



December 22, 2020

Congress Passes Omnibus, COVID-19 Relief

On Dec. 20, the House and Senate passed H.R. 133, The Consolidated Appropriations Act of 2021 (“Act”). The bill includes a \$900 billion comprehensive package to provide COVID-19 relief to businesses and individuals, including a second round of Paycheck Protection Program (PPP) loans for small businesses, extension of the Employee Retention Tax Credit (ERTC), extension of unemployment insurance and \$600 Economic Impact Payments (EIP) for individuals. The bill does not include funding for state and local governments or liability protection for businesses. Lawmakers have set aside these issues in favor of a bill that includes items that have bipartisan support.

H.R. 133 is the largest assistance package to be considered since passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020.

H.R. 133 also includes a \$1.4 trillion omnibus spending bill for the fiscal year that began Oct. 1.

The bill now awaits President Donald Trump’s signature.

Below are the Brownstein Tax Policy Team’s five takeaways from the latest deal, as well as a summary of the tax and economic provisions in the bill. The tax provisions in the bill are largely contained in Division N and Division EE. However, bill summaries are divided by category of relief, rather than summarized by division.

Five Tax Takeaways from the Deal

1. **The Employee Retention Tax Credit (ERTC) Is a Survivor.** The ERTC is now the preferred method of preventing massive layoffs by helping companies offset the cost of keeping employees on their payroll. Expect it to be used every time America faces a draconian economic contraction. The CARES Act provision, which allows up to a \$5,000 credit for each employee retained when pure economics would have dictated a layoff, was extended in the deal announced Dec. 21. The enhanced ERTC is effective Jan. 1, 2021, through June 30, 2021. It increases the credit from 50% to 70% of qualified wages, expands eligibility by allowing access for companies experiencing a 20% year-over-year decline in gross receipts, and increases the per-employee creditable wage limit from \$10,000 for the year to \$10,000 each quarter.

The ERTC was one of the few COVID-19 business tax relief provisions included in this bill. The other COVID-19-related business tax relief provision was an extension of credits for paid sick and family leave. Lawmakers chose to focus on employee retention and offsetting the cost of paid time off for current employees, rather than introducing provisions that incentivize hiring new employees or prepare workspaces for employees to return. The bill has been characterized as a “down payment” by Democratic lawmakers, suggesting more relief down the line. The next bill might focus on provisions that help businesses prepare for a full economic reopening and in-person return of employees—business liability protection, a cleaning credit and a hiring credit will likely be part of future discussions.

2. **Rank and File Put Individual Tax Relief Back in the Deal.** When the Senate bipartisan proposal emerged without a second round of EIP, there was a push to do more for individuals impacted by the pandemic through direct aid. These priorities are reflected in the final bill, which includes \$600 EIPs for individuals, half of what was provided under the CARES Act. The payments will begin as early as next week and are statutorily mandated to be made by Jan. 15, five days before President Trump leaves office.

The bill also includes a revival of the Federal Pandemic Unemployment Compensation payments of \$300 through March 14, 2021. The CARES Act provided \$600 FPUC payments that expired at the end of July. While the value of both provisions has been reduced, lawmakers clearly view this as temporary assistance to help individuals until a vaccine is available to the general public, likely this spring or early summer.

The bill also includes educational assistance tax relief for individuals—a provision allowing for the exclusion of employer payments of student debt and a replacement of the tuition expense deduction with an expansion of the Lifetime Learning Credit are both included as well. Both provisions help offset the cost of higher education, a major priority for Democrats. Broader student debt relief is not included in the bill, putting more pressure on President-elect Joe Biden from progressives to forgive at least \$10,000 in student debt for qualifying individuals.

Ultimately, the inclusion of several individual provisions helped pave the way for business tax extenders.

3. **Tax Extenders Will Always Survive.** After the passage of the Tax Cuts and Jobs Act (TCJA), the fate of tax extenders was in question. Former Ways and Means Chairman Kevin Brady (R-TX) helped design the TCJA to make some provisions permanent and let others wither on the vine in an attempt to end the annual exercise of short-term extensions for expiring tax provisions and give taxpayers some certainty. However, three years after the passage of the TCJA, on that effort progress has been slow, as tax extenders survive.

In a departure from short-term extensions only, this package does make several provisions permanent, including a reduction in the medical expense deduction floor, one of the few remaining Affordable Care Act pay-fors; tax breaks for craft beer and wine; and a credit for making buildings more energy efficient. A number of other provisions received a long-term five-year extension, including the look-through rule for related controlled foreign corporations; the New Markets Tax Credit; the Work Opportunity Tax Credit; the employer tax credit for paid family and medical leave; and an exclusion from gross income of up to \$5,250 in employer payments of student debt.

The remaining provisions, largely energy measures, received a one-year renewal. In fact, energy-related provisions dominated the tax extenders section. Additionally, the offshore wind industry scored a major victory with the expansion of the Production Tax Credit for projects that have commenced construction between 2017 and 2025.

4. **Surprise Winner: Low-Income Housing Tax Credit.** As lawmakers discussed real estate relief, most thought that Democrats would secure the inclusion of a low-income housing tax credit expansion in exchange for commercial real estate-related tax relief, a Republican priority. The COVID-19 package contains rental assistance for individuals and LIHTC expansions, but no commercial real estate tax provisions.
5. **PPP Expenditures Deductibility: Intent Wins Over Historic Tax Policy.** The IRS has consistently held that taxpayers may not deduct business expenses when those expenses are made using tax-exempt sources of income, regardless of whether such expenses would otherwise qualify as a permissible deduction. This provision is a reversal of historic precedent in order to accommodate congressional intent. For the first time, Congress is allowing taxpayers to double dip and receive the benefit of a tax deduction from tax-exempt income. This is a welcome relief for small businesses that would have had to forgo significant deductions on business expenses and potentially face a surprise tax bill.

Summary of Select Tax and Small Business Provisions

I. BUSINESS TAX RELIEF

Section Overview: This bill provides relief for employers by helping them offset the cost of keeping employees on the payroll. It includes a three-month extension for credits reimbursing employers for paid sick and family leave during COVID-19, as well as an expansion of the ERTC. The enhanced ERTC offers a 70% credit on up to \$10,000 of wages per employee per quarter. Additionally, it provides a 100% deduction for business meal expenses incurred in 2021 and 2022 in an effort to help the restaurant industry, which has been hard-hit by the pandemic.

The bill does not include a cleaning tax credit or an expansion of the Work Opportunity Tax Credit to include a new category of individuals who are currently receiving unemployment assistance. The COVID-19 relief provisions in this bill all relate to employee retention, rather than help employers hire new employees or reconfigure and clean workplaces to accommodate for a full return of the workforce.

This section also includes other miscellaneous provisions, such as a Low-Income Housing Tax Credit increase and provisions that address technical issues with the TCJA, such as changes to the depreciation of certain residential rental property.

DIVISION N—Additional Coronavirus Response and Relief

Title II—Assistance to Individuals, Families, and Businesses

Subtitle B—COVID-related Tax Relief Act of 2020

Sec. 286. Extension of Credits for Paid Sick and Family Leave.

- Extends the refundable payroll tax credits for paid sick and paid family leave, enacted in the Families First Coronavirus Response Act (FFCRA), through March 31, 2021. This extension applies to both the employer and the self-employed individual tax credits.
- Under the CARES Act, employers with less than 500 employees were required to offer paid sick and family leave. This bill does not extend the mandate, though it does extend the tax credits through March 31, 2021.
- **Impact:** Provides additional liquidity for employers by extending the refundable payroll tax credits through March 31, 2021.

Sec. 287. Election to Use Prior Year Net Earnings From Self-Employment in Determining Average Daily Self-Employment Income for Purposes of Credits for Paid Sick and Family Leave.

- Allows self-employed individuals to elect to use their average daily self-employment income from 2019 net earnings rather than 2020 net earnings in computing their tax credit against self-employment taxes.
- Effective as if included in FFCRA.
- **Impact:** Provides a more flexible measure for the self-employed in determining tax credits for paid sick and paid family leave.

Sec. 288. Certain Technical Improvements to Credits for Paid Sick and Family Leave.

- This section makes technical changes, coordinating the definitions of qualified wages for paid sick and paid family leave, and excluding such leave from employer OASDI.

- Effective as if included in FFCRA.
- **Impact:** Improves credit for paid sick and family leave by making technical and conforming changes.

DIVISION EE—Taxpayer Certainty and Disaster Tax Relief Act of 2020

Title II—Other Provisions

Sec. 201. Minimum Low-Income Housing Tax Credit Rate.

- This provision enacts a permanent 4% minimum low-income housing tax credit rate for acquisition and tax-exempt private activity bond-financed projects, placed into service after Dec. 31, 2020.
- This is similar and adds parity to the permanent minimum 9% low-income housing tax credit rate for new construction and substantial rehabilitation projects.
- **Impact:** This will increase the value and predictability of the 4% credit (as the rate has typically been below 4% since the mid-1980s), incentivizing taxpayers to take on additional qualifying housing developments.

Sec. 202. Depreciation of Certain Residential Rental Property Over 30-year Period.

- Historically, the alternative depreciation system provides that residential rental property is depreciated over 40 years. The TCJA reduced this period to 30 years for property placed in service on or after Jan. 1, 2018. This provision extends the 30-year recovery period to residential rental property placed in service before Jan. 1, 2018, and held by an electing real property trade or business (as defined in Code Sec. 163(j)(7)(B)).
- This provision applies only if the alternative depreciation system did not apply with respect to such property prior to Jan. 1, 2018.
- **Impact:** Qualifying taxpayers will have increased cost recovery deductions by depreciating their residential properties 10 years faster than under prior law.

Sec. 205. Minimum Rate of Interest for Certain Determinations Related to Life Insurance Contracts.

- To qualify for tax purposes as life insurance contracts, permanent life insurance policies must meet several requirements, including two interest rate assumptions for determining the premiums that can be used to fund the contracts. The interest rate assumptions were originally set at 4% and 6%.
- This legislation updates Code Sec. 7702 to reflect the economic conditions, by tying the rates to either a floating rate prescribed in the National Association of Insurance Commissioners' Standard Valuation Law or a floating rate based on the average applicable federal mid-term rates over a 60-month period.
- **Impact:** This provision will help contracts continue to be characterized as life insurance contracts (tax advantaged) and avoid being classified otherwise where the benefits would be taxed as ordinary income.

Sec. 206. Clarifications and Technical Improvements to CARES Act Employee Retention Credit.

