Brownstein Hyatt
Farber Schreck

News

March 5, 2021

Senate Unveils American Rescue Plan Ahead of Floor Vote

On March 4, Senate Democrats released an updated version of the $1.9 trillion stimulus plan—the American Rescue Plan Act (ARPA) (H.R.1319). The bill cleared its first procedural hurdle Thursday in a 51-50 vote, with Vice President Kamala Harris casting the tie-breaking vote to move forward with debate on the ARPA. On March 5, the chamber began “vote-a-rama.” This process will allow senators to consider an unlimited number of amendments, until their list, or their will to continue, is exhausted. Final passage of the bill is expected this weekend.

ARPA was drafted and marked up by House committees in February and approved by that chamber along party lines (219-210) on Feb. 27. The measure was then sent to the Senate, where the upper chamber made several changes in order to ensure compliance with the Byrd Rule, which governs budget reconciliation.

Notable provisions in the bill include:

- $1,400 in additional direct payments to individuals;
- Extended pandemic-related unemployment aid through September;
- Funding for COVID-19 vaccines, testing and public health programs;
- Funding to reopen K-12 schools and support child care centers;
- $350 billion in state, local, tribal and territorial aid;
- Housing and homelessness aid;
- Small-business aid, including a dedicated grant program for restaurants; and
- Investments in broadband and other infrastructure.

Below is a summary of changes made by the Senate to tax provisions in the bill:

- **Minimum Wage:** A provision increasing the minimum wage to $15 was removed from the bill because it violated the Byrd Rule. Senate Budget Committee Chair Bernie Sanders (I-VT), who has long championed the wage increase, has indicated that he will introduce an amendment to overcome a Byrd Rule challenge. His amendment would end certain tax deductions for large corporations that offer wages below $15 an hour and provide incentives for small businesses to provide the $15 minimum wage. Sanders might force a vote on his amendment during the Senate’s vote-a-rama, though it is not expected to pass.

  Senate Finance Committee Chair Ron Wyden (D-OR) also released preliminary details on his “Plan B,” which would impose a 5% charge on total payroll of large corporations if workers earn below a “certain level.” Wyden’s plan also includes an incentive for small businesses in the form of an income tax credit equal to 25% of wages, up to $10,000 per employee, if businesses increase wages.

Though both workarounds were ultimately rejected by Senate Democratic leadership for inclusion in the bill, Democrats are expected to press forward on efforts to include the minimum wage increase in forthcoming legislative vehicles.

During vote-a-rama, Sanders offered an amendment to include the $15 minimum wage in the bill. Ultimately, Sens. Kyrsten Sinema (D-AZ), Chris Coons (D-DE), Tom Carper (D-DE), Maggie Hassan (D-NH), Jeanne Shaheen (D-NH), Angus King (I-ME), Jon Tester (D-MT), and Joe Manchin (D-WV), joined all 50 Republicans in voting against the measure.

- **Economic Impact Payments.** Under the House-passed version of the bill, $1,400 EIPs completely phased out at $100,000 for individuals and $200,000 for married couples. In an effort to appeal to moderates, the Senate bill makes further changes to the income thresholds, phasing payments out completely at $80,000 for individuals and $160,000 for joint filers.

  Reductions to the full payment are based on a formula. For individuals, the reduction amount is equal to the ratio of $5,000 to the taxpayer's adjusted gross income minus $75,000, multiplied by $1,400.

  Example: A taxpayer's AGI is $77,000. The calculation for the amount of the reduction would be:

  *$77,000 - $75,000/$5,000 * $1,400 = $560*
  $1,400 - $560 = $840

  The taxpayer's credit would be reduced by $560, resulting in an $840 payment.

- **Employee Retention Tax Credit:** Under the House-passed version of the bill, the ERTC was simply extended to apply to the third and fourth quarters of 2021, and under current law, the ERTC is creditable against OASDI, allowing businesses to withhold Social Security taxes rather than making payments to the IRS. However, since the Byrd Rule, which governs budget reconciliation legislation in the Senate, prohibits the inclusion of any provision that impacts Social Security, the House-passed version restructured the credit such that it may only be taken against the employer's share of the 1.45% hospital insurance tax. The amount of the credit remained the same as what was enacted by the Consolidated Appropriations Act (H.R.133) on Dec. 27, 2020; effective Jan. 1 through June 30, employers are allowed a 70% credit for qualified wages up to $10,000 per quarter per employee. Businesses that experience a 20% year-over-year decline in gross receipts are eligible for the credit.

