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News

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Summary and Analysis of Ways and Means Reconciliation Text Released Friday — Subtitles F, G, and H

On Friday, Sept. 10, House Ways and Means Committee Chair Richard Neal (D-MA) **released** the second tranche of the panel's recommendations for budget reconciliation—the package through which Democrats aim to enact policies in President Joe Biden's Build Back Better legislative agenda.

Last week, the committee approved five subtitles addressing **Universal Paid Family and Medical Leave**, **Retirement**, **Child Care Access and Equity**, **Trade Adjustment Assistance** and Elder Care (**Pathways to Health Careers**, **Elder Justice**, **Skilled Nursing Facilities and Medicare Dental, Hearing, and Vision Coverage**). The Brownstein Tax Policy Team has **analyzed the paid leave and retirement provisions**.

However, missing from last week's text were the tax benefit provisions and revenue-raising measures through which House Democrats plan to pay for the spending and tax benefits included in the committee's reconciliation recommendations. The legislative language released today includes revenue-raising provisions relating to health care, but the remaining revenue raisers are expected by Sunday evening. Although the budget resolution approved spending up to $3.5 trillion, the final package is unlikely to reach that mark, given pressure from moderate Democrats whom the party needs to secure passage.

Overview

The language would provide clean energy incentives; extend the Child Tax Credit, Earned Income Tax Credit and Child and Dependent Care Tax Credit; reinstate Build America Bonds to provide financing for state and local governments; reduce prescription drug costs and extend the expansion of premium tax credits to lower health insurance costs. The **text** released Friday consists of the following subtitles:

- Subtitle F: Infrastructure Financing
- Subtitle G: Green Energy
- Subtitle H: Social Safety Net
- Subtitle J: Prescription Drugs

Looking Ahead

The Ways and Means Committee is currently scheduled to consider the language released today at 9:00 a.m. ET on

Tuesday, Sept. 14. Once all the committees approve their respective budget recommendations, which House Democratic leaders have requested be completed by Sept. 15, the entire package will be compiled by the House Budget Committee and then sent to the House Rules Committee for the debate process for House floor consideration.

SUBTITLE F – INFRASTRUCTURE FINANCING AND COMMUNITY DEVELOPMENT

PART 1 – INFRASTRUCTURE FINANCING

Subpart A – Bond Financing

Section 135101. Credit to Issuer for Certain Infrastructure Bonds.

- Based on the successful Build America Bonds program, authorizes a direct pay subsidy to the issuer for qualified infrastructure bonds.
- The subsidy is a percentage of the interest paid with respect to qualified bonds determined in the year the bonds are issued as follows:
  - 2022 through 2024: 35%
  - 2025: 32%
  - 2026: 30%
  - 2027: 28%
- Qualified infrastructure includes capital expenditures or operations and maintenance expenditures in connection with property the acquisition, construction or improvement of which would be a capital expenditure and certain payments related to railroad right-of ways.
- Impact: Establishes direct pay subsidy bonds as the preferred mechanism to fund infrastructure.

Section 135102. Advance Refunding Bonds.

- Reinstates the tax exemption on advance refunding.
- Impact: Likely to create a surge in the issuance of advance refundings to take advantage of lower interest rates.

Section 135103. Permanent Modification of Small Issuer Exception to Tax-Exempt Interest Expense Allocation Rules for Financial Institutions.

- Increases the small issuer exception for bank qualified bonds from $10 million to $30 million.
- Treats qualified section 501(c)(3) bonds as tax-exempt obligations for purposes of the small issuer exemption.
- Makes permanent certain rules related to qualified financings.
- Impact: Allows financial institutions to hold qualified small issue bonds without a loss of a deduction for interest expense allocable to the tax-exempt interest income on the qualified bonds.

Section 135104. Modifications to Qualified Small Issue Bonds.

