

THE CONSOLIDATED APPROPRIATIONS ACT OF 2021 (H.R. 133)

Among other things, the Consolidated Appropriations Act (the CAA) would continue Federal unemployment benefits, provide another round of stimulus checks, expand the employee retention tax credit, **extend** and expand the Paycheck Protection Loan Program, and extend a long list of tax provisions currently scheduled to expire after 2020. The following are the key provisions of the CAA.

GENERAL PROVISIONS -

1. **Continuation Of Federal Unemployment Benefits (CAA §203)**. The CAA provides for Federal supplemental unemployment payments of \$300 per week starting December 26, 2020 and ending March 14, 2021.
2. **Additional Economic Impact Payments (Code §6428A)**. The CAA provides a a refundable tax credit on 2020 returns. The credit is \$600 per taxpayer (\$1,200 for married filing jointly) and \$600 per qualifying child (as defined under §24(c)) under age 17. The credit is reduced by 5% of the taxpayer's AGI in excess of \$150,000 on a joint return, \$112,500 for a head of household, and \$75,000 for other taxpayers. This refundable credit for 2020 is in addition to the refundable credit provided under §6428 by the CARES Act. As under the CARES Act, an advance payment of the credit will be made (i.e., an Economic Impact Payment (EIP)) as provided below.
 - a. **Determining Who Gets An EIP**. As with the CARES Act, the provision provides for Treasury to issue advance payments based on the information on 2019 tax returns. In addition, eligible taxpayers treated as providing returns through the nonfiler portal in the first round of Economic Impact Payments, provided under the CARES Act, will also receive payments. Treasury may issue advance payments for Social Security Old-Age, Survivors, and Disability Insurance beneficiaries, Supplemental Security Income recipients, Railroad Retirement Board beneficiaries, and Veterans Administration beneficiaries who did not file 2019 returns based on information provided by the Social Security Administration, the Railroad Retirement Board, and the Veterans Administration.
 - b. **Generally Must Have A Social Security Number To Get EIP Or Credit**. In general, taxpayers without an eligible social security number are not eligible for the payment. However, married taxpayers filing jointly where one spouse has a Social Security Number and one spouse does not are eligible for a payment of \$600, rather than \$1,200. However, if one spouse is a member of the military and has a Social Security Number, the EIP would not be reduced and would be \$1,200. To obtain a \$600 EIP for a child, the child must have either a Social Security Number or an ATIN.
 - c. **Not Required To Repay Excess EIP**. As with the EIP provided under the CARES Act, taxpayers receiving an advance payment that exceeds the amount of their eligible credit will not be required to repay any amount of the payment. However, if the amount of the credit determined on the taxpayer's 2020 tax return exceeds the amount of the advance payment, taxpayers will receive the difference as a refundable tax credit.
 - d. **Ineligible For EIP**. The following are not eligible for the credit or the EIP: Individuals who can be claimed as a dependent, nonresident aliens, estates, and trusts. In addition, individuals who were deceased before January 1, 2020 do not qualify for an EIP.
 - e. **Payments Not Subject To Offset**. Advance payments are generally not subject to administrative offset for past due federal or state debts. In addition, the payments are protected from bank garnishment or levy by private creditors or debt collectors.
3. **Extension Of Repayment Period For Employees' Deferred Payroll Taxes (CAA §274)**. On August 8, 2020, the President of the United States issued a memorandum to allow employers to defer withholding employees' share of social security taxes or the railroad retirement tax equivalent from September 1, 2020 through December 31, 2020, and required employers to increase withholding and pay the deferred amounts ratably from wages and compensation paid between January 1, 2021 and April

30, 2021. Beginning on May 1, 2021, penalties and interest on deferred unpaid liability were scheduled to begin to accrue.

The CAA extends the repayment period through December 31, 2021. Penalties and interest on deferred unpaid tax liability will not begin to accrue until January 1, 2022.

4. **Farmers May Elect To Carryback An NOL Arising In Taxable Year Beginning 2018, 2019, Or 2020 2-Years Rather Than 5-Years (CAA §281).** The CAA allows farmers with an NOL arising in a taxable year beginning in 2018, 2019, or 2020 to carryback the NOL for 2 years as under pre-CARES Act law. The CAA **also allows farmers** who previously waived an election to carry back a net operating loss **to revoke the waiver of the NOL carryback**. These clarifications eliminate unnecessary compliance burdens for farmers. **The provision applies retroactively as if included in Section 2303 of the CARES Act.**

Time For Making Elections. An election to carryback an NOL arising in 2018, 2019, or 2020 back 2 years or the election to revoke the waiver of an NOL carryback must be made by the due date (including extensions) for filing the taxpayer's return for the first taxable year ending after the date of enactment. The elections will be made in the manner provided by the IRS. A taxpayer who previously carried the loss back 2 years rather than 5 years, will be treated as having made an election to carry such loss back 2 years unless the taxpayer amends the return on or before the due date (including extensions) for filing the taxpayer's return for the first taxable year ending after the date of enactment.

The IRS is to issue guidance to carry out this provision.

5. **Modification To Sick Leave And Family Leave Credits.**

Extension Of Credits for Paid Sick And Family Leave Through March 31, 2021 (CAA §286). The CAA extends the refundable payroll tax credits for paid sick and family leave, enacted in the Families First Coronavirus Response Act, through the end of March 2021. It also modifies the tax credits so that they apply as if the corresponding employer mandates were extended through the end of March 2021. This provision is effective as if included in FFCRA.

Self-Employed Individuals May Use 2019 S/E Income To Calculate Their Refundable Qualified Sick Leave Or Family Leave Equivalent Credits (CAA §287). The CAA allows self-employed individuals to elect to use their average daily self-employment income for 2019 rather than 2020 to compute their refundable Qualified Sick Leave or Family Leave Equivalent Credits. A self-employed individual is to make the election to use 2019 self-employment income in determining the credits as provided by the IRS. This provision is effective as if included in FFCRA.

6. **Changes To The Employee Retention Credit (ERC) Retroactive To The Effective Date Of The CARES Act (CAA §206).**

- a. **Gross Receipts Of Tax-Exempts Are As Defined For Form 990 Reporting.** The CAA clarifies that the gross receipts of a tax exempt organization in determining if the organization has had a more than 50% reduction in gross receipts is the gross receipts reported on Form 990.

- b. **Group Health Plan Expenses Qualify For Credit Even If No Other Wages Paid Employee.** The CAA clarifies that group health plan expenses can be considered wages qualifying for the credit even when no other wages are paid to the employee, consistent with IRS guidance.

- c. **May Take ERC Even If Receive PPP Loan But Wages For Which ERC Taken Do Not Qualify For Forgiveness.** The CAA provides that employers who receive Paycheck Protection Program (PPP) loans may still qualify for the Employee Retention Credit. However, payroll costs qualifying for forgiveness do not include wages taken into account in determining the Employee Retention Credit. **Practice Alert!** The CAA provides that an employer may elect for any wages retroactively qualifying for the credit under this provision during any of the first three quarters of 2020 to be deemed paid during the fourth quarter of 2020 for payroll tax reporting purposes.

7. **Extension of Employee Retention Credit Through June 30, 2021 (CAA §207, Effective For Calendar Quarters Beginning After 2020).** The CAA extends the Employee Retention Credit Through June 30, 2021. In addition, the CAA **modifies the Employee Retention Credit (ERC) effective January 1, 2021 through June 30, 2021** as follows:

- a. **Credit Increased From 50% To 70%.** The credit percentage is increased from 50 percent to 70 percent of qualified wages.
- b. **Maximum Wages Qualifying For Credit Is \$10,000 Per Quarter.** The amount of an employee's wages qualifying for the credit is increased from \$10,000 for the year to **\$10,000 for each quarter.**
- c. **Requires More Than 20% Reduction In Gross Receipts Rather Than More Than 50% Reduction.** Expands the gross receipts eligibility test by requiring gross receipts during the current calendar quarter to be more than 20% (rather than 50%) less than the gross receipts for the same calendar quarter during 2019.

Employer May Elect To Determine Gross Receipts Test Based On Prior Quarter. Generally, to qualify under the reduction in gross receipts test, an employer must have a more than 20% reduction in gross receipts for the current calendar quarter compared to the same calendar quarter in 2019. However, the CAA allows an employer to elect to apply the 20% gross receipts test based on the gross receipts for the previous calendar quarter. If the election is made the employer would qualify for the ERC for a calendar quarter if there was a more than 20% reduction in gross receipts for the immediately preceding calendar quarter compared to the corresponding calendar quarter during calendar year 2019. The election is to be made at the time and in the manner provided by the IRS.

Employer Not In Existence For Same Calendar Quarter In 2019. For an employer not in existence as of the beginning of the same calendar quarter in 2019, the employer is to compare the gross receipts in the current calendar quarter to the same calendar quarter during 2020.

