expands eligibility for certain individuals who are otherwise married.

Section 9624. Modification of Disqualified Investment Income Test.

- Increases the amount of disqualified investment income from $2,200 to $10,000 per year.
- Allows for inflation adjustment beginning in 2021 and thereafter for the full dollar amount of earned income and phaseout amounts and excessive investment income.
- Applies to tax years beginning after Dec. 31, 2020.
- **Impact:** Raises and adjusts for inflation disqualified investment income.

Section 9625. Application of Earned Income Tax Credit in Possessions of the United States.

- Directs the secretary of the Treasury Department to make payments to Puerto Rico equal to the specified matching amount for calendar year 2021 and beyond. The specified matching amount is the lesser of (1) the excess of the cost to Puerto Rico of the EITC over the base amount ($200 million) for such calendar year or (2) three times the base amount for such calendar year.
- For calendar years 2021 through 2025, the Treasury Department secretary is directed to also provide Puerto Rico the lesser of $1 million or its expenditures for education efforts vis-à-vis the EITC.
- For calendar years after 2021, the base amount shall be adjusted for inflation.
- Directs the Treasury Department secretary to withhold such payments from Puerto Rico for years in which it does not have an EITC that is not designed to substantially increase workforce participation.
- For calendar years 2021 and thereafter, the Treasury Department secretary shall make payments to the Virgin Islands, Guam and the Northern Mariana Islands equal to (1) 100% of the cost of the EITC and, (2) for calendar years 2021 through 2025, the lesser of $50,000 and the expenditures for education efforts vis-à-vis the EITC.
- For calendar years 2021 and thereafter, the Treasury Department Secretary shall make payments to American Samoa equal to (1) the lesser of $16 million or 100% of the cost of EITC plus, (2) for calendar years 2021 through 2025, the lesser of $50,000 and the expenditures for education efforts vis-à-vis the EITC. For calendar years after 2021, the base amount shall be adjusted for inflation. Directs the Treasury Department secretary to withhold such payments from American Samoa for years in which it does not have an EITC that is not designed to substantially increase workforce participation.
- **Impact:** Expands the EITC to U.S. possessions.

Section 9626. Temporary Special Rule for Determining Earned Income for Purposes of Earned Income Tax Credit.

- If a taxpayer’s earned income in 2021 is less than 2019, the taxpayer can substitute their 2019 earned income for their 2021 earned income for EITC purposes.
- For joint returns, the earned income of the taxpayer for 2019 shall be the sum of the earned income for each spouse for that year.
- Directs the secretary of the Treasury Department to make payments to U.S. possessions equal to the loss for applying this section. For U.S. possessions without mirror code systems, the Treasury Department secretary shall pay an amount equal to the aggregate benefits that would have been provided under this section had such a code been in effect.
- **Impact:** Allows taxpayers to substitute their 2019 earned income for their 2021 earned income if the former is a greater amount.

PART 4—DEPENDENT CARE ASSISTANCE

Section 9631. Refundability and Enhancement of Child and Dependent Care Tax Credit.

- Currently, the CDCTC provides a credit worth between 20% and 35% of child care costs for a child under age 13 or any dependent physically or mentally incapable of self-care. Qualifying child care expenses are limited to $3,000 for one child and $6,000 for two or more children. The credit begins to phase out at Adjusted Gross Income (AGI) over $15,000 and the credit percentage is reduced to 20% for AGIs $43,000 and over. The maximum credit value is $2,100 and it is not refundable.
- This provision makes the CDCTC fully refundable and increases the credit rate to 20% to 50%. The phaseout threshold is increased to $125,000 and taxpayers with AGIs over $500,000 do not receive the credit. The amount of qualifying child care expenses are increased to $8,000 for one child and $16,000 for two or more children.
- Provides for a reimbursement of mirror code territories for the costs of this refundable credit in 2021. Additionally, for non-mirror code territories (Puerto Rico and American Samoa), provides a reimbursement for the aggregate value of such a credit, provided the territory develops a plan, approved by the Treasury Department secretary, to distribute these amounts to its residents.
- **Impact:** Updates the CDCTC to reflect the true cost of child care by taking the maximum value of the credit from $2,100 to $8,000, and allows more taxpayers to qualify for the full credit.