- Effective as if originally included in the CARES Act, this provision clarifies that eligible employers can get a PPP loan and claim the ERTC, but amounts forgiven under the PPP loan cannot be considered qualified retention wages.
- Consistent with IRS guidance, this section also provides that group health plan expenses can be considered qualified wages when no other wages are paid.
- This provision also clarifies the definition of gross receipts for exempt organizations.

- **Impact:** These clarifications will allow more taxpayers to claim the retention credit.

Sec. 207. Extension and Modification of Employee Retention and Rehiring Tax Credit.

- This provision extends the refundable CARES Act employee retention tax credit from Dec. 31, 2020, to July 1, 2021, with the following changes applicable for 2021:
 - The credit is 70% of wages and \$10,000 per quarter (up to a \$7,000 credit per quarter per employee) instead of 50% of wages and \$10,000 in total (up to a \$5,000 credit per employee in total).
 - A business only needs a 20% drop in gross receipts to be considered eligible instead of a 50% drop.
 - Rather than a blanket disallowance for governmental employers, the credit is available to public colleges and hospitals.
 - The definition of large employer applies to companies with more than 500 employees instead of 100, allowing many more companies to obtain the credit for wages paid when their employees are providing services.
 - The 30-day lookback is also removed so bonuses and other pay increases may also qualify for the credit.
 - Businesses with 500 or fewer employees for any calendar quarter can receive an advance payment of the quarterly credit, up to 70% of the average quarterly 2019 wages.
 - The secretary is required to conduct a public awareness campaign to make sure information regarding availability of the credit is out there, including by notifying all employers reporting less than 500 employees.
- **Impact:** By increasing the amount and percentage of the credit, and applying the wage restrictions to fewer businesses, this extension and expansion of the CARES Act ERTC will provide much-needed liquidity to many businesses, especially smaller businesses.

Sec. 210. Temporary Allowance of Full Deduction for Business Meals.

- For 2021 and 2022, this provision allows a 100% deduction for business meal and food expenses from a restaurant. Absent this provision, the deduction would otherwise be 50%.
- **Impact:** This provision is important to many restaurants and businesses that have been hard hit by the pandemic. It will help encourage increased business meal purchases from struggling restaurants that are still open in 2021.

II. Small Business Relief

Section Summary: This bill provides significant relief for small businesses, including \$284.45 billion for the U.S. Small Business Administration (SBA) to operate and administer initial and second draw Paycheck Protection Program (PPP) loans. The second draw loan program lays out new parameters for eligibility—in order for a business to qualify, it would need to have 300 or fewer employees and have a 25% decline in revenue in any quarter this year as compared to the same quarter in 2019.

The bill would also simplify the loan forgiveness process for borrowers with PPP loans of \$150,000 or less, and it would expand the types of expenses that are forgivable to include operations expenditures, property damage costs, supplier costs and worker protection expenditures.

In addition to offering these organizations a second loan, small 501(c)(6) organizations and destination marketing organizations with fewer than 300 employees that do not primarily focus on lobbying efforts would also be eligible for PPP loans.

The legislation also creates a new program administered by SBA providing \$15 billion for shuttered venue operators. The program would provide grants of up to \$10 million and supplemental grants of \$5 million. Venues experiencing severe revenue declines will be prioritized in the early stages of program implementation.

The bill also recapitalizes the Economic Injury Disaster Loan (EIDL) grant program by \$20 billion. The revived program will target businesses in low-income communities that were previously denied a \$10,000 grant when funding ran out. It also does away with CARES Act provisions requiring the deduction of EIDL grant amounts from PPP forgiveness amounts.

The bill would also clarify language under the CARES Act allowing for the tax deductibility of business expenses paid with PPP loan proceeds. The provision would overturn Internal Revenue Service (IRS) and Treasury Department guidance released earlier this year, which instructed taxpayers that such expenses could not be deducted.

DIVISION N—Additional Coronavirus Response and Relief

Title III—Continuing the Paycheck Protection Program and Other Small Business Support

Sec. 301 Short Title.

- This portion of the legislation is entitled the “Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.”

Sec. 302 Definitions.

- For purposes of this Act, Administration and Administrator refers to the SBA and the administrator thereof.
- Small Business Concern means, generally, one which is independently owned and operated and which is not dominant in its field of operation (further definition can be found in Sec. 3 of the Small Business Act, 15 U.S.C. 632).

Sec. 303: Emergency Rulemaking Authority.

- Requires that the Administrator issue regulations to carry out the title no later than 10 days after its enactment.
- **Impact:** Provides its own definition of small business while also referring back the statutory definition.

Sec. 304: Additional Eligible Expenses.

- Expands the use of PPP funds to other eligible expenses, including covered operations expenditures, property damage costs, supplier costs and worker protection expenditures.
- These eligible costs will apply to existing loans and new loans, but not loans that have been forgiven.
- “Covered operations expenditures” are payments for “any business software or cloud computing service” that assist in operations functions such as accounting and inventory, etc.
- “Covered property damage costs” include payments for property damage by vandalism or looting in 2020 not covered by insurance.
- “Covered supplier costs” include payments to a supplier for goods essential to business operations where a contract was in effect prior to taking out the loan. Payments for perishable goods can be made before or during

the life of the loan.

- “Covered worker protection expenditures” refer to personal protective equipment (PPE) and other adaptive investments necessary to comply with federal and state guidance related to COVID-19.
- **Impact:** This provision expands the types of eligible costs allowable under the PPP. However, borrowers should remain aware that only 40% of costs may be spent on non-payroll costs.

Sec. 305: Hold Harmless.

- Protects lenders from liability for any initial or second draw loans made, provided that the lender (1) acted in good faith during loan origination or forgiveness; and (2) followed all other relevant federal, state, local and other statutory and regulatory requirements.
- **Impact:** This provision creates a safe harbor to lenders issuing PPP and second draw loans.

Sec. 306: Selection of Covered Period for Forgiveness.

- Allows the borrower to choose between an eight-week or 24-week covered period to use as a reference point for eligible costs following the date of origination.
- **Impact:** Provides businesses more flexibility in spending PPP funds over either an eight-week or 24-week period.

Sec. 307: Simplified Forgiveness Application.

- Loans under \$150,000 are provided a simplified application process.
- The simplified forgiveness application would require borrowers to sign an attestation about the number of employees retained, the total amount spent on payroll costs, and the total amount of the loan.
- Loans under \$150,000 are still subject to audit and therefore borrowers should retain employment records for at least four years and other relevant records for at least three years.
- **Impact:** Borrowers for loans under \$150,000 should expect expedited forgiveness of PPP loans.

Sec. 308: Specific Group Insurance Payments as Payroll Costs.

- Clarifies that certain employer-provided group insurance benefits—group life, disability, vision, or dental insurance—are included in payroll costs for existing and future PPP loans.
- Employer-provided group insurance benefits may include group life, disability, vision or dental insurance.
- **Impact:** Provides clarification and expansion of eligible “benefits” as previously enacted in the CARES Act.

Sec. 309: Demographic Information.

- Requires any loan origination application for a PPP loan to include a section where the applicant may provide voluntary demographic information, including sex, race, ethnicity and veteran status.
- **Impact:** Provides data on PPP loan recipients.

Sec. 310: Clarification of and Additional Limitations on Eligibility.

- Clarifies that a business that was not in operation before Feb. 15, 2020, is ineligible.
- **Impact:** Restricts eligibility to businesses that were in operation before Feb. 15, 2020.

Sec. 311: Paycheck Protection Program Second Draw Loans.

- Creates a new lending program based on the original PPP program to allow some previous PPP loan recipients to apply for one more loan through March 31, 2021.
- Eligible entities must have 300 employees or less and sustained a revenue loss of at least 25% in a quarter of 2020 as compared to the same quarter in 2019.
- Businesses that were eligible under the original PPP program are eligible if they meet the employee and revenue loss test.
- The program explicitly excludes (1) businesses listed in 13 C.F.R. subpart 120.110, which have historically been excluded from SBA loan programs, except for nonprofits and religious organizations; (2) lobbying and political organizations; (3) businesses affiliated with the People's Republic of China; (3) registrants under the Foreign Agents Registration Act; and (4) grantees of the Shuttered Venue Operator Grant program.
- Loans are capped at \$2 million and are 2.5 times the amount of average payroll costs.
- The restaurant and hotel industry remain exempt from the SBA affiliation rules and may calculate loan amounts using 3.5 times the amount of payroll costs.
- Second draw loans will also waive fees for lenders and borrowers, just as in the first round of PPP loans.
- Forgiveness rules as applied to the PPP will apply to second draw loans, including the requirement that at least 60% of loan proceeds must go toward payroll costs. Borrowers should also be prepared to produce records of revenue losses.
- \$30 billion is set aside for CDFIs, MDIs and other small lenders.
- \$60 billion is set aside to target first-time borrowers and to target businesses with 10 or fewer employees.
- **Impact:** The new loan program provides a much-needed lifeline to businesses feeling the economic impact of the pandemic through March 31, 2021. The program mirrors much of the existing PPP program, but restricts eligibility to entities with 300 employees or less and those businesses with revenue losses of 25% or greater. Affiliation rule waivers as applied in the first round of PPP still apply in the second round.

Sec. 312: Increased Ability for Paycheck Protection Program Borrowers to Request an Increase in Loan Amount Due to Updated Regulations.

- No later than 17 days after the enactment of the Act, the SBA Administrator must issue guidance to recipients of PPP loans who returned amounts dispersed to them or did not accept the full amount, to be able to reapply and receive the maximum. This holds as long as the borrowers have not received loan forgiveness.
- This section also allows borrowers whose loan calculations may have increased due to any interim final rule to submit a request to increase their covered amount. This holds regardless of whether the initial amount has been fully dispersed or the lender of the initial loan has submitted the Form 1502 report to the SBA.
- **Impact:** Increases the amount a recipient can receive by either allowing them another opportunity to receive funds based off a previous calculation, or by updating the calculation of the maximum amount for which they are eligible.

Sec. 313: Calculation of Maximum Loan Amount for Farmers and Ranchers Under the Paycheck Protection Program.

- Establishes a specific PPP loan calculation for farmers and ranchers who operate sole proprietorships, are independent contractors or are self-employed; reported farm income or expenses on a Schedule F (or an

equivalent); and were in business as of Feb. 15, 2020.

- Recipients calculate their coverage based on their gross income from 2019 and max out their coverage at \$2 million.
- Lenders, at the request of the loan recipient, may recalculate the maximum loan coverage if such would result in a larger loan, and provide the additional covered loan amounts based on that recalculation.
- This section applies to any PPP loans made before, on, or after the date of enactment of this provision, but excludes those loans that have been forgiven.
- **Impact:** Provides specific loan assistance calculations for ranchers and farmers.