- Increases the aggregate cap from $10 million to $30 million for qualified small issue bonds.
- Expands the definition of a manufacturing facility to include facilities used in the creation or production of intangible property, and facilities functionally related and subordinate (or directly related and ancillary) to facilities used for the manufacturing, creation or production of tangible or intangible property.
- Impact: Significantly expands the type and size of manufacturing facilities that can be financed with tax-exempt bonds.

Section 135105. Expansion of Certain Exceptions to the Private Activity Bond Rules for First-Time Farmers.

- Increases the limitation on the exemption for the use of private activity bond proceeds for first-time farmers to $552,500, indexed annually for inflation.

- Applies the same dollar limitation on the purchase of used farm equipment.
- Impact: Provides additional source of funding to first-time farmers.

Section 135106. Certain Water and Sewage Facility Bonds Exempt from Volume Cap on Private Activity Bonds.

- Exempts from the private activity bond volume cap exempt facility bonds for existing water and sewage facilities as of July 1, 2020.
- Impact: Allows issuance of limited types of bonds without need to compete for volume cap.

Section 135107. Exempt Facility Bonds for Zero-Emission Vehicle Infrastructure.

- Allows tax-exempt bonds to finance zero-emission vehicle infrastructure.
    - Zero emission infrastructure is depreciable property (not including a building and its structural components) used to charge or fuel zero-emissions vehicles.
    - Charging infrastructure that is not exclusively for governmental or commercial fleets must be made available for use by the general public, accept payment by use of a credit card reader and capable of charging or fueling vehicles produced by more than one manufacturer**.**
- Impact: Should accelerate financing of EV infrastructure through tax-exempt bonds**.**

Section 135108. Application of Davis-Bacon Act Requirements with Respect to Certain Exempt Facility Bonds.

- Applies Davis-Bacon prevailing wage requirements to all proceeds of exempt facility bonds used for the construction, alteration or repair of water-furnishing facilities, sewage facilities, highway or surface freight transfer facilities or zero-emissions vehicle infrastructure facilities.
- Impact: May increase the cost of many projects financed with tax-exempt bonds.

Subpart B – Other Provisions Related to Infrastructure Financing

Section 135111. Credit for Operations and Maintenance Costs of Government-Owned Broadband.

- Creates a 30% tax credit for state, local and tribal governments for the operations and maintenance costs of government-owned broadband systems.
    - Service must provide threshold download and upload speeds.
    - Expenses are capped at $400 per newly subscribed household living within a low-income community.
- Credit phased down to 26% in 2027, 24% in 2028 and expires after 2028.
- Impact: Intended to increase broadband availability to underserved areas.

PART 2 – NEW MARKETS TAX CREDIT

Section 135201. Permanent Extension of New Markets Tax Credit.

- Increases the New Markets Tax Credit (NMTC) allocation amount to $5 billion for 2020 and 2021, $7 billion for 2022, $6 billion for 2023 and $5 billion for 2024 and beyond.
- Provides relief for Alternative Minimum Tax (AMT) taxpayers claiming the NMTC.
- Adjusts the NMTC for inflation beginning after 2024.
- Applies to calendar years after 2021.
- Impact: By expanding the NMTC, adjusting it for inflation and providing relief from the AMT, the section further incentivizes community development and economic growth in low-income communities.

PART 3 – REHABILITATION TAX CREDIT

Section 135301. Determination of Credit Percentage.

- Increases the historic rehabilitation tax credit percentage to the following percentages:
  - 2020 through 2025: 30%
  - 2026: 26%
  - 2027: 23%
- After 2027 the credit reverts to 20%
- The increased rates are effective for property placed in service after March 31, 2021.
- Impact: Will provide larger source of funds for rehabilitation of historic buildings.

Section 135302. Increase in the Rehabilitation Credit for Certain Small Projects.

- Permanently increases the tax credit to 30% for projects with qualified rehabilitation expenses of not more than $2.5 million.
- Impact: Provides larger source of funds for rehabilitation of historic buildings.

Section 135303. Modification of Definition of Substantially Rehabilitated.