  The Senate version makes two important changes to the House-passed version of the bill: It (1) includes a higher credit amount for startup businesses; and (2) expands the definition of "qualified wages" for severely financially distressed employers.

  Qualified recovery startup businesses are defined as those that became operational after Feb. 15, 2020, and have less than $1 million in revenue. Businesses that meet eligibility requirements qualify for a credit of up to $50,000 per calendar quarter, per employee. Given that most startup businesses have less than 500 employees, the increase in the qualified wages will result in a significant benefit to the employer, since all wages paid, regardless of whether services are being performed or not, may be taken into account.

Severely financially distressed employers are defined as those that experience a 90% decline in revenue compared to the same calendar quarter in 2019 (e.g., a comparison of Q3 2021 to Q3 2019). If employers meet eligibility requirements, all wages paid to employees, regardless of whether services were being performed or not, will qualify for the credit. Few employers are likely to meet the 90% decline in revenue test, but for those that meet the definition, this could result in a modest benefit.

- **COBRA Subsidies:** The Senate version subsidizes 100% of premiums for individuals who are eligible for COBRA coverage, as opposed to the 85% subsidy included in the House-passed version. This means individuals do not have to pay any premiums and the employer or health plan may claim a refundable tax credit against Medicare payroll tax liability for the cost of the premiums. The provision is available for individuals who lost employment-based health coverage as a result of a reduction in hours, furlough or layoff.

- **Student Loans:** A new provision ensures that no individual has to pay taxes on COVID-19 student loan payments and interest relief between Dec. 31, 2020, and Jan. 1, 2026.

- **Executive Compensation.** A new revenue raiser increases to 10 the number of executives subject to section 162(m), which limits deductibility of compensation to $1 million. Under current law, the chief executive officer and the chief financial officer of a company, plus the three highest-paid officials are subject to Sec. 162(m). The Senate bill **increases** the total number of highly compensated employees subject to section 162(m) by an additional five.

- **Unemployment Insurance:** Late on March 5, a majority of the Senate Democratic caucus reached an agreement on changing the Federal Pandemic Unemployment Compensation (FPUC) payments from $400 through Aug. 29 to $300 a week through Sept. 6. The new agreement would also exempt the first $10,200 in payments from tax for households with incomes under $150,000 a year. The Senate is currently in the middle of vote-a-rama, the process by which senators offer amendments to modify the bill. Sen. Tom Carper (D-DE) is expected to offer Senate Amendment 1150 that includes this modification to the unemployment benefits in the bill. As of this writing, the amendment is expected to pass with Sen. Joe Manchin's (D-WV) support. Democrats spent much of the day trying to come to an agreement on modifications to unemployment insurance provisions in the bill.

  The bill summary below does not reflect these changes to unemployment because **the amendment** has not officially been adopted. Currently available bill text does not include the changes described above.

Full section-by-section summaries of the provisions in the March 4 version of the Senate bill are below.

Subtitle A – Budget Reconciliation Legislative Recommendations Relating to Crisis Support for Unemployed Workers

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.
- **Impact:** 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 50% of the costs they incur from March 13 through Oct. 3 to pay unemployment benefits.
- **Impact:** 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.
- *See discussion in body of alert—the FPUC payment amount and duration is likely to be modified during the Senate's amendment process on March 5.*
- **Impact:** The CARES Act provided $600 FPUC payments to supplement traditional state UI benefits through July 31, 2020. The Consolidated Appropriations Act provided a $300 payment from Dec. 26, 2020, through March 14. This provision will increase the FPUC amount by $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.
- **Impact:** 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 retirees, or take other temporary 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 the 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:** Provides 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:** Ensures 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.

<u>Subtitle F – Preserving Health Benefits for Workers</u>

Section 9501. Preserving Health Benefits for Workers.

- Provides 100% premium assistance coverage under a group health plan from the first of the month after enactment through Sept. 30, 2021, at no cost for the eligible individuals. 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 is provided to the individual regarding the availability of premium assistance.
- 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.
- **<u>Impact</u>:** This provides a retroactive, 100% subsidized COBRA option for individuals who have lost group health plan coverage. 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.

Subtitle G, Promoting Economic Security

PART 1 - 2021 RECOVERY REBATES TO INDIVIDUALS

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. The payment completely phases out for taxpayers earning more than $80,000 as single filers, or $160,000 as joint filers. 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 the taxpayer's 2019 tax return unless the taxpayer filed their 2020 tax return.
- **Impact:** 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 periodic 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.
- **Impact:** Significantly increases the amount of the credit—when combined with economic impact payments, families could receive anywhere between $4,400 and $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.