Sec. 314: Farm Credit System Institutions.

- Provides for the Farm Credit System to make loans under the PPP. Additionally, these loans will receive a risk weight of 0%, and eases requirements for Farm Credit System institutions to align with those of other PPP lenders.
- Applies to any loan made before, on or after the enactment of this Act, including forgiveness of the loan.
- **Impact:** Facilitates the participation of Farm Credit System Institutions into the PPP loan system.

Sec. 315: Definition of Seasonal Employer.

- Defines seasonal employer as an eligible recipient that (1) operates for no more than seven months of the year, or (2) earned no more than 1/3 of its receipts in any six months in the prior calendar year.
- Applies to any loan made before, on or after the enactment of this Act, including forgiveness of the loan.
- **Impact:** Redefines seasonal employer to provide greater flexibility in applying the rule.

Sec. 316: Housing Cooperatives.

- Extends PPP eligibility to housing cooperatives (defined Code Sec. 216(b)) that employ no more than 300 employees.
- **Impact:** Provides for covered loans to housing cooperatives.

Sec. 317: Eligibility of News Organizations for Loans Under the Paycheck Protection Program.

- Expands eligibility for the initial PPP program to certain for-profit and nonprofit news organizations with NAICS code 511110 or 5151 so long as they have 500 employees or less or fall under an existing SBA size standard.
- This expansion of eligibility excludes publicly traded companies.
- **Impact:** Initial PPP eligibility is expanded to small news organizations.

Sec. 318: Eligibility of Code Sec. 501(c)(6) and Destination Marketing Organizations for Loans Under the Paycheck Protection Program.

- Expands eligibility to 501(c)(6) organizations if (1) the organization has less than 300 employees; (2) less than \$1 million was spent on lobbying activities; and (3) lobbying receipts and activities are under 15%. Professional sports leagues and organizations involved in political activities are excluded.
- Expands eligibility for PPP loans to destination marketing organizations (DMO) organized as a 501(c) organization, a quasi-government entity, or a political subdivision of a state or local government. The DMO must also have less

than 300 employees and keep lobbying receipts and activities under 15%.

- **Impact:** Expands initial PPP loan eligibility to trade organizations and organizations promoting travel that have been impacted by the pandemic due to social distancing guidelines.

Sec. 319: Prohibition on Use of Loan Proceeds for Lobbying Activities.

- Prohibits loan recipients from using any of the proceeds for (1) lobbying activities, as defined by the Lobbying Disclosure Act; (2) lobbying expenditures relative to state or local elections; and (3) expenditures to influence legislation, appropriations, regulations or administrative actions before Congress or any state or local body
- **Impact:** Restricts expenditures of loan proceeds, prohibiting the use of such for lobbying.

Sec. 320: Bankruptcy Provisions.

- Establishes a special procedure in bankruptcy by which certain small debtors are eligible for PPP loans. This process requires court approval and gives priority to these claims. The relief granted by the court may be on a final basis.
- These provisions go into effect only after written notice from the Administrator that the small business debtor is eligible for PPP loans.
- The section has a two-year sunset from the date of enactment.
- **Impact:** Creates a special process in bankruptcy by which certain small debtors are eligible for PPP loans.

Sec. 321: Oversight.

- Requires that the SBA comply, within 15 days, with any data or information requests or inquiries made by the comptroller general. Should the SBA be unable to comply, the Administrator must submit to the Senate and House Small Business committees detailed justification.
- This section also requires that the SBA Administrator and the secretary of the treasury testify before the Senate and House Small Business Committees within 120 days of the enactment of the provision, as well as at least twice per year, for the next two years.
- **Impact:** Establishes timetables by which the SBA must respond to information requests and schedules periodic requirements for the SBA Administrator and the secretary of the treasury to testify before Congress.

Sec. 322: Conflicts of Interest.

- Requires that the president, vice president, head of an executive department, member of Congress or their spouse who have received a PPP loan disclose such within 30 days of applying for forgiveness.
- The section bans new loans to these covered individuals.
- **Impact:** Provides for disclosure, and prohibition going forward, of PPP loans to the president, vice president, head of an executive department, member of Congress or their spouse.

Sec. 323: Commitment Authority and Appropriations.

- Extends the program to March 31, 2021.
- Raises the authorization level for PPP to \$806.45 billion.
- Separates 7(a) and PPP loans and authorizes up to \$75 billion for 7(a) loans.

- Direct Appropriations:
 - \$284.45 billion for PPP loans
 - At least \$15 billion for guaranteeing loans made by community financial institutions
 - At least \$15 billion for guaranteeing loans made by certain small insured depository institutions, credit unions or institutions of the Farm Credit System.
 - At least \$15 billion for guaranteeing loans made to eligible recipients with not more than 10 employees or for no more than \$250,000 and going to a recipient in a low- or moderate-income neighborhood for the purposes of the Community Reinvestment Act of 1977.
 - At least \$35 billion for guaranteeing loans to first-time borrowers.
 - At least \$25 billion for second draw PPP loans for borrowers with no more than 10 employees or for no more than \$250,000 and going to a recipient in a low- or moderate-income neighborhood for the purposes of the Community Reinvestment Act of 1977.
 - \$25 million for the Minority Business Development Centers Program.
 - \$50 million for loan auditing and reviews.
 - \$20 billion for the Targeted EIDL Advance Program, of which \$20 million will be made available to the inspector general of the SBA.
 - \$57 million for the microloan program established by the Small Business Act, \$50 million going to technical assistance grants and \$7 million for direct loans.
 - \$1.9 billion for the cost of guaranteed loans and carrying out sections 326, 327 and 328 of this Act.
 - \$3.5 billion for debt relief.
 - \$15 billion for grants to live venues.
- The Administrator may modify set-asides through a specified process.
- **Impact:** Extends the funding beyond its original temporal period and raises the authorization level of PPP.

Sec. 324: Grants for Shuttered Venue Operators.

- This section creates an entirely new grant program to be administered by the SBA to provide \$15 billion in grants to live venue operators.
- Eligible entities include live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators or talent representatives that were fully operational before Feb. 29, 2020.
- Venues must demonstrate at least 25% reduction in revenues in a quarter of 2020 as compared to the same quarter in 2019.
- Venues with 90% or more in reduced revenue will be prioritized in the first 14 days of the program, and venues with 70% or more will be prioritized in the subsequent 14-day period. All other eligible entities will follow after the initial 28-day period.
- Grants of up to \$10 million may be awarded, with supplemental grants of \$5 million available.
- \$2 billion is set aside for venues with 50 or less employees.

- Eligible uses of grants include payroll costs, rent, utilities and personal protective equipment (PPE).
- **Impact:** The newly created program administered by the SBA will result in live venues receiving much-needed aid and will prioritize those venues that sustained substantial revenue losses in the first month of implementation.

Sec. 325: Extension of the Debt Relief Program.

- The Administrator shall pay the principal, interest and any associated fees on small business loans.
- All borrowers with covered loans will receive an additional three months of payments by the SBA starting in February 2021. Following this period, an additional five-month coverage period will be provided to select borrowers. The classification is done under the North American Industry Classification System, and includes those borrowers in educational services, arts, accommodation and food services. (list not exhaustive).
- For those loans made before the enactment of this act, the Administrator will make such payments for the six-month period beginning with the next payment due on the covered loan.
- No single monthly payment shall exceed \$9,000. Any additional monthly amounts may be converted to interest to be paid by the borrower.
- The Administrator may extend the period if there are sufficient funds to continue payments. The Administrator may also proportionally reduce the number of months of payments if the amount made available is insufficient. Before such a reduction is made, a report must be submitted to Congress.
- Eligibility for a covered loan to receive these payments is based on the date on which the covered loan is approved by the Administrator. And a borrower may only receive assistance under this section for one loan.
- For each lending program, the Administrator may establish a minimum loan maturity period.
- The SBA must make publicly available information and guidance on the modifications from this section, conduct outreach to all borrowers, educate stakeholders about the program and report monthly to Congress.
- **Impact:** Extends the debt relief program by at least three months for every covered borrower.

Sec. 326: Modifications to 7(a) Loan Programs.

- Increases the loan guarantee on 7(a) loans, including for Community Advantage loans, to 90%. Under a prospective repeal provision, started Oct. 21, 2021, for loans over \$150,000 the guarantee will be 75% and for those less than or equal to \$150,000, 85%.
- Increases Express Loan amounts to \$1 million and then reverts to \$500,000 on Oct. 21, 2021. These loans are guaranteed up to 75% for those under \$350,000 and 50% for those over \$350,000. This provision is also repealed on Oct. 21, 2021.
- **Impact:** Temporarily increases both loan guarantees and the amounts under the Express Loan.

Sec. 327: Temporary Fee Reductions.

- Waives fees under 7(a) and the 504 loan program.
- **Impact:** Waives fees.

Sec. 328: Low-Interest Refinancing.

- Enhances the 504 refinancing rules to create reciprocity with 7(a) programs.
- Provides authority to the SBA to establish 504 Express Loan Program to expedite 504 loans not more than

\$500,000. This program lasts only through Sept. 30, 2023.

- **Impact:** Temporarily enhances 504 refinancing and provides for expedition of 504 Express Loans.

Sec. 329: Recovery Assistance Under the Microloan Program.

- Increases access to capital through the microloan program by increasing the aggregate amount each intermediary may borrow to \$10 million (through Oct. 21, 2021), and providing a grant up to 5% of the outstanding balance of loans to intermediaries with at least 25% of loans to economically distressed areas.
- Temporarily waives nonfederal funding requirements and limits on amounts expended to provide increased access to technical assistance.
- Extends the time that borrowers may pay back loans to eight years. After Oct. 1, 2021, this timing is reduced to seven years.
- Under the microloan program, the Administrator is authorized, each fiscal year between 2021 and 2025, to make \$80 million in technical assistance grants and \$110 million in direct loans.
- Provides through appropriations \$50 million to provide technical assistance grants and \$7 million for direct loans.
- **Impact:** Increases access to micro capital and technical assistance.

Sec. 330: Extension of Participation in 8(a) Program.

- Establishes that the Administrator will assure businesses under Sec. 8(a) of the Small Business Act (a business assistance program for small disadvantaged businesses) may seek an enrollment extension of one year.
- The Administrator must issue regulations to carry out this section within 15 days of the enactment of this Act.
- **Impact:** Assures extended participation in the 8(a) program supporting small disadvantaged businesses.

Sec. 331: Targeted EIDL Advance for Small Business Continuity, Adaptation, and Resiliency.