- Lowers the substantial rehabilitation requirement from 100% to 50% of the adjusted basis of the building.
- Impact: Allows more projects that require less rehabilitation expenses to qualify for the credit.

Section 135304. Elimination of Rehabilitation Credit Basis Adjustment.

- Eliminates the requirement that the basis of a building be reduced by the historic tax credit at the time of transfer.
- Impact: Makes it easier to use the historic tax credit with other programs like the low-income housing tax credit.

Section 135305. Modifications Regarding Certain Tax-Exempt Use Property.

- Generally narrows restrictions on disqualified leases.
- Impact: Will facilitate use of credits for buildings leased to nonprofits and other tax-exempt entities.

Section 135306. Qualification of Rehabilitation Expenditures for Public School Buildings for Rehabilitation Credit.

- Excepts public school buildings that have been used as public schools within the past five years from certain tax-exempt use rules.
- Impact: Will facilitate use of historic tax credits for public school buildings.

PART 4 – DISASTER AND RESILIENCY

Section 135401. Exclusion of Amounts Received from State-Based Catastrophe Loss Mitigation Programs.

- Excludes from gross income state-qualified catastrophe mitigation payments—the amount received to make improvements to a residence for reducing the damage that would have occurred from windstorms, earthquakes or wildfire.
- Applies to taxable years beginning after 2020.
- Impact: By excluding catastrophe mitigation payments from gross income, the section provides relief for taxpayers affected by natural disasters.

Section 135402. Repeal of Temporary Limitation on Personal Casualty Losses.

- Restores the personal casualty loss deduction to the extent the claim is attributable to a federally declared disaster. This change would be effective for taxable years beginning after 2017.

- Extends the period of limitation for filing a loss claim for one year following enactment.
- Directs the Treasury Secretary to issue regulations to implement this section, including regulations consistent with **Rev. Proc. 2017-60**, relating to deteriorating concrete foundations caused by the mineral pyrrhotite.
- Impact: This section provides relief for damage or destruction of certain personal and business property due to theft, fire, storm or other casualty.

Section 135403. Credit for Qualified Wildfire Mitigation Expenditures.

- Establishes a tax credit against qualified wildfire mitigation expenditures, generally equal to 30%.
- Treats the credit as a general business credit, allowing unused credit in a year to be carried forward.
- Defines "qualified wildfire mitigation expenditure" as "any specified wildfire mitigation program of a State which requires expenditures for wildfire mitigation to be paid both by the taxpayer and such State." The definition excludes expenditures in which the ratio of the state's contribution exceeds 25% of the total.
- Excludes expenditures allocable to timber that is sold or exchanged by the taxpayer for profit.
- Applies to mitigation expenditures paid or incurred after enactment.
- Impact: By providing a credit of up to 30% for wildfire mitigation expenditures, this section incentivizes actions to help prevent future wildfire damage.

PART 5 – HOUSING

Subpart A – Low Income Housing Tax Credit

Section 135501. Increases in State Allocations.

- Increases the 9% housing credit and the small state minimum from current levels by 50%.
- The increase is phased in over five years, and for tax years 2026, 2027 and 2028.
- Effective Dec. 31, 2021.
- Impact: This significantly increases the amounts available for projects, particularly in small states.

Section 135502. Tax-exempt Bond Financing Requirement.

- Lowers the percent limitation that a building must be financed by certain tax-exempt bonds from 50% to 25% to be eligible for the exception allowing housing credits to apply without an allocation from the housing credit agency and at no charge to the state's housing tax credit cap.
- Applies to buildings financed by bonds issued in calendar years 2022 through 2028 (and explicitly not those issued during any taxable year beginning during calendar year 2019 through 2021).
- Effective Dec. 31, 2021.
- Impact: Incentivizes the building of additional low-income housing that is eligible for the "four percent" credit.

Section 135503. Buildings Designated to Serve Extremely Low-Income Households.