- d. **All Qualifying Wages Count For Employers With 500 (Rather Than 100) Or Fewer Employees.** The credit applies to all qualifying wages paid by qualifying employers with 500 or fewer full-time employees up to the \$10,000 per quarter limitation. Previously, only businesses with 100 or fewer full-time employees could take the credit on all qualifying wages paid (up to the \$10,000 max) rather than just wages paid to employees who were not working.
- e. **30-Day Look-Back Period Does Not Apply After 2020.** Prior to 2021 for employers with more than 100 employees, "qualified wages" for any employee could not exceed what the employee would have been paid for working an equivalent amount of time during the preceding 30-days. **This 30-day rule does not apply after 2020.**
- f. **Wages Taken Into Account For Certain Credits Do Not Qualify For ERC.** Wages taken into account in determining the following credits do not qualify for the ERC: the **§41** research credit; **§45A** Indian employment credit; **§45P** employer wage credit for paying differential wages to employees who are on active military duty; **§45S** employer credit for paid family and medical leave; **§51** work opportunity credit; and **§1396** empowerment zone employment credit.
- g. **Employers With 500 Or Fewer Full-Time Employees May Claim ERC In Advance.** The CAA provides that the IRS shall provide rules for employers with 500 or fewer average full-time employees during 2019 (2020 if employer not in existence during 2019) to receive an advance payment of the ERC. The advance payment may not exceed 70% of the average quarterly wages paid by the employer during calendar year 2019 (2020 if employer not in existence during 2019). If the advance ERC payment for a calendar quarter exceeds the ERC earned for the quarter, the FICA tax or Railroad Retirement tax due for that quarter will be increased by such excess.
- h. **Certain Public Instrumentalities May Claim The Credit.** The ERC does not generally apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing. However, the CAA provides that after 2020, the following government organizations may qualify for the ERC: **1)** Any organization described in

§501(c)(1) and exempt from tax under §501(a), **2) Colleges and universities, and 3) An entity whose principal purpose or function is providing medical or hospital care.**

8. **IRS Directed To Clarify Protective Equipment And Supplies Qualify For Educators' Deduction (CAA §5).** The CAA requires the Secretary of the Treasury to issue guidance or regulations providing that personal protective equipment, disinfectant, and other supplies used for the prevention of the spread of COVID-19 are treated as eligible expenses for purposes of the \$250 educator expense deduction under §62(a)(2)(D)(ii) no later than February 28, 2021. Such regulations or guidance shall be **retroactive to March 12, 2020.**
9. **100% Deduction For Food And Beverages For 2021 And 2022 (CAA §210).** Business food and beverages provided by a restaurant that are paid or incurred after 2020 and before 2023 are not reduced by 50%.
10. **Taxpayers May Use Earned Income From 2019 In Determining EITC And ACTC For 2020 (CAA §211).** The CAA allows taxpayers to use earned income from 2019 in determining the Earned Income Tax Credit (EITC) and the refundable \$1,400 Additional Child Tax Credit (ACTC) for 2020 if such earned income is more than the earned income in tax year 2020. For individuals filing a joint return, the earned income of the taxpayer for 2019 is the sum of the earned income of each spouse for 2019.
11. **\$300 Deduction For Charitable Contributions In 2021 For Individuals Who Do Not Itemize (Code §170(p)).** The CAA provides a charitable contribution deduction **for 2021** for individuals who do not itemize. The deduction is a maximum of \$300 for single individuals and married individuals filing separately. However, the maximum deduction is **\$600 for married individuals filing a joint return.** Unlike the charitable deduction for individuals using the standard deduction for 2020, **the deduction for 2021 is not a "for AGI" deduction.** Instead it is a deduction from AGI along with the standard deduction and the §199A QBI deduction. Qualifying contributions must be made in cash during 2021 to a charity described in §170(b)(1)(A) (i.e., a 60% charity). In addition, contributions to supporting organization described in §509(a)(3) (i.e., organizations for the benefit of or operated, supervised or controlled by or in connection with a private foundation), or to a donor advised fund under §4966(d)(2) do not qualify.

The substantial understatement penalty under §6662(b) for any portion of a tax understatement attributable to an overstatement of this contribution is increased from 20% to 50%.

12. **Increased 2020 Charitable Contribution Deduction Limitation For Individuals And Corporations Under CARES Act Extended Through 2021(CARES Act §2205 & Code §170).**

"Qualified Contribution."

- 1) Paid in cash during calendar year 2020 or 2021,
- 2) To a charitable organization described in §170(b)(1)(a) (i.e., a 60% charity), and
- 3) Taxpayer elects to use special limitation. Partners & S corp shareholders make election at partner or shareholder level.

"Non-qualifying Contributions"

- 1) To supporting organization described in §509(a)(3) (i.e., organizations for the benefit of or operated, supervised or controlled by or in connection with a private foundation), or
- 2) To donor advised fund under §4966(d)(2).

Individual's Special AGI Limitation For "Qualified Contributions."

- AGI in excess of all other contributions otherwise allowable for the year.

Corporation's 10% Of Taxable Income Limitation Increased To 25% For "Qualified Contributions."

- 25% of corporation's taxable income in excess of all other contributions otherwise allowable for the year.

Increased Limits For Contributions Of Wholesome Food Inventory During 2020 or 2021.

- 15% Of Income Limits Under §170(e)(3)(c) Increased To 25%.

13. Carryover Of Unused FSA Amounts From 2020 To 2021 And From 2021 To 2022 (\$214).

- Carryover Of Unused Amounts From Health And Dependent Care FSAs.** Health and dependent care flexible spending arrangements (FSAs) may carryover unused benefits (under rules similar to the rules applicable to health flexible spending arrangements) up to the full annual amount from plan years ending in 2020 (normally limited to \$500 carryover) to plan years ending in 2021 and from plan years ending in 2021 to plan years ending in 2022;
- 12-Month Grace Period.** Health and dependent care FSAs may permit a 12-month (rather than 2 ½ month) grace period after the end of the plan year for unused benefits or contributions in health and dependent care FSAs for plan years ending in 2020 or 2021;
- Reimbursements May Be Made From Health FSAs After Employee Ceases Participation In FSA.** A health FSA may allow (under rules similar to the rules applicable to dependent care FSAs) an employee who ceases participation in the plan during calendar year 2020 or 2021 to continue to receive reimbursements from unused benefits or contributions **through** the end of the plan year in which such participation ceased (including any grace period at item b. above).
- Increase In Qualifying Age Of Child From Under Age 13 To Under Age 14 For Plan Year Ending In 2020 And Carryovers From Such Year To 2021.** An FSA may extend the maximum age of eligible dependents from under age 13 to under age 14 for dependent care FSAs for the plan year ending in 2020 and unused amounts from the plan year ending in 2020 carried over to the plan year ending in 2021. This change applies to an employee enrolled in a dependent care FSA for the last plan year for which the end of the regular enrollment period was on or before 1/31/20 and has one or more dependents who attained age 13 during such plan year or if the employee has an unused balance under the FSA for such plan year, the subsequent plan year; **and**
- Allows Plans To Permit A Prospective Change In Election Amounts For Health and Dependent Care FSAs For Plan Years Ending in 2021.** An FSA that includes a health FSA arrangement or dependent care FSA may allow an employee to elect to prospectively modify the amount (but not in excess of any applicable dollar limitation) of such employee's contributions to the FSA (without regard to any change in status) for plan years ending in 2021.
- Employers Have Until End Of Next Calendar Year To Amend FSA.** Employers have until the end of the first calendar year beginning after end of plan year in which FSA change is effective to amend the FSA for the above changes.

PAYROLL PROTECTION PROGRAM (PPP) LOANS

SELECTED MODIFICATIONS TO PPP LOAN FORGIVENESS PROVISIONS -

- Expenses Qualifying For Forgiveness Are Retroactively Deductible (CAA §6, Effective For Taxable Years Ending After 3/27/20).** The CAA provides that *"no deduction shall be denied or reduced, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income"* of a PPP loan, **effective for taxable years ending after March 27, 2020.** The CAA also provides that in the case of a borrower that is a partnership or S corporation— **1)** any amount excluded from income shall be treated as tax exempt income for purposes of §705 and §1366, **and 2)** except as provided by the Secretary of the Treasury, any increase in the adjusted basis of a partner's interest in a partnership under §705 because of such tax-free forgiveness shall equal the partner's distributive

share of deductions resulting from costs giving rise to such forgiveness.