- This provision creates target application of the EIDL grant program in order to address previous grant applicants who were shut out when funding ran out.
- Eligible entities are those with 300 employees or less, are located in a low-income community and sustained revenue losses of greater than 30%. This excludes agricultural enterprises.
- Ensures these applicants receive up to \$10,000. Previous grant recipients will have their initial grant deducted from the \$10,000 grant amount.
- **Impact:** Addresses rationing that took place when EIDL grant funds ran out by providing businesses in low-income communities a \$10,000 grant.

Sec. 332: Emergency EIDL Grants.

- Extends the EIDL grant program through Dec. 31, 2021.
- Allows for SBA to have greater flexibility in review and issuance of grants.
- SBA must not make a determination on a grant application within 21 days.
- **Impact:** Extends the life of the program and puts in place realistic grant application processing timelines.

Sec. 333: Repeal of EIDL Advance Deduction.

- Previous provisions of the CARES Act included an instruction for the full amount of an EIDL advance to be deducted from the PPP forgiveness amount. This provision repeals that instruction.
- Businesses that had their forgiveness amounts reduced by the EIDL program will be made whole.
- **Impact:** Repeals EIDL advance deduction from PPP forgiveness from the CARES Act.

Sec. 334: Flexibility in Deferral of Payments of 7(a) Loans.

- Ensures bank-held and secondary market-owned 7(a) loans may enjoy the same one-year deferral.
- If an investor refuses deferral, SBA may buy back the loan unless it creates a positive subsidy in the secondary market guarantee subsidy.
- **Impact:** Creates parity between bank-owned and secondary market-owned 7(a) loans.

Sec. 335: Documentation Required for Certain Eligible Recipients.

- Provides greater flexibility in required documentation for self-employed individuals and sole proprietors.
- **Impact:** Allows for more types of documentation to be used on a loan application for a self-employed individual and sole proprietor.

Sec. 336: Election of 12-week Period by Seasonal Employers.

- Alters the seasonal period to any 12-week period selected by the seasonal employer between Feb. 15, 2019, and Feb. 15, 2020.
- The alteration applies to any loan made before, on or after the date of enactment of this Act, including forgiveness of such a loan. But excludes loans for which the borrower has received forgiveness before the date of enactment of the Act.
- **Impact:** Expands the seasonal period.

Sec. 337: Inclusion of Certain Refinancing in Non-Recourse Requirements.

- Provides that applicants cannot be held liable if they did not understand they had recourse against them at the time they took the PPP and EIDL loans after a refinancing.
- **Impact:** Decreases liability for borrowers.

Sec. 338: Application of Certain Terms Through Life of Covered Loan.

- Adjusts the treatment of (1) fee waivers, (2) personal guarantee waivers, and (3) loan deferment, attaching these to the life of the PPP loan, rather than the covered period.
- The alteration applies to any loan made before, on or after the date of enactment of this Act, including forgiveness of such a loan.
- **Impact:** Extends the life of fee waivers, personal guarantee waivers, and loan deferment.

Sec. 339: Interest Calculation on Covered Loans.

- Clarifies that the interest on covered loans is non-compounding and nonadjustable. This amendment may be made applicable to loans made before the enactment of this section upon agreement between the lender and the eligible recipient.

- **Impact:** Provides that the interest on covered loans is non-compounding and nonadjustable.

Sec. 340: Reimbursement for Processing.

- Provides for SBA reimbursement to lenders for new PPP loans.
- Tiered reimbursement rate: (1) for loans not more than \$50,000, the lesser 50% of the loan principal or \$2,500; (2) 5% of the principal for loans more than \$50,000, but less than \$350,000; (3) 3% of the principal for loans more than \$350,000 but less than \$2 million; and (4) 1% of the principle for those \$2 million or larger.
- Reimbursement shall be made within five days of the reported disbursement.
- Borrowers who knowingly retain an agent are responsible for their fees; they may not be paid from the proceeds of a covered loan.
- The section applies to any loan made before, on or after the date of enactment of this Act, including forgiveness of such a loan.
- **Impact:** Provides for prompt SBA reimbursement to lenders for new PPP loans.

Sec. 341: Duplication Requirements for Economic Injury Disaster Loan (EIDL) Recipients.

- Lifts certain restrictions on EIDL borrowers to allow them to apply for PPP loans.
- **Impact:** Permits certain EIDL borrowers to apply for PPP loans.

Sec. 342: Prohibition of Eligibility for Publicly Traded Companies.

- Makes publicly traded companies ineligible for PPP.
- **Impact:** Publicly traded companies are not eligible for PPP.

Sec. 343: Covered Period for New Paragraph (36) Loans.

- The covered period for issuing new PPP loans is extended through March 31, 2021.
- This extension of the program will apply to loans made before, on and after enactment of the legislation.
- **Impact:** This provision extends the life of the initial PPP program. The lending program ended in August 2020 and allowed covered periods for forgiveness to Dec. 31, 2020. Lending and forgiveness periods are extended to March 31, 2021.

Sec. 344: Applicable Periods for Proration.

- Clarifies the applicable period for employees whose salaries do not exceed \$100,000 to be on an annualized basis, as prorated for the period during which compensation is paid or incurred.
- **Impact:** Changes the applicable time periods for proration.

Sec. 345: Extension of Waiver of Matching Funds Requirement Under the Women's Business Center Program (WBC).

- Extends the waiver to June 30, 2021.
- **Impact:** The waiver of WBC matching funds under the CARES Act is extended.

Sec. 346: Clarification of Use of CARES Act Funds for Small Business Development Centers.

- Clarifies that any awards made under this bill are in addition to, and separate from, amounts appropriated to

make grants under Sec. 21 of the Small Business Act.

- These awards may be used to complement and support grants under Sec. 21, except that priority for such grants will be given to small business development centers.
- **Impact:** Clarifies that while these funds may be used as one funding stream, they are different awards.

Sec. 347: GAO Report.

- Within 120 days, the GAO must submit a report to the House and Senate Small Business committees detailing the use of funds made available to the SBA through supplemental appropriations for FY 2020.
- **Impact:** Requires a report from the GAO.

Sec. 348: Effective Date; Applicability.

- Unless otherwise provided, this Act takes effect on the date of its enactment and applies to loans and grants made on or after such date.
- **Impact:** Provisions in this Act generally take effect immediately to provide assistance to businesses as quickly as possible.

Title II—Assistance to Individuals, Families, and Businesses

Subtitle B—COVID-Related Tax Relief Act of 2020

Sec. 276. Clarification of Tax Treatment of Forgiveness of Covered Loans.

- The cause of much confusion when originally included in the CARES Act, this provision clarifies that:
 - taxpayers do not need to include PPP loan forgiveness amounts in gross income;
 - otherwise deductible expenses financed by PPP loan proceeds continue to be deductible, and
 - taxpayers do not need to reduce their tax basis or any other tax attributes as a result of PPP loan forgiveness.
- The provision is effective as of the date of enactment of the CARES Act.
- **Impact:** This provision gives clarity and much-needed relief to businesses that obtained PPP loans.

Sec. 278. Clarification of Tax Treatment of Certain Loan Forgiveness and Other Business Financial Assistance Under the CARES Act.

- The provision clarifies that gross income does not include forgiveness of certain loans, emergency EIDL grants and certain loan repayment assistance, each as provided by the CARES Act. The provision also clarifies that loan forgiveness does not preclude deductions paid for with amounts exempt from gross income. Similarly, tax basis and other attributes will also not be reduced as a result of those amounts being excluded from gross income.
- The provision provides similar treatment for targeted EIDL advances and grants for shuttered venue operators.
- This provision is effective March 27, 2020.
- **Impact:** This provision ensures that loan forgiveness is not included in gross income and that taxpayers may still claim deductions for expenses paid with tax-exempt income. A similar provision was included for expenses paid with forgiven PPP grants.

III. UNEMPLOYMENT ASSISTANCE

Section Summary: This bill extends the Pandemic Unemployment Assistance (PUA) program, allowing payments to individuals who do not traditionally qualify for state unemployment benefits. Self-employed individuals and gig economy workers will benefit from this extension, since the provision was set to expire Dec. 31, 2020, under the CARES Act. The bill also provides an additional \$300 in Federal Pandemic Unemployment Compensation (FPUC) payments to supplement state benefits. It balances enhanced benefits with new program integrity measures that require verification of identity and return-to-work requirements so that employees cannot turn down suitable employment and still receive benefits. The bill also provides continuing assistance to states in order to cover the cost of unemployment programs, but in some cases reduces the amount of federal coverage.

DIVISION N— Additional Coronavirus Response and Relief

Title II—Assistance to Individuals, Families, and Businesses

Subtitle A—Unemployment Insurance, Chapter 1—Continued Assistance to Unemployed Workers

Sec. 200: Short Title.

- This section provides the short title—Continued Assistance for Unemployed Workers Act of 2020.

Subchapter I – Extension of CARES Act Unemployment Provisions

Sec. 201: Extension and Benefit Phaseout Rule for Pandemic Unemployment Assistance.

- Extends Pandemic Unemployment Assistance (PUA) to March 14, 2021, instead of the Dec. 31, 2021, expiration under the CARES Act. The program is retroactive to Dec. 1, 2020.
- Allows individuals receiving benefits as of March 14, 2021, to continue through April 5, 2021, as long as the individual has not reached the maximum number of weeks.
- Increases the number of weeks of benefits an individual may claim from 39 to 50.
- Requires individuals who received unemployment assistance to which they were not entitled to repay such amounts, unless states provide a waiver because the individual was not at fault or because such repayment would violate equity and good conscience.
- Provides a transition rule for individuals transitioning between PUA and the Pandemic Emergency Unemployment Compensation (PEUC) program (Sec. 2107 of the CARES Act).
- **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. This includes independent contractors. These provisions were set to expire at the end of the year and are now extended through March 14.

Sec 202: Extension of Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations.

- Extends Sec. 2103 of the CARES Act, providing payments to states to reimburse nonprofits, government agencies and Indian tribes for half of the costs they incur from March 13 through March 14, 2021, instead of Dec. 31, 2020.
- **Impact:** Provides monies to states for claims made by those who are employed by nonprofits, government agencies and Indian tribes.

Sec. 203: Extension of Federal Pandemic Unemployment Compensation.

- Provides a Federal Pandemic Unemployment Compensation (FPUC) supplement to all state and federal unemployment benefits at \$300 per week, starting after Dec. 26, 2020, and ending March 14, 2021.
- **Impact:** The CARES Act provided \$600 FPUC payments to supplement traditional state UI benefits through July 31, 2020. From July 31, this provision provides additional payments through March 14, 2021.

Sec 204: Extension of Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week.