Section 9632. Increase in Exclusion for Employer Provided Dependent Care Assistance.

- Dependent Care Assistance Programs currently allow taxpayers to set aside pre-tax money for eligible dependent care expenses, such as child care.
- This provision increases the current exclusion for employer-provided dependent care assistance from $5,000 to $10,500 for married couples in 2021.
- **Impact:** Increases the dependent care assistant exclusion to better reflect the cost of child care.

Subtitle G, Part 5 – Credits for Paid Sick and Family Leave

- **Section 9641. Extension of Credits.**
- Extends the FFCRA employer tax credits for paid sick and paid family leave from March 31 until Sept. 30, 2021.
- **Impact:** Extends the FFCRA employer tax credits for six months.

Section 9642. Increase in Limitations on Credits for Paid Family Leave.

- Increases the amount of qualified family leave wages that an employer may claim for the tax credit from $10,000 to $12,000. It also increases the number of days for which self-employed individuals may claim the tax credit from 50 to 60 days.
- **Impact:** Expands the FFCRA paid family leave wage amounts and increases the number of days for self-employed individuals.

Section 9643. Expansion of Leave to which Paid Family Leave Credits Applies.

- Allows employers to claim a tax credit for paid family leave provided for reasons under the previous employer mandate for paid leave.

- **<u>Impact</u>:** Employers may claim a tax credit for paid family leave provided if the employee had contracted COVID-19 or was caring for someone with COVID-19.

Section 9644. Paid Leave Credits Allowed for Leave for COVID-19 Vaccination.

- Expands the paid sick and paid family leave tax credits to include time taken off by an employee to obtain a COVID-19 immunization or to recover from any injury, disability, illness or condition related to such immunization.
- Makes conforming changes to self-employed individual tax credits.
- **<u>Impact</u>:** Expands the reasons for paid sick leave and paid family leave to include those related to receiving a COVID-19 vaccination.

Section 9645. Application of Non-Discrimination Rules.

- Disallows paid sick and paid family leave tax credits to any employer that discriminates in favor of highly compensated employees, full-time employees or employees on the basis of employment tenure, with respect to providing paid qualified sick or family leave.
- **<u>Impact</u>:** Prevents employers from claiming a tax credit if they discriminate in favor of highly compensated, full-time or longer-term tenured employees.

Section 9646. Reset of Limitation on Paid Sick Leave.

- Restarts a new 10-day period for paid sick leave on which an employer can claim tax credits. The current 10-day limitation runs from the start of the tax credits in 2020 through March 31, 2021. A new 10-day period applies to sick leave taken after March 31, 2021.
- Makes conforming changes for restart of self-employed paid sick leave, beginning on Jan. 1, 2021.
- **<u>Impact</u>:** Resets and allows a new 10-day period for paid sick leave and employer tax credits for such leave.

Section 9647. Credits Allowed Against Employer Hospital Insurance Tax.

- Effective after March 31, 2021, tax credits for paid sick and paid family leave will be structured as refundable against only the hospital insurance tax.
- **<u>Impact</u>:** Limits the tax credits for paid sick and paid family leave as refundable against the hospital insurance tax only, after March 31, 2021.

Section 9648. Application of Credits to Certain Governmental Employers.

- Permits state and local governments, as well as tax-exempt 501(c)(1) federal government instrumentalities to utilize tax credits for paid sick and paid family leave.
- **<u>Impact</u>:** Expands the FFCRA tax credits for paid sick and paid family leave to state and local governments, and tax-exempt federal government instrumentalities.

Section 9649. Gross Up of Credit in Lieu of Exclusion from Tax.

- Increases the amount of paid sick and paid family leave tax credits by the amount of the employer-share of taxes that would be imposed under OASDI and HI on the qualified paid sick and paid family leave wages.
- **<u>Impact</u>:** Provides a gross up of the paid sick and paid family leave tax credits in lieu of exclusion from tax.

Section 9650. Effective Date.

- The amendments in Part 5 apply to amounts paid with respect to calendar quarters beginning after March 31, 2021, unless otherwise indicated. Any application to self-employment tax credits shall apply to taxable years beginning after Dec. 31, 2020.
- **Impact:** Establishes effective dates for Part 5.

Section 9651. Extension of Employee Retention Tax Credit.

This provision extends the employee retention tax credit to all of 2021 (instead of the first six months).