2. **Simplified Application Process For Loans Of \$150,000 Or Less (CAA §307, Applies to loans made before, on, or after the date of enactment, including the forgiveness of the loan).** For loans of \$150,000 or less the CAA says the loan shall be forgiven if the eligible borrower submits to the lender **a one-page form, to be prepared by the SBA not later than 24 days** after the date of enactment. The form shall require the **borrower to:**

- 1) Provide the number of employees the eligible recipient was able to retain because of the covered loan;
- 2) Provide the estimated amount of the loan spent by the eligible recipient on payroll costs;
- 3) Provide the total loan amount;
- 4) Attest that borrower:
 - a) Accurately provided the required certification; and
 - b) Complied with PPP loan requirements under section 7(a)(36);
- 5) Retain records relevant to the form that prove compliance with such requirements—
 - a) with respect to **employment records**, for the **4-year** period following submission of the form; and
 - b) with respect to **other records**, for the **3-year** period following submission of the form.

SBA Enforcement. The SBA may review and audit borrowers with loans of \$150,000 or less; access any records described in the previous paragraph; and modify the amount of the loan or the amount of forgiveness if there is fraud, ineligibility, or other material noncompliance with the loan or loan forgiveness requirements.

SBA Audit Plan. The SBA must submit to the Senate and House Small Business Committees a report 45 days after enactment detailing their review and forgiveness audit plan to mitigate risk of fraud and provide monthly reviews and audit updates thereafter.

3. **Forgiveness Process For Loans Greater Than \$150,000 Unchanged.** For loans of more than \$150,000, it appears the loan forgiveness application and process is unchanged by the CAA.
4. **Borrowers May Select Period For Determining Loan Forgiveness (CAA §306).** For loans made **on or after the date of enactment**, the CAA allows a borrower to select the period for determining forgiveness. The selected period would begin on the date loan proceeds are disbursed to the borrower and would end on any date chosen by the borrower during the period beginning 8 weeks after the disbursement of the loan proceeds and ending on the date that is 24 weeks after the date loan proceeds are disbursed.
5. **For Loans For Which Forgiveness Granted After Date Of Enactment, FTE And Salary/Hourly Wage Reduction Restoration Safe Harbors May Be Extended By SBA (CAA §311).** The CAA provides that the SBA may extend the date for meeting the FTE and Salary/Hourly Wage Reduction Safe Harbors consistent with the purposes of the Paycheck Protection Program.
6. **Group Life, Disability, Vision, Or Dental Expenses Included In Payroll Costs (CAA §308. Effective for loans made before, on, or after date of enactment).** The CAA Clarifies that other employer-provided group insurance benefits are included in payroll costs. This includes, group life, disability, vision, or dental insurance.
7. **Additional Nonpayroll Costs Qualifying For Forgiveness If Forgiveness Received After Enactment (CAA §304).** The CAA retains the requirement that 60% of expenditures qualifying for forgiveness must be payroll costs. However, the other 40% may include certain costs **in addition to qualified mortgage interest expense, rental expense, and utilities. These additional “other costs” include –**

- 1) **Covered Operations Expenditure** – A payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses;
- 2) **Covered Property Damage Cost** – A cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation;
- 3) **Covered Supplier Cost** – An expenditure made by an entity to a supplier of goods for the supply of goods that **1)** are essential to the operations of the entity at the time at which the expenditure is made **and 2)** is made pursuant to a contract, order, or purchase order **i)** in effect at any time before the covered period with respect to the PPP loan **or ii)** with respect to perishable goods, in effect before or at any time during such covered period; and
- 4) **Covered Worker Protection Expenditure** – An expense or capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by HHS, the CDC, OSHA, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning on March 1, 2020 and ending on the date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID–19) expires related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19. The CAA says these expenditures may include – **a) The purchase, maintenance, or renovation of assets that create or expand — i)** a drive-through window facility; **ii)** an indoor, outdoor, or combined air or air pressure ventilation or filtration system; **iii)** a physical barrier such as a sneeze guard; **iv)** an expansion of additional indoor, outdoor, or combined business space; **v)** an onsite or offsite health screening capability; **or vi)** other assets relating to the compliance with the requirements or guidance described above, as determined by the SBA in consultation with the Secretary of HHS and the Secretary of Labor; **and b) The purchase of — i)** covered materials described in section 328.103(a) of title 44, Code of Federal Regulations, or any successor regulation; **ii)** particulate filtering face-piece respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use authorization; **or iii)** other kinds of personal protective equipment, as determined by the SBA in consultation with the Secretary of HHS and the Secretary of Labor. **Practice Alert!** A Covered Worker Protection Expenditure does not include residential real property or intangible property.

Effective Date. The CAA allows PPP loans before, on, or after the enactment to be eligible to utilize the expanded forgivable expenses **except for borrowers that received PPP loan forgiveness before the date of enactment.**

8. **Clarification Of And Additional Limitations On Eligibility (CAA §310).**

1. **Business Must Be In Operation On 2/15/20 To Receive PPP Loan (CAA §310(a)).** The CAA clarifies that a business or organization that was not in operation on February 15, 2020 shall not be eligible for an initial PPP loan and a second draw PPP loan. This provision is effective as if included in the CARES Act and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act before, on, or after the date of enactment of the CAA, including forgiveness of such a loan.
2. **Do Not Qualify For PPP Loan If Receive Shuttered Venue Operator Grant (CAA §310(b)).** The CAA prohibits otherwise eligible entities that receive a grant under the Shuttered Venue Operator Grants from obtaining a PPP loan. This provision applies to loans made on or after the enactment of the CAA.

GENERAL MODIFICATIONS TO PPP LOAN APPLICATION PROVISIONS.

1. **Borrowers Who Could Have Borrowed More Because Of Subsequent SBA Releases Could Apply For Additional Loan Amounts (CAA §312).** The CAA requires the SBA to release guidance to lenders within 17 days of enactment that allows borrowers who returned all or part of their PPP loan or who did not accept the full amount of the loan to reapply for the maximum amount applicable. In addition, the CAA allows PPP loan recipients whose maximum loan amount would have been higher because of SBA IFRs (Interim Final Rules) issued subsequent to the funding of their loan to apply for additional loan amounts from the lender. The borrower may apply for additional loan amounts even after the original loan amount has been disbursed and even if the borrower has already applied for forgiveness. **However, this provision does not apply to loans where the borrower has received forgiveness as of the date of enactment.**

2. **Farmers And Ranchers PPP Loan Amount Based On Gross Receipts Rather Than Net Income (CAA §313, Effective for PPP Loans before, on, or after date of enactment, except for loans that were forgiven before the date of enactment).** The loan amount for farmers and ranchers **filing Schedule F** who were in business on February 15, 2020 is determined under the CAA based on 2019 Schedule F gross receipts (up to a maximum of \$100,000) rather than net income. Therefore, the maximum loan amount attributable to a farmer or rancher's Schedule F income would still be \$20,833. However, even farmers and ranchers with a loss on their 2019 return could receive a PPP loan. Lenders who made a PPP loan to a farmer or rancher prior to the effective date of the CAA, may recalculate the maximum loan amount and loan additional amounts to a farmer or rancher who requests a loan for the additional amount.
Practice Alert! The CAA allows Farm Credit System Institutions to make PPP Loans.

3. **The Period For New PPP Loans (CAA §343).** The CAA extends the period for making PPP loans through March 31, 2021. This provision is effective for loans made before, on, or after the date of enactment, including the forgiveness of such loan.

REQUIREMENTS TO OBTAIN PPP LOAN AFTER ENACTMENT FOR BUSINESSES THAT HAVE NOT RECEIVED A PPP LOAN

1. **Summary.** For businesses wanting to apply for a PPP Loan for the first time after the date of enactment, the rules are essentially the same as for PPP loans made through August 8, 2020 except for the modifications to those rules made by the CAA. The basic rules for first-time borrowers are outlined below.

2. **Types Of Businesses Eligible For First-Time PPP Loans.** The following types of businesses generally qualify to obtain a first-time PPP loan: **1)** A business with 500 or fewer employees, **2)** A business that otherwise meets the SBA's size standard, **3)** §501(c)(3) organizations and religious organizations with 500 or fewer employees, **3)** A sole proprietor; **5)** An independent contractor, **6)** A self-employed individual, **7)** A tribal business concern that meets SBA size standard, **8)** A 501(c)(19) veterans organization that meets SBA size standard, **9)** Certain 501(c)(6) organizations, **10)** Certain Destination Marketing Organizations, **11)** Certain Housing Cooperatives, **and 12)** Certain News Organizations. Section 501(c)(6) organizations, Destination Marketing Organizations, Housing Cooperatives, and Certain News Organizations were added to the list of businesses that may qualify for PPP Loans by the CAA and are discussed below.
 - a. **501(c)(6) Organizations Qualifying For PPP Loans (CAA §318).** Under the CAA a 501(c)(6) organization qualifies to obtain a PPP loan if:
 - i. The organization does not receive more than 15 percent of receipts from lobbying;
 - ii. The lobbying activities do not comprise more than 15 percent of activities;
 - iii. The cost of lobbying activities of the organization did not exceed \$1,000,000 during the most recent tax year that ended prior to February 15, 2020; and
 - iv. The organization has 300 or fewer employees.