- Requires at least 10% of a state's housing credit ceiling be allocated to buildings where 20% or more of the residential units are rent-restricted. The units must be designated for households with an aggregate income lesser than the greater of (1) 30% of area median gross income, or (2) the federal poverty level.
- Increases the eligible basis to 150% of the otherwise applicable basis for buildings designated as requiring an increase in credit to be financially feasible. Housing credit agencies may not allocate more than 15% of the state housing credit ceiling amount to such buildings.
- Effective for credit allocations made Dec. 31, 2021, through Dec. 31, 2031.
- Impact: Encourages the building of housing for extremely low-income households.

Section 135504. Inclusion of Rural Areas as Difficult Development Areas.

- Amends the definition of difficult development areas to include rural areas for the purpose of determining eligible basis.
- Applies to buildings placed in service after Dec. 31, 2021.
- Impact: Effectively increases the eligible basis for buildings located within rural areas to 130% of the otherwise applicable basis for the purpose of determining the credit, which should incentivize the building of housing in underserved communities.

Section 135505. Repeal of Qualified Contract Option.

- Repeals the ability of low-income building owners to back out of their extended low-income housing commitment by submitting a written request to the credit agency to find a buyer that will agree to acquire the owner's interest in the low-income portion of the building at a statutory price for buildings receiving allocations after Jan. 1, 2022.
- For buildings that may still use the exception, the specified statutory price is the fair market value as determined by the housing credit agency taking into account the rent restrictions required to continue to satisfy the minimum set-aside requirements.
- The proposal is generally effective on the date of enactment. The proposal to modify the specified statutory price applies to buildings with respect to which the building owner submits, after the date of enactment, a written request to find a buyer that agrees to acquire the owner's interest in the low-income portion of the building.
- Impact: Limits the ability of building owners to back out of their low-income housing commitments, providing more stability for the program.

Section 135506. Modification and Clarification of Rights Relating to Building Purchase.

- The proposal changes the right of first refusal safe harbor into an option safe harbor.
- For existing agreements, clarifies that for the purposes of the safe harbor, the right to acquire the building includes the right to acquire all of the partnership interests relating to the building, as well as the right to acquire assets held for the development, operation or maintenance of the building.
- Clarifies that for existing agreements, the right of first refusal safe harbor may be satisfied by the grant of an option.
- Amends the minimum purchase price to exclude exit taxes.
- The proposal to change the right of first refusal safe harbor into an option safe harbor is effective for agreements entered into or amended after the date of enactment. The other provisions of the proposal are effective for agreements entered into before, on or after the date of enactment. However, none of the changes of the proposal are intended to supersede express language in any agreement with respect to the terms of a right of first refusal or option permitted under the safe harbor.
- Impact: Clarifies the rules regarding the right of first refusal safe harbor.

Section 135507. Increase in Credit for Bond-Financed Projects Designated by Housing Credit Agency.

- Provides that buildings designated by the housing credit agency as requiring an increase in credit in order to be financially feasible and are also financed with the proceeds of certain tax-exempt bonds may be treated as difficult development areas for purposes of determining eligible basis, as long as the determinations of housing credit dollar amounts are not made after Dec. 31, 2028.
- Applies to buildings after the date of enactment.
- Impact: Effectively allows such designated buildings to receive treatment as though they were located in a difficult development area, even if the building is financed with tax-exempt bonds.

Subpart B – Neighborhood Homes Investment Act

Section 135511. Neighborhood Homes Credit.