- Extends Sec. 2105 of the CARES Act, which provided funding to pay the cost of the first week of unemployment benefits 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. This is extended through March 14, 2021, and will be reimbursed for weeks after Dec. 26, 2020, at 50%.
- **Impact:** Partially funds the benefit payments for states that provide benefits more rapidly. The CARES Act fully funded the waiver of a waiting week.

Sec. 205: Extension of Emergency State Staffing Flexibility.

- Extends Sec. 2106 of the CARES Act through March 14, 2021, which provides states with temporary, limited flexibility to hire temporary staff, rehire former staff or take other steps to quickly process unemployment claims.
- **Impact:** Provides states with staffing to process claims.

Sec. 206: Extension and Benefit Phaseout Rule for Pandemic Emergency Unemployment Compensation.

- Extends Sec. 2107 of the CARES Act, the Pandemic Emergency Unemployment Compensation (PEUC) program, to March 14, 2021, and allows individuals receiving benefits as of March 14, 2021, to continue through April 5, 2021, as long as the individual has not reached the maximum number of weeks.
- Increases the number of weeks of benefits an individual may claim through the PEUC program from 13 to 24.
- Provides rules for states about sequencing these benefits with other unemployment benefits.
- **Impact:** The CARES Act provides additional monies and weeks of benefits for those who are most displaced from the pandemic. This increases the time frame for relief.

Sec. 207: Extension of Temporary Financing of Short-Time Compensation Payments in States with Programs in Law.

- Sec. 2108 of the CARES Act provided funding to support existing state “short-time compensation” (STC) programs, where employers reduce employees’ hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit.
- This provision extends the program through March 14, 2021, and continues to provide 100% federal financing programs that are established in state law.
- **Impact:** Provides “bridge” compensation for employees where employers keep employees on payroll but reduce their hours.

Sec. 208: Extension of Temporary Financing of Short-Time Compensation Agreements for States Without Programs in Law.

- Sec. 2109 of the CARES Act permitted states to enter into an agreement with the Department of Labor to enact an

STC plan. It provided funding to support states that began a “short-time compensation” program by providing 50% of the costs a state incurred. This provision extends the program through March 14, 2021.

- **Impact:** Encourages states to offer programs that provide “bridge” compensation for employees where employers keep employees on payroll but reduce their hours.

Sec. 209: Technical Amendment to References to Regulation in CARES Act.

- Provides a technical amendment to correct a reference error in the CARES Act.

Subchapter II – Extension of FFCRA Unemployment Provisions

Sec. 221: 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. This provision extends that duration through March 14, 2021.
- **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.

Sec. 222: Extension of Full Federal Funding of Extended Unemployment Compensation.

- 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. This section extends the 100% reimbursement to cover benefits paid through March 14, 2021.
- **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.

Subchapter III – Continued Assistance to Rail Workers

Sec. 231: Short Title.

- This section provides the short title—Continued Assistance to Rail Workers Act of 2020.

Sec. 232: Additional Enhanced Benefits Under the Railroad Unemployment Insurance Act.

- Sec. 2113 of the CARES Act provided an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance recipient for up to three months. This section restores the benefit for registration periods beginning after Dec. 26, 2020, and ending on or before March 14, 2021.
- **Impact:** Provides additional monies for railroad employees who become unemployed as a result of the pandemic.

Sec. 233: Extended Unemployment Benefits Under the Railroad Unemployment Insurance Act.

- Provides up to 11 additional weeks of unemployment benefits under the Railroad Unemployment Insurance Act (RUIA) for qualifying railroad workers. This provision also extends the availability of the 13 weeks of additional unemployment benefits provided under CARES Act Sec. 2114. These weeks are not available to those whose extended benefit period begins after March 14, 2021, and they end for everyone for any registration period

beginning after April 5, 2021.

- **Impact:** Provides additional monies for railroad employees who are most displaced from pandemic.

Sec. 234: Extension of Waiver of the Seven-Day Waiting Period for Benefits Under the Railroad Unemployment Insurance Act.

- Sec. 2112 of the CARES Act temporarily eliminated the seven-day waiting period for railroad unemployment insurance benefits through Dec. 31, 2020. This section extends the waiver through March 14, 2021.
- **Impact:** Speeds up delivery of unemployment insurance for railroad employees.

Sec. 235: Treatment of Payments From the Railroad Unemployment Insurance Account.

- Temporarily prevents sequestration of the benefits available under the RUIA during the period that is seven days after the date of enactment of this section and 30 days after the date on which the president's declaration under the National Emergencies Act related to the coronavirus is terminated.
- **Impact:** Temporarily avoids a reduction in railroad unemployment benefits through March 13, 2020.

Subchapter IV – Improvements to Pandemic Unemployment Assistance to Strengthen Program Integrity

Sec. 241: Requirement to Substantiate Employment or Self-Employment and Wages Earned or Paid to Confirm Eligibility for Pandemic Unemployment Assistance.

- Effective Jan. 31, 2021, requires new applicants to the PUA program to provide documentation to substantiate prior employment or self-employment (or the intended commencement of employment or self-employment) within 21 days of applying for benefits.
- Requires individuals receiving PUA as of Jan. 31, 2021, to submit documentation to substantiate employment or self-employment within 90 days; otherwise, the claimant will be ineligible to receive further PUA benefits.
- **Impact:** Introduces program integrity measures through various substantiation requirements to the PUA program. A version of this provision was included in the GOP's HEALS Act.

Sec. 242: Requirement for States to Verify Identity of Applicants for Pandemic Unemployment Assistance.

- Requires states to have procedures in place to verify or validate the identity of PUA applicants, and for timely payment of benefits.
- Clarifies that expenses to implement such procedures qualify as an administrative cost and may be reimbursed as part of PUA operation.
- **Impact:** Introduces program integrity measures to the PUA program to minimize fraud.

Subchapter V – Return to Work Reporting Requirement

Sec. 251: Return to Work Reporting for CARES Act Agreements.

- Effective 30 days from enactment, requires states to have processes in place to address situations when claimants of unemployment compensation refuse to return to work or refuse to accept an offer of suitable work without good cause including:
 - A reporting method for employers to notify the state when an individual refuses employment.

- A plain language notice to claimants about state return to work laws, rights to refuse to return to work or to refuse suitable work and information on contesting a denial of a claim, as well as what constitutes suitable work, including a claimant's right to refuse work that poses a risk to the claimant's health and safety.
- **Impact:** This helps address employer concerns that claimants may not return to work if their UI compensation is close to, over or equivalent to what they would receive when working.

Subchapter VI – Other Related Provisions and Technical Corrections

Sec. 261: Mixed Earner Unemployment Compensation.

- Provides a federally funded \$100 per week additional benefit, in addition to \$300 FPUC payments, to individuals who have at least \$5,000 a year in self-employment income, but are disqualified from receiving PUA because they are eligible for regular state unemployment benefits. This provision would be effective for future unemployment benefit payments after a state chooses to make an agreement with the Department of Labor and it expires March 14, 2021.
- **Impact:** Increases federal supplemental payments for self-employed individuals to \$400.

Sec. 262: Lost Wages Assistance Recoupment Fairness.

- Similar to Sec. 210, allows states to waive recovery of Lost Wages Assistance (LWA) program overpayments for which the recipient was not at fault and would suffer hardship if required to repay the benefits.
- **Impact:** Equalizes the treatment of overpayments for both the PUA and LWA programs.

Sec. 263: Continuing Eligibility for Certain Recipients of PUA.

- Amends the CARES Act to require individuals to submit weekly recertifications to confirm eligibility for PUA, effective 30 days after the enactment of this section.
- Includes a safe harbor to ensure that individuals who are otherwise eligible for PUA do not have their benefits terminated because of inadvertent or state system errors in past required weekly benefit recertifications, so long as the state made good faith efforts to implement the program.
- **Impact:** Requires recertifications for continued PUA eligibility to minimize fraud but balances it with the necessary flexibilities for individuals.

Sec. 264: Technical Correction for Nonprofit Organizations Classified as Federal Instrumentalities.

- Amends Sec. 2103 of the CARES Act such that certain federal instrumentalities that are reimbursable employers are allowed to receive the same federal subsidy for reimbursable employers that is provided to nonprofit organizations and government entities.
- **Impact:** A technical correction to allow certain federal instrumentalities to qualify for the same benefits as other nonprofit organizations.

Sec. 265: Technical Correction for the Commonwealth of Northern Mariana Islands.

- Allows PUA and Federal Pandemic Unemployment Compensation (FPUC) benefits to be provided to workers in the Commonwealth of the Northern Mariana Islands with "Commonwealth Only Transitional Worker" or CW-1 status.
- **Impact:** Extends certain UI benefits to workers in the Northern Mariana Islands.

Sec. 266: Waiver to Preserve Access to Extended Benefits (EB) in High Unemployment States.

- Provides a temporary waiver from Sec. 203(b)(1)(B) of 26 U.S.C. 3304, which provides that no extended benefit period may begin before the 14th week after the close of a prior extended benefit period in any state (“EB freeze period”). This requirement is waived from Nov. 1, 2020, through Dec. 31, 2021.
- **Impact:** Technical correction to ensure continuity of EBs.

IV. INDIVIDUAL TAX RELIEF

Section Summary: The bill’s signature individual relief provision is another round of EIP. Unlike the CARES Act, which provided a maximum payment of \$1,200, this bill provides up to \$600 per individual before phasing out the amount. It also increases payments for qualifying dependents from \$500 to \$600 and expands eligibility for the payments to mixed-status families where one spouse has a Social Security Number (SSN). These families can claim the corresponding amount for the first round of EIP when they file their 2020 taxes. This provision is designed to provide individuals with the help they need while stimulating the economy during the continued lockdown of many businesses.

The bill also includes other relief for families, such as allowing families who experience income loss to use 2019 income to determine eligibility for the Earned Income Tax Credit and the Additional Child Tax Credit. It also provides greater flexibility for families with Flexible Spending Accounts, since many experienced changes in child care expenses.

Finally, the bill prioritizes educational assistance for individuals—provisions include allowing up to \$5,250 of employer-provided student debt payments to be excluded from gross income.

DIVISION N—Additional Coronavirus Response and Relief

Title II—Assistance to Individuals, Families, and Businesses

Subtitle B—COVID-related Tax Relief Act of 2020

Sec. 272. Additional 2020 Recovery Rebates for Individuals.

- Provides a one-time \$600 payment to individuals with adjusted gross income up to \$75,000 and \$1,200 for joint filers making up to \$150,000. Taxpayers are eligible for an additional \$600 per qualifying child dependent.
- Reduces rebates by \$5 for each \$100 that a taxpayer’s income exceeds a phase-out threshold, until the rebate is completely phased out.
- Amounts are based on taxpayers’ 2019 tax returns.
- **Impact:** Provides immediate cash relief for working-class Americans and will help stimulate the economy.