For the second half of 2021, the credit may be taken against the employer's share of 1.45% hospital insurance tax instead of the 6.2% old-age, survivor and disability insurance.

Impact: This extension will greatly increase the 2021 value of the credit from up to $7,000 per employee to $14,000 per employee, incentivizing employers to retain employees. However, depending on the final guidance, it could change the timing of when employers receive the credit and how well they are able to monetize it.

PART 7—PREMIUM TAX CREDIT

Section 9661. Improving Affordability by Expanding Premium Assistance for Consumers.

- Modifies the income tier percentages that determine eligibility for the premium tax credit for years 2021 and 2022.
- Increases the income floor to households earning 150% of the federal poverty level, reducing the applicable percentage to 0% for families earning up to 150% of the federal poverty level.
- Extends the premium tax credit to households earning 400% of the federal poverty level or higher, imposing a flat percentage of 8.5% of household income for households making at least 400% of the federal poverty level.
- **Impact: I**ncreases premium tax credits available for all taxpayers eligible for assistance under current law. Removes the income ceiling to allow households earning more than 400% of the federal poverty level to pay no higher premium than 8.5% of household income.

Section 9662. Temporary Modification of Limitations on Reconciliation of Tax Credits for Coverage Under a Qualified Health Plan with Advance Payment of Such Credit.

- Temporarily suspends repayment obligations for tax year 2020.
- **Impact:** Taxpayers who receive an advance payment in excess of their respective premium tax credit will not be required to repay the difference for tax year 2020.

Section 9663. Application of Premium Tax Credit in Case of Individuals Receiving Unemployment Compensation During 2021.

- Provides premium tax assistance to individuals who receive unemployment compensation during 2021.
- Allows advanced premium tax credits as if the taxpayer's income was no higher than 133% of the federal poverty line, applicable to any taxpayer who has received or has been approved to receive unemployment compensation in 2021.
- **Impact:** Allows individuals who collect unemployment compensation to receive premium tax credit rates as if their household falls within the income tier designated for those earning 133% of the federal poverty level.

Section 9671. Repeal of Election to Allocate Interest, Etc. on Worldwide Basis.

- Repeals an election under section 864(f) that would have allowed U.S. affiliated groups to allocate their interest expenses worldwide in years beginning after Dec. 31, 2020. Because the election was due to take effect in 2021, this change would maintain pre-2021 policy.
- **Impact:** This will result in fewer foreign tax credits being claimed and a corresponding increase in tax revenue.

Section 9672. Tax Treatment of Targeted EIDL Advances.

- This provision clarifies that Targeted EIDL Advances from the Small Business Administration are not included in gross income, do not reduce tax attributes and do not otherwise deny deductions or basis increases.
- This provision also explains that Targeted EIDL Advances should be treated as exempt income in the case of partnerships and S corporations.
- **Impact:** This section provides welcomed tax treatment of Targeted EIDL Advances to taxpayers after the IRS previously provided that EIDL advances would generate taxable income.

Sec. 9673. Tax Treatment of Restaurant Revitalization Grants.

- Provides that Restaurant Revitalization Grants from the Small Business Administration are not included in gross income, do not reduce tax attributes, and do not otherwise deny deductions or basis increases.
- This provision also explains that Restaurant Revitalization Grants should be treated as exempt income in the case of partnerships and S corporations.
- **Impact:** This tax reporting treatment of Restaurant Revitalization Grants allows restaurants to utilize the full benefits of their grants (instead of having to include such grant in income and pay taxes on it).

Subtitle H – Pensions

Section 9700. Short Title.

- Refers to Subtitle H as the Butch Lewis Emergency Pension Plan Relief Act of 2021.

Section 9701. Temporary Delay of Designation of Multiemployer Plans as in Endangered, Critical, or Critical and Declining Status.

- Under current law, multiemployer plans must report their financial condition at least once each year (identifying if the plan is in a red, yellow or green zone). Based on the plan's status, specified actions may be required.
- In this provision, a multiemployer plan may elect the funding zone status of the plan as of the first plan year beginning during the period beginning on March 1, 2020, and ending on Feb. 28, 2021, or the succeeding plan year (per the election) to be the same as the status of the plan for the plan year preceding the designated plan year.
- Any multiemployer plan in endangered or critical status for the plan year preceding the designated plan year would not have to update its plan or schedules until the plan year following the designated plan year.
- **Impact:** A multiemployer plan in endangered or critical status would not have to update its plan or schedules until the plan year beginning March 1, 2021. This would provide the multiemployer plan with flexibility and ease an administrative burden given the economic and financial turmoil resulting from the COVID-19 public health crisis.