- Establishes a new neighborhood homes credit as part of the general business credit.
- Provides that the credit amount is the lesser of either (1) the excess of development costs incurred, over the sales price of the property; or (2) 35% of the lesser of either (i) the development costs incurred, or (ii) 80% of the national median sales price for new homes.
- Directs states to designate an agency to serve as the Neighborhood Homes Credit Agency (NHCA) responsible for allocating credits to project sponsors based upon certain qualifying factors.
- The credit is available for the construction—or rehabilitation—for-sale of: (1) homes with up to four dwelling units; (2) condominiums; and (3) residences owned by a housing cooperative. Qualified residences must be located within census tracts that meet specified parameters prioritizing lower-income, rural or disaster locations.
- If the home is sold again within five years of a qualifying sale, the seller must repay a specified amount to the neighborhood home credit agency.
- Specifies alternate credit amount and repayment rules for rehabilitation of owner-occupied property: the credit amount is equal to the lesser of (1) the excess of costs incurred by the taxpayer, over any amounts paid to the taxpayer for the rehabilitation; (2) 50% of the costs incurred; or 3) $50,000.
- Effective for taxable years beginning after Dec. 31, 2021.
- Impact: Creates a general business credit to subsidize taxpayers who develop or rehabilitate property and affordably sell to purchasers to use as their principal residence, or taxpayers who rehabilitate certain owner-occupied property.

PART 6 – INVESTMENTS IN TRIBAL INFRASTRUCTURE

Section 135601. Treatment of Indian Tribes as States with Respect to Bond Issuance.

- For private activity bonds, it directs the Treasury Secretary to annually establish a national bond volume cap based on the greater of the (1) state population formula and (2) minimum state ceiling amount.
- An Indian Tribal Government is defined as the governing body of an Indian tribe, band, nation or other organized group or community of Alaska Natives, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and also would include any agencies, instrumentalities or political subdivision thereof.
- No portion of the private activity bond volume cap may be used to finance (1) any portion of a building in which class II or class III gaming is conducted or housed or (2) property used in the conduct of such gaming.
- The changes apply to obligations issued in calendar years beginning after enactment.
- Impact: This section revises the rules for Indian Tribal Governments with regard to private activity bonds, but does not allow the use of the bonds to finance gaming facilities.

Section 135602. New Markets Tax Credit for Tribal Statistical Areas.

- Beginning after 2021, this section establishes a new markets tax credit (NMTC) limitation of $175 million allocated only with respect to Tribal Statistical Areas.
    - Defines a “Tribal Statistical Area” as “any low-income community which is located in any Tribal Census Tract, Oklahoma Tribal Statistical Area, Tribal-Designated Statistical Area, Alaska Native Village Statistical Area or Hawaiian Home Land.”
    - Defines “low-income community” as (1) a census tract in which the poverty rate is at least 20% or (2) a census tract in which median family income does not exceed 80% of statewide median family income.

    - Low-income community businesses that service a significant population of Tribal or Alaska Native Village members of a low-income community also fall under this definition.
- Adjusts the credit limitation for inflation.
- Directs the Treasury Secretary to prescribe regulations that outline procedures for determining which projects are qualified active low-income community businesses.
- The changes apply to NMTC limitation amounts determined after 2021.
- Impact: By expanding the NMTC for Tribal Statistical Areas, this section incentivizes community development and economic growth in low-income communities in tribal lands.

Section 135603. Inclusion of Indian Areas as Difficult Development Areas for Purposes of Certain Buildings.

- Expands the definition of a "difficult development area" for purposes of the low-income housing tax credit to include "any Indian area," which is any area designated as one that has high construction, land and utility costs relative to area median gross income.
- The changes shall apply to buildings placed in service after 2021.
- Impact: By including Indian areas in the definition of a difficult development area, projects in these areas are eligible to receive additional housing credit assistance.

PART 7 – INVESTMENTS IN TERRITORIES

Section 135701. Possessions Economic Activity Credit.

- Creates a new possessions economic activity credit equal to 20% of qualified possession wages and allocable employee fringe benefit expenses up to $50,000 per year for full-time employees of qualified domestic corporations. The credit is a general business credit.
    - Qualifying possession wages are those paid in connection with the active conduct of a trade or business within a U.S. territory or possession to any employee for services performed if the principal place of employment of the employee is within the U.S. territory or possession.
    - Qualifying corporations are those for which (1) 80% or more of gross income for the previous three-year period was derived from sources within the U.S. territory or possession or (2) 75% or more of gross income was derived from the active conduct or a trade or business within the U.S. territory or possession.
- The credit applies to taxable years beginning after the date of enactment through 2031.
- Impact: This section provides a new incentive to encourage business activity in U.S. territories or possessions.