Sec. 273. Amendments to Recovery Rebates Under the CARES Act.

- A mixed-status household, where at least one spouse has a valid Social Security Number (SSN), will be eligible for a \$1,200 payment rather than the \$2,400. A qualifying child will not be accounted for unless the taxpayer files their return with a valid SSN. This provision is effective retroactive to the date of enactment of the CARES Act.
- A valid identification number includes the adoption taxpayer identification number of a qualifying child.
- **Impact:** Eliminates fraud and ensures that payments get to eligible individuals.

Sec. 274. Extension of Certain Deferred Payroll taxes.

- President Trump previously issued a memorandum allowing employers to defer withholding employees' share of social security tax obligation for the last four months of 2020 (allowing larger paychecks to employees), to be made up and paid back through increased withholding for the first four months of 2021.
- This provision extends the repayment period through Dec. 31, 2021.
- **Impact:** Assists individual workers whose employers deferred withholding, and recognizes that many workers may not be in a good financial position to presently accept lower paychecks from increased withholding.

Sec. 275. Regulations or Guidance Clarifying Application of Educator Expense Tax Deduction.

- Under current law, educators may claim a deduction for up to \$250 in qualified expenses. The definition of qualified expenses is expanded to include personal protective equipment (PPE) and other supplies used for the prevention of the spread of COVID-19. This provision is retroactive to March 12, 2020.
- **Impact:** Allows educators to deduct the cost of supplies purchased to prevent the spread of COVID-19.

Sec. 277. Emergency Financial Aid Grants.

- Provides that emergency financial aid grants under the CARES Act are excluded from gross income of college students, including for determining eligibility for the American Opportunity and Lifetime Learning Tax Credit.
- **Impact:** Ensures that emergency assistance does not disqualify students from claiming certain educational assistance credits.

Sec. 283. Disclosures to Identify Tax Receivables Not Eligible for Collection Pursuant to Qualified Tax Collection Contracts.

- Provides the authority needed for the commissioner of social security and the secretary of the treasury to share taxpayer information.
- The Taxpayer First Act (TFA) excludes Supplemental Social Security and Social Security Disability Insurance beneficiaries from the IRS private debt collection program beginning on Jan. 1, 2021.
- Authorizes disclosure by the secretary to the Social Security Administration to determine the eligibility of tax receivables.
- **Impact:** Provides the authority needed to share such information and make the TFA provision work as intended.

Sec. 284. Modification of Certain Protections for Taxpayer Return Information.

- The provision unwinds and fixes changes made under the CARES Act and restores taxpayer confidentiality protections to the tax return information shared by the IRS.
- The CARES Act modified the FUTURE Act to allow the IRS to share tax return information of student aid applicants, their parents, students and borrowers with the Department of Education.
- **Impact:** Reinstates certain protections to confidential information of borrowers while allowing certain uses as requested.

DIVISION EE—Taxpayer Certainty and Disaster Tax Relief Act of 2020

Title II—Other Provisions

Sec. 211. Temporary Special Rule for Determination of Earned Income.

- Allows taxpayers to utilize 2019 income for purposes of determining the Earned Income Tax Credit and the Additional Child Tax Credit for tax year 2020.
- **Impact:** Provides an exception for financially compromised taxpayers to maximize their 2020 benefits based on their usual income levels.

Sec. 212. Certain Charitable Contributions Deductible by Non-Itemizers.

- Provides a special rule for taxpayers who do not itemize, allowing a maximum deduction of \$300 (\$600 if MFJ) for charitable contributions made in cash.
- The penalty for underpayments attributable to the overstatement of charitable contributions is increased from 20% to 50%.
- The modification applies to taxable years beginning after Dec. 31, 2020. For 2020, the maximum deduction remains \$300 for single and married taxpayers.
- **Impact:** Promotes philanthropy.

Sec. 213. Modification of Limitations on Charitable Contributions.

- The CARES Act provision modifying the limitations on charitable contributions remains the same but has been extended through tax year 2021.
- Increases the limitations on deductions for charitable contributions.
- The 50% of adjusted gross income limitation is suspended for individuals.
- The 10% limitation is increased to 25% of taxable income for corporations.
- Increases the limitation on deductions for contributions of food inventory from 15% to 25%.
- **Impact:** Promotes philanthropy.

Sec. 214. Temporary Special Rules for Health and Dependent Care Flexible Spending Arrangements.

- Allows plans to permit health and dependent care flexible spending arrangements (FSAs) to carry over unused benefits up to the full annual amount from 2020 to 2021 and 2021 to 2022.
- Allows plans to permit a 12-month grace period for unused benefits or contributions in health and dependent care FSAs for plan years ending in 2020 or 2021.
- Allows plans to extend the maximum age of eligible dependents from 13 to 14 for dependent care FSAs for the 2020 plan year and unused amounts from the 2020 plan year to be carried over into the 2021 plan year.
- Allows plans to permit a prospective change in election amounts for health and dependent care FSAs for plan years ending in 2021.
- **Impact:** Provides flexibility for FSAs due to changes in expenses for employees due to COVID-19 (e.g., some parents do not have child care expenses due to work-from-home arrangements or child care center closures).

V. Retirement

Section Overview: The bill contains four provisions intended to assist pension plans navigate changes in its workforce that may occur as a result of the pandemic. Specifically, the changes include creating parity between pension plans and

account plans, such as 401(k) plans and 403(b) plans, for the minimum allowable age for employees to take distributions during a working retirement. In addition, the bill assists pension plans from triggering a partial plan termination if a significant reduction in workforce occurs. The bill also contains language related to special rules for money purchase pension plans and a provision on elections to terminate the transfer period for qualified transfers from pension plans for future retiree costs.

DIVISION EE—Taxpayer Certainty and Disaster Tax Relief Act of 2020

Title II—Other Provisions

Sec. 208. Minimum Age for Distributions During Working Retirement.

- Allows pension plans (i.e., qualified defined benefit plans and money purchase plans) to provide for in-service distributions to participants at or after age 59½.
 - Previously, in-service distributions only could be made at or after age 62.
 - The plan’s normal retirement age need not be this age.
- Also adds a special multiemployer plan exception: A multiemployer pension plan can provide for in-service distributions at or after age 55 rather than age 59½, if:
 - The plan covers employees in the building and construction industry,
 - Eligible participants must have been a participant in the plan on or before April 30, 2013,
 - Trust must have been in existence before Jan. 1, 1970, and
 - The plan had received a favorable determination letter from IRS before Dec. 31, 2011, at a time when the plan already allowed for in-service distribution at or after age 55.
- **Impact:** The minimum age for in-service distributions is now consistent between pension plans and account plans (e.g., 401(k) plans, 403(b) plans). If a pension plan provides for such in-service distributions, the pension annuity income available to participants at and after retirement will be reduced.

Sec. 209. Temporary Rule Preventing Partial Plan Termination.

- A partial plan termination may occur when, based on the applicable facts and circumstances, either a significant percentage or significant number of participants are dropped from a plan, either because of an employer-initiated plan amendment or termination of employment.
 - If a partial plan termination occurs, affected participants must be fully vested in their accrued benefit, to the extent funded.
 - A “significant” percentage reduction generally means a reduction of 20% or more.
- Under this new law, a plan will not be treated as having had a partial plan termination during any plan year that includes the period from March 13, 2020, through March 31, 2021:
 - If the number of active participants covered by the plan on March 31, 2021, is at least 80% of the number of active participants covered by the plan on March 13, 2020.
- **Impact:** Protects qualified plans from having to fully vest the accounts and accrued benefits of “affected participants” who were terminated due to the coronavirus pandemic where the plan sponsor employers had some recovery and mostly restored the pre-pandemic number of employees. This provision does not help employers that may take longer than March 31, 2021, to recover its pre-pandemic employee population,

especially if the national emergency declaration related to the coronavirus extends beyond March 2021.

DIVISION N—Additional Coronavirus Response and Relief

Title II—Assistance to Individuals, Families, and Businesses

Subtitle B—COVID-related Tax Relief Act of 2020

Sec. 280. Application of Special Rules to Money Purchase Pension Plans.

- Qualified coronavirus-affected individuals can receive penalty-free and special favorable tax treatment on “coronavirus-related distributions” of up to \$100,000 in the aggregate from all eligible retirement plans of the plan sponsor’s controlled group if made through Dec. 31, 2020, if and to the extent the plan is amended to provide these distributions.
 - Applies only to “eligible retirement plans” within the meaning of Code Sec. 402(c)(8): individual retirement arrangements (IRAs) under Code Sec. 408(a) or (b), qualified plans under Code Sec. 401(a), plans under Code Sec. 403(a) or 403(b), and governmental deferred compensation plans under Code Sec. 457(b).
 - Money purchase pension plans were excluded since they are treated as pension plans under Code Sec. 401(a).
- The new law amends the CARES Act to clarify that, for purposes of “coronavirus-related distributions” under CARES Act Sec. 2202(a), money purchase pension plans are treated as eligible retirement plans.
 - Effective retroactive to March 27, 2020.
- **Impact:** Expands the types of plans that can make tax-favored coronavirus-related distributions to include money purchase pension plans.

Sec. 285. 2020 Election to Terminate Transfer Period for Qualified Transfers from Pension Plan for Covering Future Retiree Costs.

- Under current law, subject to certain exceptions, a pension plan must prohibit the diversion of plan assets for purposes other than for the exclusive benefit of the employees or their beneficiaries until all liabilities to employees and their beneficiaries have been satisfied.
 - If any of the pension plan assets revert to the employer, the reversion amount is included in the employer’s gross income, and an excise tax may be imposed.
 - **Code §420(f)** provides one such exception—qualified future transfers—that permits a pension plan to transfer an amount equal to up to 10 years of retiree health and retiree life insurance costs to a retiree health benefits account and retiree life insurance account in the plan.
 - Applicable requirements include: (i) the qualified future transfer must be 120% funded at the outset and throughout the elected transfer period, (ii) any unused amounts must be transferred back, and (iii) a “maintenance of effort” requirement must be met.
 - Recent market volatility related to the coronavirus pandemic has caused funding levels to fall below the required 120%. As a result, plan sponsors must immediately fund the shortfall to restore the 120% funding level.
- This provision allows an employer, which sponsors a pension plan and which has made a qualified future transfer election, to make a one-time election to terminate the existing transfer period for any taxable year beginning

after the date of election. Requirements include:

- Election can be made through Dec. 31, 2021.
- Maintenance of effort must continue to apply as if the transfer period were not shortened.
- The employer must ensure that the plan stays at least 100% funded throughout the original transfer period.
- The plan must meet specified funding targets for the first five years after the original transfer period.
- All amounts remaining in the retiree benefits account at the end of the shortened transfer period must be returned to the pension plan and treated as a reversion under Code Sec. 4980 (but without application of an excise tax to such amount).
 - Unless before the end of the five-year period beginning after the original transfer period, an equivalent amount is transferred back to a retiree health benefits account or retiree life insurance account.
- **Impact:** Provides relief to employers from having to immediately fund the pension plan to restore the retiree account funding to 120%. This will allow corporate assets to be used for other important purposes related to business operations.