Section 9702. Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status for 2020 Or 2021.

- Under current law, a multiemployer plan's funding improvement period or rehabilitation period (as applicable) is 10 years and, for a plan in seriously endangered status, the funding improvement period is 15 years.
- In this provision, a multiemployer plan in endangered or critical status for a plan year beginning in 2020 or 2021 could elect to extend its rehabilitation period by five years.
- **Impact:** Multiemployer plans are given the flexibility of additional time to improve contribution rates, limit benefit accruals and maintain plan funding. This provision is effective for plan years beginning after Dec. 31, 2019.

Section 9703. Adjustments to Funding Standard Account Rules.

- Multiemployer plans are required to establish and maintain a funding standard account pursuant to the Code. A plan generally must amortize experience gains and losses and waivers of minimum funding over 15 years. However, during the 2008 recession, a provision was added to the Code to allow a multiemployer plan that met a solvency test to use special funding relief rules if it suffered investment losses that affected the value of its assets for either or both of the first two plan years that ended after Aug. 31, 2008, by electing to extend the amortization period for experienced losses and/or an extended smoothing period for asset valuation. If a multiemployer plan becomes insolvent, the PBGC guarantees the payment of benefits up to certain limits established by ERISA. The basic guarantee is 100% of the first $11 per month for each year of service and 75% of the next $33 per month for each year of service. Thus, the maximum benefit that can be guaranteed under this section is $35.75 per month for each year of service.
- Provides that multiemployer plans that satisfy the solvency test as of Feb. 29, 2020, can elect to use a 30-year amortization base for investment losses in plan years beginning in 2019 and 2020 to spread out those losses over time.
- Effective for plan years ending on or after Feb. 29, 2020.
- **Impact:** Provides a longer period over which to pay for long-term liabilities can be paid. This would help a multiemployer plan better weather the economic and financial storm created by the COVID-19 public health crisis.

Section 9704. Special Financial Assistance Program for Financially Troubled Multiemployer Plans.

- Creates a special financial assistance program that allows the PBGC to make single lump sum cash payments to financially troubled multiemployer plans so that the plan can continue to operate and pay benefits generally through 2051 without having to be taken over by the PBGC or cut benefits. The assistance is provided through general U.S. Treasury funds.
- Eligible multiemployer plans include (i) plans in critical and declining status, (ii) plans with significant underfunding with more retirees than active workers in any plan year beginning in 2020 through 2022, and (iii) plans that have suspended benefits and certain plans that already have become insolvent.
- Applications for the financial assistance must be submitted by Dec. 31, 2025.
- Multiemployer plans receiving this assistance would be required to invest the lump sum cash payment in investment grade bonds or other investments as permitted by the PBGC.
- Increases PBGC annual premium to $52 per participant beginning in calendar year 2031 and indexed for inflation.
- **Impact:** Provides financial relief to multiemployer plans and the cash-strapped PBGC with the overarching purpose of protecting retirees' pensions.

Section 9705. Extended Amortization for Single Employer Plans.

- If a single employer pension plan has a funding shortfall, the underfunded amount must be amortized over seven years.

- Extends the amortization period for funding shortfalls to 15 years. Also, all shortfall amortization bases for all plan years beginning after Dec. 31, 2019 (or, at sponsor's election, after Dec. 31, 2018), and all shortfall amortization installments determined with respect to such bases, would be reduced to zero.
- Effective for plan years beginning after Dec. 31, 2018.
- **Impact:** To provide pension plans, participants and plan sponsors more stability and a longer period over which to pay for long-term liabilities that can stretch out for more than 50 years (assuming benefits are paid in the form of annuities, rather than lump sum payments).

Section 9706. Extension of Pension Funding Stabilization Percentages for Single Employer Plans.