Brownstein Hyatt
Farber Schreck

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.
- Amends the House language defining qualified homeless youth to require the Treasury Department secretary to certify that individuals are unaccompanied or homeless youths, as opposed to local educational agencies or financial aid administrators.
- **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.

- Repeals a provision prohibiting an otherwise EITC-eligible taxpayer with qualifying children from claiming the childless EITC if he or she cannot claim the EITC with respect to qualifying children due to failure to meet child identification requirements.
- Applies to tax years beginning after Dec. 31, 2020.
- **Impact:** Allows individuals who do not claim the EITC with respect to qualifying children due to a failure to meet identification requirements to now claim the childless EITC.

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 $3,650 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 of 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.
- Amends the House version to loosen reporting requirements, giving the Treasury Department secretary broader and more general authority.
- **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 is 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.

PART 5 – CREDITS FOR PAID SICK and FAMILY LEAVE

Section 9641. Payroll Credits.

- Provides refundable employer tax credits for paid sick and paid family leave from April 1, 2021, until Sept. 30, 2021.
- Restarts a new 10-day period for paid sick leave during which an employer can claim tax credits. The new 10-day period applies to sick leave taken after the first quarter of calendar year 2021.
- Increases the aggregate amount of qualified family leave wages that an employer may claim for the paid family tax credit from $10,000 to $12,000.
- Expands the definition of paid sick and paid family leave 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.
- Allows the paid sick and paid family leave tax credits to be increased by an employer's allocable qualified health plan expenses, certain allocable collectively bargained defined benefit pension contributions and allocable collectively bargained apprenticeship program contributions.
- Structures the amount of both paid sick and paid family leave tax credits as refundable against the hospital insurance tax only.

- Provides that wages taken into account in determining the paid sick and paid family leave tax credits shall not provide a double tax benefit and directs the Treasury Department secretary to issue specific guidance with respect to PPP payroll costs.
- Permits state and local governments, as well as tax-exempt 501(c)(1) federal government instrumentalities to utilize the paid sick and paid family leave tax credits.
- Disallows 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 leave.
- **Impact:** Extends the refundable paid sick and paid family leave tax credits through September 2021; increases and expands the levels of the tax credits; resets the 10-day limitation for paid sick leave; limits the tax credits to the amount of employer hospital insurance tax; and applies nondiscrimination rules.

Section 9642. Credit for Sick Leave for Certain Self-Employed Individuals.

- Provides a refundable tax credit for individuals who are self-employed for paid sick leave taken between April 1, 2021, and Sept. 30, 2021.
- Expands the definition of paid sick leave 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.
- Restarts a new 10-day period for paid sick leave during which an individual can claim a tax credit. The new 10-day period applies to sick leave taken after the first quarter of calendar year 2021.
- Defines average daily self-employment income, allows individuals to elect to use prior year net earnings rather than current year earnings, and disallows any credit if documentation as prescribed by the Treasury Department secretary is not maintained.
- Provides that wages taken into account in determining the paid sick leave tax credit shall not provide a double tax benefit, and directs how payments are to be made to possessions having mirror tax code systems and to those possessions that do not have mirror tax code systems.
- **Impact:** Extends the refundable paid sick leave tax credit for self-employed individuals through September 2021; increases and expands the levels of tax credit; resets the 10-day limitation for paid sick leave; and limits the tax credit to the amount of hospital insurance tax.

Section 9643. Credit for Family Leave for Certain Self-Employed Individuals.

- Provides a refundable tax credit for individuals who are self-employed for paid family leave taken between April 1, 2021, and Sept. 30, 2021.
- Expands the definition of paid family leave 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.
- Increases the number of days for which self-employed individuals may claim the tax credit from 50 to 60 days.
- Defines average daily self-employment income, allows individuals to elect to use prior year net earnings rather than current year earnings, and disallows any credit if documentation as prescribed by the Treasury Department secretary is not maintained. Requires coordination with the tax credit for paid sick leave.
- Provides that wages taken into account in determining the paid family leave tax credit shall not provide a double tax benefit, and directs how payments are to be made to possessions having mirror tax code systems and to those possessions that do not have mirror tax code systems.
- **Impact:** Extends the refundable paid family leave tax credit through September 2021; increases and expands the levels of tax credit; and limits the tax credit to the amount of the employer hospital insurance tax.

PART 6 - EMPLOYEE RETENTION CREDIT

Section 9651. Extension of Employee Retention Tax Credit.