Practice Alert! Professional sports leagues or organizations with the purpose of promoting or

participating in a political campaign or other political activities are not eligible for PPP loans.

- b. **Destination Marketing Organizations (CAA §318)**. That CAA provides that a Destination Marketing Organization qualifies for a PPP loan if:
 - i. The organization does not receive more than 15 percent of receipts from lobbying;
 - ii. The lobbying activities do not comprise more than 15 percent of activities;
 - iii. The organization has 300 or fewer employees; **and**
 - iv. The destination marketing organization is registered as a 501(c) organization, a quasi-government entity, or a political subdivision of a state or local government.
- c. **Housing Cooperatives (CAA §316)**. The CAA provides for PPP eligibility for housing cooperatives defined in §216(b) which employ no more than 300 employees.
- d. **Qualifying News Organizations (CAA §317)**. The CAA provides for PPP eligibility for **1) FCC license holders and newspapers with more than one physical location, as long as the business has no more than 500 employees per physical location or the applicable SBA size standard; and 2) Makes §511 public colleges and universities that have a public broadcasting station eligible for a PPP loan if the organization certifies that the loan will support locally focused or emergency information.**

In addition, the CAA **1) Waives the affiliation rules** for newspapers, TV and radio broadcasters, and public broadcasters, as long as the organization has no more than 500 employees per physical location or the applicable SBA size standard; **and 2) Waives the prohibition against publicly-traded news organizations from being eligible** if the business certifies that the loan will support locally focused or emergency content.

- 3. **Prohibition of Eligibility for Publicly Traded Companies(CAA §342)**. The CAA generally excludes publicly traded companies from PPP loan eligibility.
- 4. **Special Rules**. A business must generally meet the following requirements to qualify for a first-time PPP loan: **1) The business must have been in operation on 2/15/20, 2) For a business in the accommodation and food sector (NAICS 72) – the 500 employee test is applied per physical location, 3) For a business operating a franchise or receiving financial assistance from approved small business investment company, the normal affiliation rules do not apply, and 4) The 500 employee test includes all employees – full-time, part-time, and others.**

5. **Amount Of Loan.**

General Rule.

- a. Average monthly payroll costs paid or incurred either:
 - i) During the 1-year period before the date the loan is made; **or**
 - ii) During calendar year 2019. For businesses not operational in 2019 – average monthly payroll costs incurred for January and February 2020.
- b. Times 2.5 (Not to exceed \$10,000,000)

Seasonal Employers.

- a. Average monthly payroll costs for any 12-week period selected by the seasonal employer between February 15, 2019, and February 15, 2020.
- b. Times 2.5 (Not to exceed \$10,000,000)

- 6. **Payroll Costs**. Payroll costs are generally defined the same as prior to the CAA, except the CAA clarifies that employer-provided group health care benefits includes group life, disability, vision, or dental insurance.

QUALIFYING BUSINESSES MAY GO FOR A SECOND PPP LOAN (CAA §311)

1. **A Qualifying Business May Go For A “PPP Second Draw” Loan.** The CAA creates the opportunity for a second loan from the Paycheck Protection Program, called a “PPP second draw” loan for smaller and harder-hit businesses, with a **maximum amount of \$2 million.**
2. **Eligibility Requirements.** For Borrowers that previously received a PPP loan to receive a PPP Second Draw Loan, the entity must be a business concern, non-profit organization, housing cooperative, veterans’ organization, Tribal business concern, eligible self-employed individual, sole proprietor, independent contractor, or small agricultural cooperative and such entity must:
 - a. **Employ 300 or Fewer Employees.**
 - b. **Have Used Or Will Use Previous Loan Proceeds.** The entity must attest that it has used or will use on or **before the expected date of the disbursement of the second PPP loan the full amount of the prior PPP loan.**
 - c. **Have At Least 25% Reduction In Gross Receipts.**
 - Gross receipts during the first, second, third or fourth quarter (for loan applications submitted after 2020) of 2020 were at least 25% less than that for the same quarter during 2019;
 - If not in business during first or second quarter of 2019 but was in business during third and fourth quarter of 2019, had gross receipts during first, second, third or fourth quarter (for loan applications submitted after 2020) of 2020 at least 25% less than the gross receipts during third or fourth quarter of 2019;
 - If only quarter in business for 2019 was the fourth quarter, then had gross receipts during the first, second, third, or fourth quarter (for loan applications submitted after 2020) of 2020 at least 25% less than the gross receipts during the fourth quarter of 2019; or
 - If not in business during 2019, but was in business on 2/15/20, had gross receipts during second, third, or fourth quarter (for loan applications submitted after 2020) of 2020 at least 25% less than the gross receipts during first quarter of 2020.

Documenting Gross Receipts Reduction For “PPP Second Draw” Loans Of \$150,000 Or Less.

The CAA provides that for PPP Second Draw Loans of \$150,000 or less an entity may submit a certification attesting that the entity meets the 25% revenue loss requirements. However, on or before the date the entity submits its loan forgiveness application, the entity must produce adequate documentation that the entity met the revenue loss requirements.

NonProfit And Veterans Organizations. Non-profit and veterans organizations may utilize gross receipts to calculate their revenue loss standard.

3. **Businesses Not Eligible For 2nd PPP Loan.** Businesses that are not eligible for a second PPP loan include:
 - a) Entities listed in 13 C.F.R. 120.110 and subsequent regulations except for entities from that regulation which have otherwise been made eligible by statute or guidance, and except for nonprofits and religious organizations;
 - b) Any business primarily engaged in political or lobbying activities;
 - c) Any business owned 20% or more by an entity created or organized under the laws of the People’s Republic of China or that has significant operations in the People’s Republic of China;
 - d) A business that retains as a member of its board of directors a person who is a resident of the People’s Republic of China; or
 - e) Entities that receive a grant under the Shuttered Venue Operator Grant program.

4. **Amount of Loan.**

General Rule.

- a. Average monthly payroll costs paid or incurred either:
 - i) During the 1-year period before the date the loan is made; **or**
 - ii) During calendar year 2019.
- b. Times 2.5 (Not to exceed \$2,000,000).

Businesses Not In Existence During 1-Year Period Preceding February 15, 2020. Businesses not in existence during the 1-Year period preceding February 15, 2020, determine the amount of the PPP loan as follows:

- a. Average monthly payroll costs paid or incurred as of the date the business applies for the PPP loan.
- b. Divided by number of months in which those costs were paid or incurred.
- c. Times 2.5 (not to exceed \$2,000,000).

Seasonal Employer. The amount of the PPP loan for a seasonable employer determined as follows:

- a. The average monthly payroll costs incurred or paid by the eligible entity during any 12-week period between February 15, 2019 and February 15, 2020.
- b. Times 2.5 (not to exceed \$2,000,000).

Definition of “Seasonal Employer” – The CAA defines a “Seasonal Employer” as a borrower that i) does not operate for more than 7 months in any calendar year; or ii) during the preceding calendar year, had gross receipts for any 6 months of that year that were not more than 1/3 of the gross receipts of the employer for the other 6 months of that year.

Accommodation And Food Services Businesses. The amount of a PPP loan for a business in industries assigned to NAICS code 72 (Accommodation and Food Services) is determined as follows:

- a. Average monthly payroll costs paid or incurred either:
 - i) During the 1-year period before the date the loan is made; **or**
 - ii) During calendar year 2019.
- b. Times 3.5 (Not to exceed \$2,000,000).

5. **Businesses With Multiple Locations.** Businesses with multiple locations that are eligible entities under the initial PPP requirements may employ not more than 300 employees per physical location.

6. **Waiver Of Affiliation Rules That Apply To Initial PPP Loans Apply To A "PPP Second Draw" Loan.**

7. **An Eligible Entity May Only Receive One PPP Second Draw Loan.**

8. **Forgiveness of “PPP Second Draw” Loans.** Borrowers of a PPP second draw loan would be eligible for loan forgiveness equal to **the sum of** their payroll costs, as well as covered mortgage, rent, and utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred during the covered period. The 60/40 cost allocation between payroll and non-payroll costs in order to receive full forgiveness continues to apply.

9. **Churches and Religion Organizations.** The CAA expresses the sense of Congress that the SBA’s guidance clarifying the eligibility of churches and religious organizations was proper and prohibits the application of regulations otherwise rendering ineligible businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs. This codifies that the prohibition on

eligibility in SBA release 13 CRF 120.110(k) shall not apply for initial and second draw loans.

CLARIFICATION OF ISSUES RELATED TO SBA PAYMENTS AND GRANTS.