Section 135702. Additional New Markets Tax Credit Allocations for the Territories.

- For each year after 2021, this section establishes a new markets tax credit (NMTC) limitation of:
    - $80 million only to be allocated with respect to low-income communities in Puerto Rico; and
    - $20 million only to be allocated with respect to low-income-communities in U.S. possessions other than Puerto Rico.
- The changes shall apply to the NMTC limitation determined for years after 2021.
- Impact: By allocating additional NMTC to Puerto Rico and other U.S. territories, this section incentivizes economic development in low-income communities located in Puerto Rico and other U.S. possessions.

SUBTITLE G – GREEN ENERGY

PART 1 – RENEWABLE ELECTRICITY AND REDUCING CARBON EMISSIONS

Section 136101. Extension of Credit for Electricity Produced from Certain Renewable Resources.

- Extends the section 45 production tax credit (PTC) allowing producers to claim a base credit of 0.5 cents per kilowatt hour and bonus credit of 2.5 cents per kilowatt hour, subject to the producer satisfying the new prevailing-wage requirements during the facility's construction and the 10-years credit period and meeting the new apprenticeship requirements.
- Projects would be eligible for the bonus rate even if they do not meet the prevailing-wage and apprenticeship requirements provided they start construction before the enactment date or have a maximum net output of less than one megawatt.
- Phases down the base and bonus credits amounts based on the year construction begins: 80% for projects that begin construction in 2032, 60% for projects beginning in 2033, and no credit for construction beginning in 2034 and later.
- For landfill gas, trash, qualified hydropower, marine and hydrokinetic renewable energy facilities and geothermal, extends the PTC through 2031 and phases the amount down to 80% in 2032 and 60% in 2033.
- For wind and solar facilities, extends the PTC through 2031 and phases the amount down to 80% in 2032 and 60% in 2033. For solar facilities, taxpayers are permitted to claim the investment tax credit (ITC) in lieu of the PTC with respect to the facility. (*See description in summary of section 136102 below)*
- The prevailing wage requirement applies to the taxpayer and its contractors and requires that employees receive the prevailing wage rates for construction, alteration or repair in the project's locality as determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31, of title 40, United States Code. Rules are provided to cure noncompliance, subject to a penalty of $5,000 per affected worker.
- The apprenticeship requirement is satisfied by ensuring that not less than 15% (5% for projects with construction beginning before 2023 and 10% for projects beginning in 2023) of the total labor hours of construction, alteration or repair work on any applicable project are performed by qualified apprentices. Exception can be obtained if the taxpayer demonstrates a lack of available qualified apprentices in the area of the construction, alteration or repair work and makes a good faith effort to comply with the requirement. Rules are provided to cure noncompliance, subject to a penalty of $500 per hour of apprenticeship requirement that has not been met, capped at the value of the credit.
- For facilities placed in service after Dec. 31, 2021, the base credit is increased by 2 percentage points if the facilities meet domestic-content requirements (10 percentage points where the prevailing-wage and apprenticeship requirements are also met). The domestic-content provision generally requires that at least 55% of the total cost of the components are attributable to components that are mined, produced or manufactured in the United States. The Treasury Secretary is permitted to make exceptions where relevant components are not produced in sufficient supply in the United States, or the requirement would increase the overall cost of the project by more than 25%.
- For taxpayers electing the direct-payment option in lieu of the credit, the direct-pay amount is reduced if the domestic-content requirements are not met beginning in 2024 and eliminated if the requirements are not met in 2026 or later.
- <u>Impact</u>: Extends the benefits of the production tax credit for 10 years to provide business certainty and encourage the development of electricity from certain renewable resources.