- Extends the employee retention tax credit six months until Dec. 31, 2021, generally allowing a 70% credit for

qualified wages up to $10,000 per quarter (up to $7,000 credit per quarter per employee).
- After Q1 and Q2, changes to the 2021 credit for Q3 and Q4 are as follows:
  - The credit may be taken against the employer's 1.45% share of hospital insurance tax instead of the 6.2% share of old-age, survivor and disability insurance.
  - **Special Rule for Startup Recovery Businesses:** Businesses started after Feb. 15, 2020, with annualized gross receipts of less than $1 million are limited to a maximum quarterly credit of $50,000. Note, the $50,000 quarterly limitation does not apply to wages paid when there is a COVID-19 order that suspends operations.
  - **Special Rule for Severely Economically Distressed Businesses:** For any employer that has at least a 90% decline in gross receipts when compared to the corresponding quarter in 2019, all wages paid are considered qualified retention wages.
  - Clarifies that employers can receive certain SBA loans (PPP loans, shuttered venture loans, and restaurant revitalization grants) and claim the credit, but forgiven loan amounts cannot receive a double benefit and be considered qualified retention wages.
- Though the IRS generally has a three-year review period, this provision allows the IRS five years to review credit claims.
- **Impact:** This extension will greatly increase the 2021 value of the credit from up to $14,000 per employee to $28,000 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.

PART 8 - MISCELLANEOUS

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.

- Clarifies that Targeted EIDL Advances for small business continuity, adaptation and resiliency 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.
- Treats Targeted EIDL Advances as exempt income in the case of partnerships and S corporations.
- **Impact:** This section provides welcomed clarification of tax treatment of Targeted EIDL Advances to taxpayers after the IRS previously said 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.
- 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).

Sec. 9674. Modification of Exceptions for Reporting of Third Party Network Transactions.

- Under current law, third party settlement organizations (TPSO) are only required to report information with respect to third party network transactions if participating payees have transactions that exceed $20,000 and the aggregate number of transactions are over 200.
- This provision lowers the threshold for de minimis payments—TPSOs will be required to report information with respect to their party network transactions if participating payees have transactions that exceed $600. It eliminates the transaction threshold altogether.
- **Impact:** Under current law, TPSOs, which include several gig economy platforms, are not required to report income earned by payees (i.e., platform users), unless it exceeds $20,000 and the payees engage in 200 transactions. As a result, a platform user could have $100,000 in income, through fewer than 200 transactions, and the platform would not be required to report income. The new standard would lower the reporting threshold to $600 and eliminate the transaction threshold.

Sec. 9675. Modification of Treatment of Student Loan Forgiveness.

- Provides that student loan payments and interest relief provided between Dec. 31, 2020, and Jan. 1, 2026, are not included in the gross income of the beneficiary and are not subject to tax.

- **Impact:** Provides tax relief for individuals who receive student loan assistance.

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 critical (red zone), endangered (yellow zone) or other (green zone). Based on the plan's status, specified actions may be required.
- Allows a multiemployer plan to 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. The election impacts what notices must be provided.
- 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 would apply to 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 experienced 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 plans 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 in any plan year beginning in 2020 through 2022, (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. The plan would not be eligible to apply for a new suspension of benefits, and, if it becomes insolvent notwithstanding the special financial assistance, would be subject to current rules and guarantees for insolvent plans. Also, the plan would be deemed to be in critical status until the last plan year ending in 2051. Withdrawal liability calculations would take into account the special financial assistance.
- Increases PBGC annual premium to $52 per participant for plan years beginning after Dec. 31, 2020, and is 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, 2021 (or, at sponsor's election, after Dec. 31, 2018, 2019 or 2020), 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. The plan sponsor may elect that this revised phase-out not apply for all purposes or solely for determining the AFTAP.

- 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. Expansion of Limitation on Excess Employee Remuneration.

- Code §162(m) provides that annual compensation paid to a publicly held corporation's "covered employees" that exceeds $1 million is not deductible by that corporation. The Tax Cut and Jobs Act of 2017 amended the definition of "covered employee" to include: (i) the principal executive officer (PEO) or principal financial officer (PFO) at any time during the tax year; (ii) an employee whose total compensation is required to be reported under the Exchange Act because such employee is among the three highest-paid officers for the taxable year; and (iii) any covered employee of the taxpayer (or predecessor) for any taxable year beginning after Dec. 31, 2016.
- This provision increases the number of "covered employees" by including the five highest compensated employees who are other than the PEO, the PFO, or the other top three paid officers.
- **Impact**: This provision expands the group of employees of publicly held corporations for whom annual compensation in excess of $1 million would be nondeductible. It would apply to taxable years beginning after Dec. 31, 2027. This is a revenue raising provision.

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.

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