1. EIDL Grants.

- a. **Targeted EIDL Grants (CAA §278(b)).** The CAA provides targeted EIDL grants of up to \$10,000 through December 31, 2021. To qualify, a business cannot have more than 300 employees and must have a reduction in gross receipts of at least 30% during an 8-week period between March 2, 2020 and December 31, 2021 relative to a comparable 8-week period immediately preceding March 2, 2020 or during 2019.
- b. **EIDL Advance Does Not Reduce PPP Loan Forgiveness.** The CAA retroactively provides that the amount of a PPP loan eligible for forgiveness is not reduced by an EIDL advance. The SBA is to issue rules to ensure borrowers are made whole if they received forgiveness and their EIDL reduced the amount of that forgiveness.
- c. **EIDL Advance Is Not Included In Income (CAA §278(a)).** The CAA says “**1)** any advance described in section 1110(e) of the CARES Act or any funding under section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act shall not be included in the gross income of the person that receives such advance or funding, **2)** no deduction shall be denied, no tax at tribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph 1), and **3)** in the case of a partnership or S corporation that receives such advance or funding **A)** any amount excluded from income by reason of paragraph 1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986, and **B)** the Secretary of the Treasury shall prescribe rules for determining a partner’s distributive share of any amount described in subparagraph A) for purposes of section 705.” [Emphasis added]

2. Extension of §1112 of the CARES Act, Providing Payment of Principal, Interest, and Associated Fees on Qualifying Small Business Administration (SBA) 7(a), 504 and Microloans (CAA §325). The CAA resumes the payment of principal and interest (P&I) on small business loans guaranteed by the SBA under the 7(a), 504 and microloan programs, established under the CARES Act. The following is a summary of this provision:

- a. **Additional 3 Months Of Principal And Interest Payments Beginning In February For Loans Approved Before The Effective Date Of The CARES Act.** Generally, borrowers with qualifying loans approved by the SBA prior to the CARES Act will receive an additional three months of P&I, starting in February 2021. These payments will be capped at \$9,000 per borrower per month.
- b. **“Underserved Borrowers” Receive An Additional 5 Months Of Principal And Interest Payments.** After the three-month period described above, borrowers considered to be underserved—namely the smallest or hardest-hit by the pandemic—will receive an additional five months of P&I payments, also capped at \$9,000 per borrower per month. These borrowers are borrowers with a NAICS code beginning with 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812 and include:
 - Borrowers with SBA microloans or 7(a) Community Advantage loans,
 - Borrowers with any 7(a) or 504 loan in the hardest-hit sectors, as measured by the severity of sector-wide job losses since the start of the pandemic including food service and accommodation; arts, entertainment and recreation; education; and laundry and personal care services.
- c. **Principal And Interest Payments For 6 Months On Newly Approved Loans.** The SBA will generally make payments of P&I for the first 6 months for loans approved during the period beginning on February 1 and ending on September 30, 2021. These payments will be capped at \$9,000 per month.

- d. **Principal And Interest Will Be Paid On Only One Loan Approved After March 27, 2020.** A borrower may not receive P&I payments for more than one loan approved after March 27, 2020.
- e. **Payments Of Principal And Interest Not Included In Borrower's Income (CAA §278(a)).** The CAA provides that no amount shall be included in the gross income of the borrower by reason of the payments and no deduction shall be denied or reduced, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of this exclusion from gross income. In addition, in the case of a partnership or S corporation on whose behalf of principal and interest is made, any amount excluded from income shall be treated as tax exempt income for purposes of §705 and §1366. And, except as provided by the Secretary of Treasury, any increase in the adjusted basis of a partner's interest in a partnership under §705 for any amount excluded from income shall equal the sum of the partner's distributive share of deductions resulting from interest and fees described in §1112(c) of the CARES Act and the partner's share, as determined under §752 of principal described in §1112(c) of the CARES Act.

- 3. **Funding For Independent Live Venue Operators, Including Eligible Independent Movie Theaters And Museums, Affected By COVID-19 Stay-At-Home Orders (CAA §278(d)).** The CAA authorizes \$15 billion for the SBA to make grants to eligible live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theater operators, or talent representatives **that demonstrate a 25 percent reduction in revenues.**

In the initial 14-day period of implementation of the program, grants are to only be awarded to eligible entities that have faced 90 percent or greater revenue loss. In the 14-day period following the initial 14-day period, grants are to only be awarded to eligible entities that have faced 70 percent or greater revenue loss. After these two periods, grants will be awarded to all other eligible entities. The grants are to be used for specified expenses such as payroll costs, rent, utilities, and personal protective equipment.

- 4. **PPP Bankruptcy Provisions (CAA §320).** The CAA establishes a special procedure in the bankruptcy process if the SBA determines certain small business debtors are eligible for Paycheck Protection Program loans. It requires court approval for PPP loans to these debtors and requires any such loan be given a super priority claim in the bankruptcy process, providing additional protection to taxpayers and participating banks. These bankruptcy provisions would take effect only upon a written determination by the SBA that certain small business debtors are eligible for PPP loans and would sunset two years from the date of enactment.

TAX RELIEF PROVISIONS FOR DISASTERS OTHER THAN THE COVID-RELATED DISASTER (CAA §301 through §305)

- 1. **Applicability.** The disaster relief provisions of the CAA provide tax relief for individuals and businesses in Presidentially declared disaster areas for **major disasters declared on or after January 1, 2020, through 60 days after the date of enactment.** The relief generally applies to **incident periods beginning on or after December 28, 2019. These provisions do not apply to areas for which a major disaster has been so declared only by reason of COVID-19.**
- 2. **Definition - "Qualified Disaster Area" And "Qualified Disaster Zone."** Some benefits provided by the CAA are available only to individuals living in and businesses located in **"Qualified Disaster Zones"** while other benefits are available to individuals and businesses located in a **"Qualified Disaster Area."**
 - a. **Qualified Disaster Zone.** Under the CAA, a **"Qualified Disaster Zone"** is that portion of any qualified disaster area which was determined by the President, during the period beginning on January 1, 2020, and ending on the date which is 60 days after the date of enactment, to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of the qualified disaster with respect to such disaster area.
 - b. **Qualified Disaster Area.** A **"Qualified Disaster Area"** means any area with respect to which a

major disaster was declared, during the period beginning on January 1, 2020, and ending on the date which is 60 days after the **date of enactment**, by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act if the incident period of the disaster with respect to which such declaration is made begins on or after December 28, 2019 and on or before the **date of enactment**. **These provisions do not apply to areas for which a major disaster has been (declared only by reason of COVID-**

3. Other Definitions.

- a. **Qualified Disaster.** The term “**Qualified Disaster**” means with respect to any qualified disaster area, the disaster by reason of which a major disaster was declared with respect to such area.
- b. **Incident Period.** The term “**Incident Period**” means, with respect to any qualified disaster, the period specified by FEMA as the period during which such disaster occurred (except such period shall not be treated as ending after the date which is 30 days after **the date of enactment**).

4. Increased Casualty Loss Deductions for “Qualified Disaster-Related Personal Losses” (CAA §304(b)). Generally, individuals who incur personal Federally declared disaster losses **1)** must itemize deductions in order to take the loss, **2)** must reduce the losses from each separate casualty by \$100, **and 3)** the total personal disaster casualty losses for a year are not deductible unless they exceed 10% of adjusted gross income (AGI). **The CAA changes these requirements for Federally declared casualty losses within a “Qualified Disaster Area.”**

- a. **“Qualified Disaster-Related Personal Losses” (“Qualified Disaster Losses”).** “Qualified Disaster-Related Personal Losses” (“Qualified Disaster Losses”) are those personal Federally declared casualty losses described in §165(c)(3) which arise in a Qualified Disaster Area to the extent they exceed personal casualty gains as defined in §165(h)(3)(A) (i.e., from any involuntary conversion of property arising from fire, storm, shipwreck, or other casualty, or from theft).
- b. **Those Taking Standard Deduction May Deduct “Qualified Disaster Losses.”** The CAA allows individuals with “Qualified Disaster Losses” who do not itemize deductions to increase their standard deduction by a “Qualified Disaster Loss.” In addition, even though the standard deduction is not allowed in calculating AMT, a **“Qualified Disaster Loss” will be allowed in computing AMT.**
- c. **Reduction Of \$100 Per Casualty Increased To \$500 Per Casualty.** The \$100 reduction in losses related to a particular casualty is increased to \$500 for “Qualified Disaster Losses.”
- d. **“Qualified Disaster Losses” Not Subject To 10% AGI Threshold.** “Qualified Disaster Losses” are not subject to the 10% of AGI threshold that normally applies to casualty losses.