VI. DISASTER TAX RELIEF

Section Overview: This section provides relief for individuals and employers affected by a qualified disaster other than of COVID-19. It allows for special uses for retirement funds, an employee retention credit, increased charitable giving for disaster relief, favorable rules for personal casualty losses, and an increased low-income housing tax credit.

DIVISION EE—Taxpayer Certainty and Disaster Tax Relief Act of 2020

Title III—Disaster Tax Relief

Sec. 301: Definitions.

- This section defines qualified disaster area as an area with a major disaster starting on Jan. 1, 2020, to 60 days following the enactment of the bill. A qualifying disaster must go beyond the impacts of COVID-19 on the area.
- This section also defines a qualified disaster zone, qualified disaster and incident period.

Sec. 302: Special Disaster-Related Rules for Use of Retirement Funds.

- This section allows tax-favored withdrawals for a qualified disaster distribution from retirement plans limited to \$100,000 or aggregate amounts treated as qualified disaster distributions received in prior years. This provides an exception to the 10% early retirement plan withdrawal.
- Individuals that receive a qualified disaster distribution may make contributions up to the amount of the distribution to a retirement account within the next three years. This section also distinguishes between IRAs and non-IRA accounts.
- This section defines qualified disaster distribution and eligible retirement plan.
- This section applies special rules including exemption of distributions from trustee-to-trustee transfer and

withholding rules and qualified disaster distributions treated as meeting plan distribution requirements.

- This section sets parameters for recontributions of withdrawals for home purchases up to the aggregate amount of the original distribution for 180 days following the enactment.
- This section increases the limit on loans not treated as distributions from a qualified plan from \$50,000 to \$100,000. The language also permits a delay of repayment of loans that fall within the 180 days.
- **Impact:** This section allows for individuals suffering from a disaster to access funds from their retirement plans to fund the expenses of a qualified disaster.

Sec. 303: Employee Retention Credit for Employers Affected by Qualified Disasters.

- This section provides a tax credit for 40% of qualified wages, up to \$6,000, for each employee by the employer whose business was affected by the disaster.
- This section defines eligible employer, eligible employee and qualified wages.
- This section applies a special rule of a denial of a double credit based on sections 41, 45A, 45P, 45S, 51 and 1396 of the Code.
- For tax-exempt organizations, there is an option to claim the credit against payroll taxes.
- **Impact:** This section allows for employers affected by qualified disasters to claim a \$6,000 for each employee or if they are a particular tax-exempt organization, they can claim this credit against payroll taxes.

Sec. 304: Other Disaster Related Tax Relief Provisions.

- This section removes the limitation on charitable disaster relief contributions.
- This section also provides special rules for qualified disaster-related personal casualty losses. This provision removes the rule requiring that the personal casualty losses must exceed 10% of adjusted gross income. Further, the provision no longer requires taxpayers to itemize deductions.
- **Impact:** This section provides two provisions to allow for increased charitable giving for qualified disaster relief and personal casualty losses.

Sec. 305: Low-Income Housing Tax Credit.

- This section provides for an additional low-income housing credit for 2021 and 2022. The state ceiling for the credit is increased for low-income housing tax credit allocations. The dollar amount limit is the lesser of \$3.50 times the population of the state or 65% of the state housing credit ceiling. The provision also extends the placed-in-service deadline for an additional year.
- **Impact:** This section provides an additional low-income housing credit for 2021 and 2022.

Sec. 306: Treatment of Possessions.

- This section provides that the secretary of the treasury will make payments to possessions of the U.S. that have a mirror code tax system and other possessions. The payments will be equal to the losses the territories would incur by applying to the disaster relief provisions.
- **Impact:** This section allows for payments to U.S. territories and possessions.

VII. TAX EXTENDERS AND ENERGY TAX PROVISIONS

Section Summary: The bill contains a number of tax extender provisions that extend, repeal and make permanent certain expiring tax provisions, most of which were scheduled to end in 2020. A comprehensive list of these provisions is provided in the table below.

The package breaks the mold of one-year extensions by providing for a permanent extension of several tax benefits, including tax relief for craft beverages, a 7.5% medical expense deduction and an energy-efficient commercial buildings deduction with updated standards.

Other breaks set to expire in 2020 were extended through 2025, including the New Markets Tax Credit, the Work Opportunity Tax Credit, the Controlled Foreign Corporations Look-through Rule and the Family Leave Credit, among others.

All other provisions set to expire in 2020 were extended only by one year to 2021, setting up another extenders discussion next December.

The bill also contains extensions and expansions to green energy specific credits. The wind energy credit was extended by one year with a 40% haircut, the solar energy credit was extended by two years and reduced by 26% and the Sec. 45Q carbon capture was extended two additional years. In addition, the Investment Tax Credit was expanded to include waste heat to power property, and the offshore wind credit was expanded through 2025.

Two provisions were not extended under the bill—the second generation biofuels property depreciation and the special rule for dispositions to implement Federal Energy Regulatory Commission or state electric restricting policy. As such, these provisions will be effectively repealed, if the bill is enacted.

DIVISION EE—Taxpayer Certainty and Disaster Tax Relief Act of 2020

Title I—Extension of Certain Expiring Tax Provisions

Subtitles A through C, Secs. 101-149

Expiring in 2020	Summary	Extension
Business		
Provisions Modifying the Rates of Taxation of Beer, Wine and Distilled Spirits, and Certain Other Rules	This provision makes the reduced excise tax rate in the Craft Beverage Modernization Act permanent. The tax shall be: (1) \$16 on the first 6 million barrels of beer brewed during the calendar year and imported into the U.S., and \$18 on any other barrels. The provision also reduces the rate for certain domestic producers from \$7 per barrel to \$3.50. The provision allows a credit of \$1 per gallon on the first 30,000 wine gallons, 90 cents per gallon on the first 100,000 wine gallons, and 53.5 cents per wine gallon on the first 620,000 wine gallons.	Permanent (Sec. 106)
Refunds In Lieu of Reduced Rates for Certain Craft Beverages Produced Outside the U.S.	The provision requires that, beginning in 2023, the Treasury Department will administer quarterly refunds for reduced import rates, rather than Customs and Border Protection determining it upon entry. The provision requires that refunds be allowed within 90 days, as opposed to 45.	Permanent (Sec. 107)
Reduced Rates	The provision prohibits smuggled or illegally produced beer, wine and spirits	Permanent

Not Allowed for Smuggled or Illegally Produced Beer, Wine and Spirits	from securing reduced rates.	(Sec. 108)
Minimum Processing Requirements for Reduced Distilled Spirits Rates	The provision clarifies the definition of processing for determining the volume limitations on reduced rates. It disregards mere bottling of distilled spirits in determining whose controlled group is relevant for purposes of the limitations.	Permanent (Sec. 109)
Modification of Single Taxpayer Rules	The provision makes certain modifications to single taxpayer rules for beer, wine and distilled spirits. It specifically changes language that requires taxation “marketed under a similar brand, license” to simply “under a license.”	Permanent (Sec. 110)
Look-Through Treatment of Payments Between Rebated Controlled Foreign Corporations under Foreign Personal Holding Company Income Rules	The credit allows U.S. corporations to shift their income on certain foreign subsidiaries placed in countries with high tax rates to areas with lower rates, thereby reducing their tax burden.	2025 Extension (Sec. 111)
New Markets Tax Credit	The credit encourages investment in low-income communities traditionally lacking access to capital. The provision extends the carryover period for unused credits through 2030.	2025 Extension (Sec. 112)
Work Opportunity Tax Credit	The credit aims to increase job opportunities for certain disadvantaged individuals by reducing the cost of hiring. Employees covered under the credit include families receiving Temporary Assistance to Needy Families benefits, food stamp benefits, ex-felons and certain veterans.	2025 Extension (Sec. 113)
Seven-Year Recovery for Motorsports Racing Facilities	Nonresidential structures in the theme and amusement park industry are exempt from the 39-year depreciation life and have a seven-year recovery period. This provision extends the inclusion of the motorsports racing facilities in this industry.	2025 Extension (Sec. 115)
Special Expensing Rules for Film, Television and Live Theatrical Production	The rule allows taxpayers to deduct up to \$15 million of production costs (\$20 million for productions in low-income and distressed communities). Eligible productions are limited to those in which at least 75% of the compensation paid is for services performed in the U.S.	2025 Extension (Sec. 116)
Empowerment	Empowerment Zones are impoverished and economically distressed areas	2025 Extension,

Zone Tax Incentives	where businesses may receive federal grants and tax incentives. The provision terminates the increased expensing on qualifying equipment under Code Sec. 179 and the deferral of capital gains tax on the sale of certain assets, effective for tax years beginning after Dec. 31, 2020.	repeal section 179 (which are obsolete) and capital gains benefits (which are expired) (Sec. 118)
Employer Credit for Paid Family and Medical Leave	The credit is equal to 12.5% of eligible wages if the rate of payment is 50% and is increased by up to 0.25% for each point that the rate of payment exceeds 50%. The maximum amount of leave is 12 weeks per taxable year.	2025 Extension (Sec. 119)
Indian Employment Tax Credit	The credit, designed to encourage the hiring of Indian tribe members, is claimed by employers for qualified wages and health insurance costs. It is limited to services performed within an Indian reservation and for individuals living on or near the reservation. The provision extends the credit through 2021 on the first \$20,000 of qualified wages and health insurance costs incurred by the employer.	2021 Extension (Sec. 135)
Mine Rescue Team Training Credit	The credit amount is limited to the lesser of (1) 20% of training program costs per employee (including wages paid to the employee while in training) or (2) \$10,000. Employees must be full-time miners eligible to serve on a mine rescue team in order for taxpayers to claim the credit for training.	2021 Extension (Sec. 136)
Three-Year Depreciation for Racehorses Two Years or Younger	The cost recovery period for racehorses is seven years, although racehorses that begin training after age 2 have a three-year recovery period. Under the provision, this three-year recovery period is extended to all racehorses.	2021 Extension (Sec. 137)
Accelerated Depreciation for Business Property on Indian Reservations	The credit makes businesses on Indian reservations eligible for accelerated depreciation.	2021 Extension (Sec. 138)
American Samoa Economic Development Credit	The credit is against U.S. corporate income tax equal to the share of a domestic corporation's employee wages, employee fringe benefit expenses and tangible property depreciation allowances with respect to activities within American Samoa.	2021 Extension (Sec. 139)
Energy		
Energy Efficient Commercial Building Deduction	This deduction is for certain energy-saving property used in domestic commercial buildings. Qualifying energy-efficient property includes property installed as part of (1) the interior lighting system; (2) the heating, cooling, ventilation or hot water system; or (3) the building envelope. This provision makes certain deductions permanent and updates the ASHRAE Reference Standard to as of two years before the start of construction and indexes to inflation the amount of the \$1.80-per-square-foot limitation.	Permanent, with updated standards (Sec. 102)
Oil Spill Liability Trust Fund	The provision extends a 9 cents-per-barrel excise tax on domestic crude oil and imported petroleum products through 2025. Revenues from the tax	2025 Extension (Sec. 117)