- In 2012, 2014 and 2015, Congress provided for pension interest rate smoothing to address concerns that historically low interest rates were creating inflated pension funding obligations and were diverting corporate assets away from jobs and business recovery. The smoothed interest rates would begin phasing out in 2021.
- This provision reduces the phase out of the smoothed interest rates generally as follows: the 10% interest rate corridor would be reduced to 5%, effective in 2020. The phase-out of the 5% corridor would be delayed until 2026, when the corridor would, as under current law, increase by 5 percentage points each year until it attains 30% in 2030, and it then would remain at 30%. Includes a 5% floor on the 25-year interest rate averages.
- Effective for plan years beginning after Dec. 31, 2019.
- **Impact:** Reduces excess volatility in funding of plans, given current historic low interest rates, and prevents additional diversion of corporate assets away from business recovery and job growth.

Section 9707. Modification of Special Rules for Minimum Funding Standards for Community Newspapers.

- The SECURE Act provided pension funding relief to specified community newspapers by (i) increasing the interest rate to calculate minimum funding obligations to 8% and (ii) lengthening the funding amortization period to 30 years (an increase from seven years).
- Expands the minimum funding relief that was included under §115 of the SECURE Act to additional types of community newspapers.
- **Impact:** Provides pension funding relief to additional community newspapers.

Section 9708. Cost of Living Adjustment Freeze.

- Under current law, various qualified plan limits are adjusted annually to reflect increases in the cost of living. Also, the maximum amount of annual compensation that is used by qualified plans for various purposes is annually adjusted for inflation.
- Freezes the annual inflation adjustments and the maximum annual compensation amount for calendar years beginning Jan. 1, 2031, setting the limits in effect on Dec. 31, 2030, as the future, ongoing limit.
- The freeze does not apply to plans maintained by collective bargaining agreements.
- There are some carve-outs. Annual inflation adjustments will continue for:
- The dollar amount used to determine an individual's ineligibility for the Indian employment credit under Code §45A.
- The maximum annual elective deferral limit under 401(k), 403(b) and 457(b) plans, and SIMPLE plans.

- The contribution and compensation limits applicable to SEPs.
- The maximum annual compensation taken into account for determining contribution deductions under Code §404.
- Distributions under tax credit ESOPs.
- Identifying the officers who are key employees for determining top heavy status under Code §416.
- The maximum employee compensation considered for VEBA nondiscrimination requirements.
- The number of securities held in an ESOP suspense account for purposes of Code §664.
- **Impact:** This provision will limit the maximum benefit that can be accrued under a pension plan (for 2021, $230,000) and the maximum annual contribution per participant under a defined contribution plan (for 2021, $58,000). Also appears to limit the number of catch-up contributions that older participants would be able to make under 401(k), 403(b), governmental 457(b) plans and SEPs (for 2021, $6,500).

Subtitle I – Child Care for Workers

Section 9801. Child Care Assistance Programs.

- This provision increases annual funding for the Child Care Entitlement to States (CCES) to $3.55 billion per year: $3.375 billion of this funding is to be allocated to the states and D.C., $100 million is to be allocated to tribes and tribal organizations, and $75 million is to be allocated to U.S. territories.
- The matching requirement is to be waived on the new funding for FY 2021 and FY 2022.
- This provision also makes U.S. territories eligible to receive CCES funding, which is to be allotted to them in proportion to the shares provided through the Child Care and Development Block Grant (CCDBG).
- The provision also requires redistribution of unused funds and exempts funds provided under Sec. 418 from the overall cap on funding to U.S. territories.
- **Impact:** This section increases mandatory annual funding for child care through the CCES. These funds can be used for CCDBG allowable uses. It also expands access to funds to U.S. territories, which were not previously eligible, and temporarily suspends matching requirements for states, easing the financial burden they face during the pandemic.

Brownstein Hyatt
Farber Schreck

Russell W. Sullivan
Shareholder

Charlie A. Iovino
Senior Policy Advisor and Counsel

Michael P. Marn
Policy Analyst

Sage Schaftel
Policy Advisor

Daniel Joseph
Policy Advisor

Rosemary Becchi
Strategic Advisor and Counsel

Radha Mohan
Senior Policy Advisor and Counsel

Gloria Walker
Policy Advisor

Nancy A. Strelau
Shareholder

Lori Harju
Policy Director

Harold Hancock
Shareholder

Marckia L. Hayes
Associate

Gregory M. Janssen
Associate