5. Special Rules For Loans And Distributions From IRAs And Qualified Retirement Plans (CAA §302).

The CAA provides tax-favored benefits as discussed below for disaster distributions from IRAs and qualified retirement plans. **Practice Alert!** The CARES Act also provides expanded relief for qualified coronavirus-related distributions and loans from IRAs and qualified retirement plans during 2020.

- a. **“Qualified Disaster Distributions.”** A **“Qualified Disaster Distribution”** is any distribution, **not to exceed \$100,000** (reduced by the aggregate amounts treated as qualified disaster distributions received by the individual for all prior taxable years), from a Traditional, SEP, SIMPLE, or Roth IRA, a qualified retirement plan (e.g., profit-sharing, §401(k), pension plan), a §403(b) annuity, or a §457 plan, made: **1) on or after the first day of the incident period of a qualified disaster and before the date which is 180 days after the date of enactment, and 2)** to an individual whose principal place of abode at any time during the incident period of such qualified disaster is located in the qualified disaster area and who has sustained an economic loss by reason of such qualified disaster. **Practice Alert!** The CAA provides that a Plan will not be treated as violating any requirement of the Internal Revenue Code of 1986 merely because it treats a distribution as a *“Qualified Disaster Distribution”* unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to the individual exceeds \$100,000.

- b. **Exception From 10% Early Distribution Penalty.** The CAA provides an exception from the 10% early distribution penalty under §72(t) for “Qualified Disaster Distributions.”
- c. **May Rollover “Qualified Disaster Distribution” Within 3 Years Of Distribution.** The CAA provides that any individual who receives a qualified disaster distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan (as defined in §402(c)(8)(B)) of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under §402(c), §403(a)(4), §403(b)(8), §408(d)(3), or §457(e)(16). **This, in essence, allows a rollover of “Qualified Disaster Distributions” within 3 years of the distribution rather than within 60 days after the distribution. The rollover will be treated as a trustee-to-trustee transfer.**
- d. **3-Year Spread For Income From “Qualified Disaster Distribution.”** Generally, any “Qualified Disaster Distribution” amount required to be included in gross income during a taxable year is included ratably over the 3-taxable-year period beginning with such taxable year. However, taxpayers can elect out of this 3-year spread.
- e. **Notification And Withholding Not Required On “Qualified Disaster Distributions.”** Plan administrators are not required to notify a participant of the tax consequences of “Qualified Disaster Distributions” (e.g., rollover options, etc.) and they are not required to withhold income taxes from such distributions.
- f. **“Qualified Disaster Distributions” Treated As Meeting Plan Distribution Requirements.** The CAA provides that a “Qualified Disaster Distribution” shall be treated as meeting the requirements of §401(k)(2)(B)(i), §403(b)(7)(A)(ii), §403(b)(11), and §457(d)(1)(A) of the Code. This generally means that a “Qualified Disaster Distribution” may be made from §401(k) plans, §403(b) annuities, and §457 plans even though distributions are normally not available until the participant meets certain requirements such as severance from employment, death, disability, reaching age 59½, hardship, etc.
- g. **Rollovers Of “Qualified Disaster Distributions” From Retirement Plans For Home Purchase Or Construction May Be Made During The “Applicable Period.”** The CAA allows any individual who received a “Qualified Distribution” to make one or more contributions in an aggregate amount not to exceed the amount of such qualified distribution to an eligible retirement plan (as defined in §402(c)(8)(B)) of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under §402(c), §403(a)(4), §403(b)(8), or §408(d)(3). **Therefore, such “Qualified Distributions” otherwise qualifying for rollover may be rolled over within the “Applicable Period” and are not limited to the normal 60-day rollover period.**
 - 1) **“Qualified Distribution.”** The term “Qualified Distribution” means any distribution **1) Which is a distribution a) from a §401(k) plan that would be allowed because of financial hardship, b) from a §403(b) annuity because of hardship, or c) from an IRA which is a “qualified first-time homebuyer distribution” as described in §72(t)(2)(F); 2) Received during the period beginning on the date which is 180 days before the first day of the incident period of such qualified disaster and ending on the date which is 30 days after the last day of such incident period, And 3) Which was to be used to purchase or construct a principal residence in a qualified disaster area, but which was not purchased or constructed on account of the qualified disaster with respect to such area.**
 - 2) **“Applicable Period.”** “Applicable Period” means, in the case of a principal residence in a qualified disaster area with respect to any qualified disaster, the period beginning on the first day of the incident period of such qualified disaster and ending on date which is 180 days after the **date of enactment.**
- h. **More Liberal Qualified Plan Loan Provisions.** The CAA increases the amount a plan participant may borrow from a qualified plan and provides modified repayment provisions as described below.

- 1) **Increase In Maximum Loan Amount.** In the case of any loan from a qualified employer plan to a “Qualified Individual” made during the 180-day period beginning on **the date of enactment** — The maximum loan amount for loans from the plan is “**\$100,000**” rather than “**\$50,000**” not to exceed **the present value of the total nonforfeitable accrued benefit** of the employee under the plan rather than **one-half of the present value of the nonforfeitable accrued benefit** of the employee under the plan.
 - 2) **Delay Of Loan Repayments For One Year.** In the case of a “Qualified Individual” (with respect to any qualified disaster) with an outstanding loan (on or after the first day of the incident period of such qualified disaster) from a qualified employer plan (as defined in §72(p)(4) – **1**) if the due date pursuant §72(p)(2) for any repayment with respect to such loan occurs during the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the last day of such incident period, such due date shall be delayed for 1 year (or, if later, until the date which is 180 days after the date of enactment). **Practice Pointer!** In determining the 5-year period and the term of a loan, the period during which such payments are delayed as provided in the preceding paragraph are disregarded.
 - 3) **“Qualified Individual.”** A “Qualified Individual” means any individual **i)** whose principal place of abode at any time during the incident period of any qualified disaster is located in the qualified disaster area with respect to such qualified disaster, **and ii)** who has sustained an economic loss by reason of such qualified disaster.
 - 4) **Plans May Make Retroactive Amendments To Allow For the Above Benefits By The Last Day Of The First Plan Year Beginning On Or After January 1, 2022.** The CAA provides that plans providing the above benefits to participants may provide them as long as the plan is properly amended generally no later than the last day of the first plan year beginning on or after January 1, 2022 or such later date as the Secretary of the Treasury may prescribe. Governmental plans are allowed additional time to amend.
6. **Employer’s 40% Retention Credit For Employees Affected By Qualified Disasters (CAA §303).** The CAA provides a §38 business credit for “Eligible Employers.” The credit for any taxable year is **40% of up to \$6,000 of “Qualified Wages”** with respect to each “Eligible Employee” of the “Eligible Employer” (reduced by the amount of qualified wages of such employee taken into account for any prior taxable year).
- a. **“Eligible Employer.”** The term “Eligible Employer” means any employer **1)** That conducted an active trade or business in a qualified disaster zone at any time during the incident period of the qualified disaster with respect to such qualified disaster zone, **and 2)** With respect to whom such trade or business is inoperable at any time during the period beginning on the first day of the incident period of such qualified disaster and ending on **the date of enactment**, as a result of damage sustained because of such qualified disaster.
 - b. **“Eligible Employee.”** The term “Eligible Employee” means with respect to an “Eligible Employer” an employee whose **principal place of employment** with such eligible employer immediately before the qualified disaster described at 5. a. above, was in such qualified disaster zone.
 - c. **“Qualified Wages.”** The term “Qualified Wages” means **wages** (as defined in §51(c)(1) without regard to §3306(b)(2)(B)) **paid or incurred** by an “Eligible Employer” with respect to an “Eligible Employee” at any time on or after the date on which the trade or business described in **Item 5.a. above**, first became inoperable at the principal place of employment of the employee (determined immediately before the qualified disaster referred to in such paragraph) and before the earlier of 1) The date on which such trade or business has resumed significant operations at such principal place of employment, or 2) The date which is 150 days after the last day of the incident period of the qualified disaster referred to in Item 5.a., above. Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