Financing Rate	finance the Oil Spill Liability Trust Fund.	
Beginning-of-Construction Date for Renewable Power Facilities to Claim the Production Tax Credit or the Investment Tax Credit in Lieu of the PTC	The renewable electricity PTC is a credit for electricity produced. Under the provision, the credit is extended for renewable power facilities that begin construction by the end of 2021. The credit is reduced by 40% for wind facilities beginning construction by the end of 2021.	2021 Extension (Sec. 131)
Second Generation Biofuel Producer Credit	The credit is a nonrefundable income credit for each gallon of second generation biofuel production equal to \$1.01.	2021 Extension (Sec. 140)
Credit for Section 25C Nonbusiness Energy Property	The credit provides homeowners with a nonrefundable tax credit for investments in both high-efficiency energy property and investments in certain energy-efficiency improvements. The provision allows a credit of 10% for qualified energy improvements and allows credits from \$50 to \$300 for energy-efficient property including furnaces, boilers, biomass stoves, heat pumps, water heaters, central air conditioners and circulating fans.	2021 Extension (Sec. 141)
Alternative Motor Vehicle Credit for Qualified Fuel Cell Vehicles	The credit, based on vehicle weight, has a base amount of \$4,000 for vehicles weighing 8,500 pounds or less. Heavier vehicles may be eligible for larger credits, with the highest credit amount being \$40,000 for vehicles weighing more than 26,000 pounds. Cars and light trucks can qualify for an additional tax credit of \$1,000 to \$2,000 per vehicle depending on fuel economy.	2021 Extension (Sec. 142)
Alternative Fuel Vehicle Refueling Property	A 30% credit is provided for the cost of any qualified alternative fuel vehicle refueling property installed by a business or at a taxpayer's principal residence. The credit is limited to \$30,000 for businesses at each separate location with qualifying property, and \$1,000 for residences.	2021 Extension (Sec. 143)
Credit for Two-Wheeled Plug-In Electric Vehicles	A credit is available for certain two-wheeled plug-in vehicles acquired before Jan. 1, 2021. It is equal to 10% of the vehicle's cost, up to \$2,500.	2021 Extension (Sec. 144)
Credit for Production of Indian Coal	This is a credit for Indian coal produced from reserves owned or held in trust by an Indian tribe on June 14, 2005. The amount of the credit is \$2.00 per ton, adjusted for inflation. The credit is available for coal sold after Dec. 31, 2005, and before Jan. 1, 2021.	2021 Extension (Sec. 145)
Credit for Construction of Energy Efficient New Homes	Contractors and producers of energy-efficient homes can qualify for a credit for each new home built that is purchased. It is equal to \$2,000 per home for those built by contractors and \$1,000 per manufactured home.	2021 Extension (Sec. 146)
Incentives for Alternative Fuel and Alternative Fuel Mixtures	There is a 50-cents-per-gallon excise credit for certain alternative fuels used as fuel in a motor vehicle, motor boat or airplane and a 50-cents-per-gallon credit for alternative fuels mixed with a traditional fuel for use as a fuel.	2021 Extension (Sec. 147)

Extension of Residential Energy-Efficient Property Credit and Inclusion of Biomass Fuel Property Expenditures	The provision extends the credit at 26% for property placed in service through 2022. The rate is reduced to 22% for property placed in service in 2023. Under the provision, the definition of eligible property includes energy efficient biomass fuel property with a thermal efficiency rating of at least 75% beginning in 2021. The provision also prevents biomass stoves from qualifying for Code Sec. 25C.	2023 Extension (Sec. 148)
Black Lung Disability Trust Fund: Increased Coal Excise Tax	The provision extends the rates of 1.10 per ton for coal from underground mines and 55 cents per ton for coal from surface mines for the excise tax that funds the Black Lung Disability Trust Fund.	2021 Extension (Sec. 149)
Individual		
Medical Expense Deduction: Adjusted Gross Income Floor of 7.5%	Individuals are allowed to deduct unreimbursed medical expenses above a specific income threshold if they itemize their deductions. The provision changes the deduction amount from 10% of income to 7.5%. As part of the Affordable Care Act, this threshold was changed to 10%. In TCJA, this threshold was changed back to 7.5% through December 2020.	Permanent (Sec. 101)
Exclusion for Benefits Provided to Volunteer Firefighters and Emergency Medical Responders	There is an exclusion from gross income of certain benefits for members of qualified voluntary emergency response organizations. The payments include the forgiveness or rebate of state and local income and property taxes or payments by states or their political subdivisions to reimburse for expenses. The exclusion is limited to \$50 a month, an increase from \$40 per month.	Permanent (Sec. 103)
Above-the-Line Deduction for Qualified Tuition and Related Expenses	For individuals whose AGI is \$65,000 or below, the provision caps the qualified tuition at \$4,000. The deduction is capped at \$2,000 for individuals with AGI of \$80,000. Beyond 2020, the qualified tuition deduction would be repealed and replaced by increasing the phase-out limits on the Lifetime Learning Credit from \$58,000 to \$80,000.	Permanent, by increasing the phase-out limits in the permanent Lifetime Learning Credit (Sec. 104)
Exclusion of Discharge of Principal Residence Indebtedness from Gross Income for Individuals	The provision extends the exclusion from gross income for a discharge of qualified principal residence indebtedness until 2025 and reduces the maximum amount from \$2,000,000 to \$750,000.	2025 Extension, at \$750,000, reduced from \$2 million (Sec. 114)
Exclusion for Certain Employer Payments of	The provision extends the allowance for employers to provide tax-free student loan repayment benefits to employees. Employers may contribute up to \$5,250 per year.	2025 Extension (Sec. 120)

Student Loans		
Mortgage Insurance Premiums Treated As Qualified Residence Interest	Homeowners can treat qualifying mortgage insurance premiums as mortgage interest, making the premiums deductible if they itemize. Homeowners must also have an AGI below 55,000 for single and \$110,000 for married filing jointly. The provision extends the rule through 2021 and phases out the deduction for taxpayers with AGI over \$100,000.	2021 Extension (Sec. 133)
Credit for Health Insurance Costs of Eligible Individuals	The health coverage tax credit (HCTC) reduces the cost of qualified health insurance for eligible individuals. Taxpayers must be (1) an eligible trade adjustment assistance recipient; (2) an eligible alternative TAA recipient or reemployment TAA recipient; or (3) an eligible Pension Benefit Guaranty Corporation pension recipient. The provision extends the HCTC equal to 72.5% of the premiums paid by taxpayers for coverage of family members under qualified health insurance.	2021 Extension (Sec. 134)

Expiring in 2022	Summary	Extension
Business		
Credit for Certain Expenditures for Maintaining Railroad Tracks	Qualified railroad track maintenance expenditures paid or incurred before Jan. 1, 2023, qualify for a 50% business tax credit. Otherwise, the credit is equal to 40% on maintenance expenses of certain railroad track. The credit cannot exceed \$3,500 times the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year.	Permanent, at 40% rate (Sec. 105)
Energy		
Five-Year Cost Recovery for Renewable Energy Property if Construction Begins Before Jan. 1, 2022	The recovery period for certain renewable-energy equipment is five years. Solar illumination, fuel cell, microturbine, CHP and small wind property are eligible for five-year cost recovery if construction begins before Jan. 1, 2022.	2023 Extension (Sec. 132)

Expiring in 2023	Summary	Extension
Energy		
Credit for Carbon Oxide Sequestration	There is a credit for the capture and sequestration of carbon emissions from the use of coal and natural gas in the electric power sector.	2025 Extension (Sec. 121)

Not Extended	Summary	Expiration
Special Depreciation Allowance for Second	Second generation biofuel plant property allows for the immediate first-year bonus depreciation of 50% of the cost of facilities that produce eligible biofuels. Previous federal tax law limited the eligibility for first-year bonus depreciation of cellulosic biofuels to facilities producing ethanol; those	2020

Generation Biofuel Plant Property	producing nonethanol fuels from cellulosic feedstocks did not qualify for the allowance.	
Special Rule to Implement Electric Transmission Restructuring	The code permits taxpayers to elect to recognize any capital gain from the sale of qualifying electricity transmission property to an independent transmission company, pursuant to a Federal Energy Regulatory Commission (FERC) restructuring policy, evenly over eight years beginning with the year of the sale. The sale proceeds must be reinvested in other electricity assets within four years.	2020

DIVISION EE—Taxpayer Certainty and Disaster Tax Relief Act of 2020

Title II—Other Provisions

Sec. 203. Waste Energy Recovery Property Eligible for Energy Credit.

- This provision adds “waste energy recovery property” to the investment tax credit, making it applicable for the credit. Waste energy recovery property is defined as property that generates electricity solely from heat from buildings or equipment if the primary purpose is not the generation of electricity. Capacity is capped at 50 megawatts and the waste recovery property is not eligible for a double benefit. Property that begins construction after 2021 or 2022 is eligible for a 26% tax credit and after 2023 22%.
- **Impact:** The impact of this provision is that waste energy recovery property is now eligible to receive a credit for property constructed after 2021 and prior to Jan. 1, 2024. This will encourage the construction of waste energy recovery properties.

Sec. 204. Extension of Energy Credit for Offshore Wind Facilities.

- This provision extends a credit for qualified offshore wind facilities where construction begins before Jan. 1, 2026. Further, construction projects between Dec. 31, 2016, to Jan. 1, 2026, are not subject to the onshore wind phase out rates.
- **Impact:** This provision will provide a credit for offshore wind facility construction and encourage the construction of offshore wind.

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