- 1) **Credit Reduces Deduction For Wages.** Any credit taken under this provision reduces the taxpayer's deduction for wages.
 - 2) **Wages Paid To Certain Related Individuals Do Not Qualify For The Credit.** — The CAA says that “rules similar to the rules of sections 51(i)(1) * * * shall apply.” Generally, this means that wages paid to children or their descendants; brothers or sisters; stepbrothers or stepsisters; fathers, mothers or their ancestors; stepfathers or stepmothers; sons or daughters of brothers or sisters; son-in-laws, daughter-in-laws, father-in-laws, mother-in-laws, brother-in-laws, or sister-in-laws; or dependents of a more than 50% owner of the business will not qualify for the credit.
 - 3) **Wages For Which Credit Taken Under This Provision Do Not Qualify For Other Credits.** Wages for which a credit is taken under this provision do not qualify for the following credits: the **§41** research credit; **§45A** Indian employment credit; **§45P** employer wage credit for paying differential wages to employees who are on active military duty; **§45S** employer credit for paid family and medical leave; **§51** work opportunity credit; and **§1396** empowerment zone employment credit.
 - 4) **Wages Taken Into Account In Determining 40% Credit Do Not Qualify For PPP Forgiveness.** Payroll costs qualifying for PPP Loan forgiveness do not include wages for which this 40% credit is taken.
 - 5) **A Qualified Tax-Exempt Organization Qualifying For Credit Reduces 6.2% OASDI Liability By Credit.** A tax-exempt employer may take the 40% credit for qualified wages paid to eligible employee during a calendar quarter (up to a maximum cumulative credit of \$2,400 per eligible employee) as a reduction of the employer's 6.2% OASDI liability for that quarter. If the credit for a quarter exceeds the employer's OASDI liability for a quarter, the excess credit is carried over to the succeeding quarter. A “Qualified Tax-Exempt Organization means an organization described in §501(c) of and exempt from taxation under §501(a) if such organization would be an eligible employer if the activities of such organization were an active trade or business.
 - 6) **Eligible Employers May Elect To Not Take The Credit.** An Eligible Employer may elect not to take the credit at at such time and in the manner as provided by the IRS.
 - 7) **Section 52 Controlled Group Rules Apply.** The CAA also says that for purposes of this credit, the controlled group rules of §52 shall apply. Therefore, all employees of all corporations that are members of a controlled group are treated as employed by a single employer.
7. **Special Limitations For C Corporation's “Qualified Contributions” For Disaster Relief (CAA §304(a)).**
- a. **“Qualified Contribution.”** The term “Qualified Contribution” means any charitable contribution (as defined in §170(c)) if —
 - 1) Such contribution **a)** is **paid** during the **period beginning on** January 1, 2020, and ending on the date which is 60 days after **the date of enactment**, in cash to an organization described in §170(b)(1)(A), and **b)** is made for relief efforts in one or more qualified disaster areas;
 - 2) The taxpayer **obtains** from such organization **contemporaneous written acknowledgment** (within the meaning of §170(f)(8)) which also states that such contribution was used (or is to be used) for relief efforts in one or more qualified disaster areas; **and**
 - 3) The taxpayer **elects for the** following **special limitations to apply** to such “Qualified Contribution.”

Practice Alert! The CAA provides that a “Qualified Contribution” does not include a contribution **1)** to a supporting organization under §509(a)(3), **or 2)** for the establishment of a new, or maintenance of an existing, donor advised fund as defined in §4966(d)(2).

- b. **100% Of Taxable Income Limitation For “Qualified Contributions” By C Corporations.** A “Qualified Contribution” made by a C Corporation shall be allowed to the extent the Corporation’s taxable income exceeds all other contributions otherwise allowable for the year pursuant to the special 25% of taxable income limitation under the CARES Act and the normal charitable contribution limitations under §170(b)(2).

25% Of Taxable Income Limitation Under CARES Act Applied First. In applying this limitation for Qualifying Disaster Relief Contributions, the 25% of taxable limitation provided under §2205(a)(2)(B) of the CARES Act is applied first without regard to any Qualified Disaster Relief Contributions.

Carryover Of Excess Contributions. Any “Qualified Contributions” in excess of this special limitation are carried over to subsequent taxable years using the normal limitations and carryover provisions for contribution carryovers. In addition, “Qualified Contributions” are not taken into account for purposes of determining the deductibility of contributions which are subject to the normal 10% of taxable income limitation.

8. **Low-income Housing Tax Credit For Properties In Qualified Disaster Zones (CAA §305).** The CAA increases the 2021 and 2022 state ceilings for 9-percent low-income housing tax credit allocations for allocations to qualified disaster zones. The maximum increase across 2021 and 2022 is equal to the lesser of 1) \$3.50 multiplied by the number of state residents in disaster zones or 2) 65 percent of the state’s 2020 low-income housing tax credit ceiling. The provision also allows an additional year for properties provided disaster allocations to place buildings in service.

EXTENSION OF CERTAIN EXPIRING PROVISIONS

PROVISIONS REPEALED OR TERMINATED AFTER 2020

1. **Deduction For Qualified Higher Education Expenses Repealed (§222(e); CAA §104).** The CAA ***repeals*** the “for AGI” deduction for qualified higher education expenses (up to \$4,000) **for tax years beginning after December 31, 2020.**
- **Increased Income Limit For Lifetime Learning Credit (CAA §104).** Effective for tax years beginning after 2020, the CAA increases the income phase-out thresholds for the **Lifetime Learning Credit** to match the higher income phase-out thresholds for the **American Opportunity Credit (AOTC)**. **Practice Alert!** the MAGI phase-out ranges for the AOTC (which will also apply to the Lifetime Learning Credit after 2020) are: \$160,000 to \$180,000 For Joint Returns; \$80,000 to \$90,000 for Singles.
2. **Special Depreciation Allowance For Second Generation Biofuel Plant Property (§168(l)).** The CAA does not appear to have extended the additional 50% depreciation allowance for property used to produce second generation biofuel **that applies to property placed in service before 2021.**

SCHEDULED TO EXPIRE AFTER 2020 – REMOVED FROM LIST OF EXPIRING PROVISIONS

1. **Up-Front Deduction For Energy Efficient Improvements To Commercial Buildings (§179D; CAA §102).** The CAA provides that the §179D up-front deduction of up to \$1.80 per square foot for the cost of qualifying energy-efficient property installed in a commercial building applies to **Property Placed in Service after 2020.** The CAA adjusts the deduction for inflation for tax years beginning after 2020.
3. **Decrease In Medical Expense Deduction Subtraction From 10% To 7.5% (§213(f); CAA §101).** The CAA provides that the 7.5%-of-AGI medical deduction threshold for all taxpayers will apply to **taxable years beginning after December 31, 2020** (previously, the 7.5% threshold was scheduled to go up to 10% after 2020).
4. **2020 Income Exclusion For Qualified Payments To Volunteer Firefighters Or EMS Personnel (§139B(d); CAA §103).** The CAA provides that the exclusion for reduction or rebate of taxes described in §164(a)(1), (2), or (3) (such as property taxes) and the exclusion of up to \$50 per month for qualified

expense reimbursements of up to \$50 per month for members of a volunteer firefighting or volunteer emergency medical services organization continues to apply to **taxable years beginning after 2020** (previously, this provision was to apply to 2020 only).

5. **Various Rules Relating To Beer, Wine, And Distilled Spirits (§§ 5051, 5414, 5041, 5001, 5212, 5555; CAA §106 through §110)**. The CAA removes the expiration dates that previously applied to various provisions relating to beer, wine, and distilled spirits.

SCHEDULED TO EXPIRE AFTER 2022 – REMOVED FROM LIST OF EXPIRING PROVISIONS

1. **Railroad Track/Maintenance Credit (§45G; CAA §105)**. The credit under §45G for 50% of the "qualified railroad track maintenance expenditures." The credit rate drops To 40% After 2022.

PROVISIONS SCHEDULED TO EXPIRE AFTER 2020 – EXTENDED THROUGH 2021

1. **Premiums For Mortgage Insurance Deductible As Qualified Residence Interest (§163(h)(3); CAA §133)**. The deduction for "qualified mortgage insurance premiums" as qualified residence interest applies to **amounts paid through 2021** that are not properly allocable to any period after 2021.
2. **Credit For Qualified Energy-Efficient Home Improvements (§25C; CAA §141)**. The 10% credit for qualified energy-efficient home improvements with a **lifetime limit of \$500** (reduced by any credits claimed after 2005) **to qualifying property placed in service before 2022**.
3. **Credit For Builders Of Energy-Efficient New Homes (§45L; CAA §146)**. Contractors and manufacturers receive a credit for the construction of qualified energy-efficient new homes that achieve a 30% or 50% reduction in heating and cooling energy consumption relative to a comparable dwelling. The credit equals \$1,000 for manufactured homes meeting a 30% efficiency standard and \$2,000 for homes meeting a 50% standard. The CAA extends this credit **to homes acquired from the contractor or manufacturer before 2022**.
4. **Accelerated Depreciation For Business Property On Indian Reservations (§168(j); CAA §138)**. Shortened depreciation recovery periods can be used for both regular tax and AMT purposes for "qualified Indian reservation property." For example, property normally depreciable over a 5-year period may be depreciated over a 3-year period if it is *qualified Indian reservation property* (i.e., certain property used in connection with the conduct of a trade or business within an Indian reservation). The CAA extends this provision **to qualifying property placed in service before 2022**.
5. **Recovery Period For Certain Race Horses (§168(e)(3)(A)(i); CAA §137)**. The 3-year recovery period for qualified race horses **applies to any qualifying race horse placed in service before 2022**.
6. **Employment Tax Credit For Members Of Indian Tribes (§45A; CAA §135)**. Certain employers are eligible for a credit equal to 20% of the first \$20,000 of qualified wages and insurance costs paid to each qualified employee who is a member of an Indian tribe and works on an Indian reservation over the amounts paid to employees in 1993. The CAA extends this provision **to wages paid or incurred in tax years beginning before 2022**.
7. **Mine Rescue Team Training Credit (§45N(e); CAA §136)**. The 20% Mine Rescue Team Training Credit applies to training costs paid or incurred in **tax years beginning before 2022**.
8. **Credit For Electricity Produced From Renewable Resources (§45(d) & §48; CAA §131)**. The CAA extends the renewable electricity production credit under §45 for closed-loop biomass, open-loop biomass, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy facilities **to facilities the construction of which begins before 2022**. In addition, the CAA extends the election to treat qualified wind, closed-loop biomass, open-loop biomass, geothermal, solar, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy facilities as energy property under §48(a)(5)(C)(ii) to qualified energy facilities **where construction begins before 2022**.

9. **Credit For Production Of Indian Coal (§45(e)(10); CAA §145).** The credit for the production of Indian coal applies to **Indian coal produced before 2022.**
10. **Second Generation Biofuel Producer Credit (§40(b)(6)(J)(i); CAA §140).** The biofuel producer credit applies to **qualified biofuel production before 2022.**
11. **Alternative Fuel Credit And Alternative Fuel Mixture Credit (§6426(d)(5), 6426(e)(3), and §6427(e)(6)(C); CAA §147).** The alternative fuels credit and the alternative fuel mixture credit under §6426(d) and §6426(e), and the excise tax refund provisions of §6427(e), apply to **qualifying fuel sold or used before 2022.**
12. **American Samoa Economic Development Credit (Sec. 119 of P.L. 109-432, as amended by Sec. 756 of P.L. 111-312; CAA §139).** The American Samoa economic development credit provisions apply to **tax years beginning before 2022.**
13. **Credit For Alternative Fuel Vehicle Refueling Property (§30C(g); CAA §143).** The §30C credit for qualified alternative fuel vehicle refueling property applies to **property placed in service before 2022.**
14. **Credit For New Qualified Fuel Cell Motor Vehicles (§30B(k)(1); CAA §142).** The credit under §30B for qualified fuel cell motor vehicles applies to **vehicles purchased before 2022.**
15. **Credit For 2-Wheeled Electric Vehicle (§30D; CAA §144).** Section 30D(g) provides 10-percent credit for qualifying plug-in electric 2-wheeled vehicles (motorcycles) with a battery capacity of at least 2.5 kilowatt-hours and capable of achieving speeds of at least 45 miles per hour. The maximum credit for any qualifying vehicle is \$2,500. The credit applies to vehicles **acquired before 2022.**
16. **Health Coverage Tax Credit (§35; CAA §134).** The health coverage tax credit or HCTC allows eligible individuals a refundable credit equal to 72.5% of the premiums paid by the individual for coverage of the individual and qualifying family members under qualified health insurance. An eligible individual is an individual who is **1) an eligible Trade Adjustment Assistance (“TAA”) recipient, 2) an eligible alternative TAA recipient, or 3) an eligible Pension Benefit Guaranty Corporation pension recipient.** The credit **expires after 2021.**

PROVISIONS SCHEDULED TO BE REDUCED OR EXPIRE AFTER 2020 - EXTENDED THROUGH 2022

1. **26% Individual Energy Credit For “Qualified Fuel Cell Property,” “Qualified Small Wind Energy Property,” “Qualified Solar Electric Property,” “Qualified Solar Water Heating Property,” And “Qualified Geothermal Heat Pump Property” (§25D; CAA §148).** The 26% credit for: **1) “Qualified Fuel Cell Property,” 2) “Qualified Small Wind Energy Property,” 3) “Qualified Solar Electric Property,” 4) “Qualified Solar Water Heating Property,” And 5) “Qualified Geothermal Heat Pump Property”** will continue at **26%** for qualifying property **installed in 2020, 2021, or 2022**, and will be **reduced to 22% for qualifying property installed in 2023.** Previously, the credit was schedule to be reduced from 26% to 22% for property installed after 2020 and before 2022.
 - **“Qualified Biomass Fuel Property Added.”** The CAA adds qualified biomass fuel property to the list of property qualifying for this credit effective for **expenditures paid or incurred in taxable years beginning after December 31, 2020.**
2. **26% Business Energy Credit For “Qualified Fuel Cell Property,” “Small Wind Energy Property,” “Qualified Solar Energy Property,” And “Fiber-Optic-Distributed Solar Property” (§48(a)(2)(A); CAA §132).** The 26% business credit for **“Qualified Solar Energy Property,” “Fiber-Optic Solar Property,” “Qualified Fuel Cell Property,” and “Qualified Small Wind Energy Property”** will continue at **26%** for qualified property **where the construction of the property begins after 2019 and before 2023** and will be **reduced to 22%** for qualified property where the **construction of the property begins after 2022 and before 2024.** Previously, the credit was schedule to be reduced from 26% to 22% for property where construction started after 2020.

3. **Income And Excise Tax Credits For Biodiesel And Renewable Diesel (§40A)**. Although not extended by the CAA, various income and excise tax credits under §40A for biodiesel fuel and renewable diesel fuel **apply to fuel sold or used before 2023**.

PROVISIONS SCHEDULED TO EXPIRE AFTER 2020 - EXTENDED THROUGH 2025

1. **Income Exclusion For Discharge Of Up To \$750,000 Of Qualified Principal Residence Indebtedness (§108(a)(1)(E); CAA §114)**. The exclusion for discharge of “qualified acquisition indebtedness” on a principal residence **applies to discharges of qualified principal residence debt occurring through 2025**.
 - **\$2 Million Maximum Reduced to \$750,000. Effective for discharges of indebtedness after 2020**, the CAA reduces the maximum amount of “qualified acquisition indebtedness” on a principal residence qualifying for the exclusion from \$2,000,000 (\$1,000,000 for married individuals filing separate returns) to \$750,000 (\$375,000 for married individuals filing separate returns).
2. **Motorsports Entertainment Complexes As 7-Year Property (§168(i)(15); CAA §115)**. The CAA provides that the 7-year recovery period for Motorsports entertainment complexes, as defined in §168(i)(15), **applies to qualifying property placed in service before 2026**.
3. **Qualified Film, Television, And Live Theatrical Production Expense Election (§181; CAA §116)**. A taxpayer may elect to expense the cost of any “qualified film, television, or live theatrical production” costing up to \$15 million (\$20 million if a significant amount of the expenses are incurred in low-income or distressed areas) for **qualified productions commencing before 2026**.
4. **Tax Incentives For Empowerment Zones (CAA §118)**. The CAA generally extends the provisions encouraging investments in “empowerment zones” **through December 31, 2025**. However, the increased §179 deduction for an enterprise zone business under §1397A and the provision providing for nonrecognition of gain on rollover of empowerment zone investments under §1397B were allowed to expire for tax years beginning after 2020.
5. **Work Opportunity Tax Credit (§51; CAA §113)**. The Work Opportunity Tax Credit (WOTC) is available on an elective basis for employers hiring individuals from one or more of certain targeted groups and applies for qualifying employees **who begin work on or before December 31, 2025**.
6. **New Markets Tax Credit (§45D; CAA §112)**. The CAA extends the national new markets tax credit limitation of \$5,000,000 for investments in and loans to small businesses located in low-income communities **to calendar years 2021 through 2025**. The CAA also extends through 2030 the carryover period for any unused credit limitation.
7. **Look-Through Treatment For Payments Between Related CFCs Under Foreign Personal Holding Company Income Rules (§954(c)(6); CAA §111)**. The look-through treatment for related controlled foreign corporations (CFCs) is extended to **tax years of a foreign corporation beginning before 2026** and for tax years of U.S. shareholders with or within which the tax year of such foreign corporation ends.
8. **Employer Credit For Paid Family And Medical Leave (§45S; CAA §119)**. The credit for paid family and medical leave applies to qualified wages paid in tax years beginning before 2026. Employers may claim this elective general business credit on eligible wages paid to qualifying employees with respect to qualifying family and medical leave. The credit is equal to 12.5% of eligible wages, if the rate of payment is 50% of such wages, and is increased by 0.25 percentage points (but not above 25%) for each percentage point that the rate of payment exceeds 50%.
9. **Educational Expenses Paid From Qualified Education Assistance Programs Include Payments On Employee’s Qualified Education Loan (§127(c)(1)(B); CAA §120)**. The CAA **extends through 2025** the provision treating payments on an employee’s education loan from an employer’s qualified education assistance program under §127 as qualified education expenses (with an overall annual limit of \$5,250).

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