Section 136102. Extension and Modification of Energy Credit.

- Extends the section 48 investment tax credit (ITC) for taxpayers that begin construction of energy property before the end of 2032. The ITC provides a base credit of 6% and a bonus credit of 30% for facilities that are placed into service after Dec. 31, 2021. The base credit phases down to 5.2% in 2032 and 4.4% in 2033. The bonus credit phases down to 26% in 2032 and 22% in 2033. The credit is not available for facilities that begin construction after 2033 or are placed in service after 2036.

- Requires taxpayers claiming the bonus credit to satisfy prevailing-wage and apprenticeship requirements during the property's construction and every year of the credit period. *(See description in summary of section 136101 above)*
- For facilities placed in service after Dec. 31, 2021, the base credit is increased by 2 percentage points if the facilities meet domestic-content requirements (10 percentage points where the prevailing-wage and apprenticeship requirements are also met).
- For solar facilities, permits taxpayers to claim the ITC in lieu of the PTC.
- Applies the same credit extension and phase down to geothermal, fiber-optic solar equipment, fuel cell property, microturbine property, combine heat and power property, small wind energy property, biogas property, waste energy recovery property and offshore wind property.
- Expands the ITC to include energy storage technology and linear generators.
- For taxpayers electing the direct-payment option in lieu of the credit, the direct-pay amount is reduced if the domestic-content requirements are not met beginning in 2024 and eliminated if the requirements are not met in 2026 or later.
- Impact: Extends the ITC for 10 years to provide business certainty and encourage investments in certain renewable-energy facilities, including energy-storage technology and linear generators.

Section 136103. Increase in Energy Credit for Solar Facilities Placed in Service in Connection with Low-Income Communities.

- Expands the section 48 ITC to include solar facilities located in low-income communities, including energy-storage technology and interconnection property, provided the facility receives an allocation of environmental justice solar-capacity limitation.
- Requires the Treasury Secretary, in consultation with the Energy Secretary and the EPA Administrator, to allocate an annual environmental justice solar-capacity limitation to qualifying projects based on those with the greatest health and economic benefit, the greatest employment and wages, and greatest engagement with local governments and community-based organizations.
- Sets the annual capacity limitation from 2022 to 2031 at 1.8 gigawatts direct-current capacity and zero thereafter, taking into account the prior year's unused credit allocations through 2033.
- Increases the allocation by an additional 10% if the project is located in a low-income community or 20% if the project is a qualifying low-income residential building project or low-income economic benefit project. A qualifying low-income residential building project is a facility that is installed on a residential building participating in a covered housing program, a Housing Development Fund Corporation cooperative, multifamily housing program, or other affordable housing programs, provided the financial benefits of the electricity produced are allocated to the building's occupants. A low-income economic benefit project qualifies if 50% of the financial benefits of the electricity produced are provided to households with income less than 200% of the poverty line or below 80% of area median income.
- Requires taxpayers claiming the bonus credit to satisfy prevailing-wage and apprenticeship requirements during the facility's construction and every year of the credit period as well as domestic-content requirements.
- For taxpayers electing the direct-payment option in lieu of the credit, the direct-pay amount is reduced if the domestic-content requirements are not met beginning in 2024 and eliminated if the requirements are not met in 2026 or later.
- Impact: Creates an investment incentive for solar-energy facilities in qualifying low-income residential building projects and low-income economic benefit projects.

Section 136104. Elective Payment for Energy Property and Electricity Produced from Certain Renewable Resources.

- Allows taxpayers to forego claiming a qualifying credit in exchange for an equivalent tax refund. The direct-payment option is available with respect to:

  - section 48 ITC,
  - section 45 PTC,
  - section 45Q carbon capture credit,
  - section 30C alternative fuel vehicle refueling property credit,
  - section 48C advanced energy project credit,
  - section 48D investment credit for transmission property,
  - section 48E zero emissions facility credit,
  - section 45W zero-emission nuclear power production credit, and
  - section 45X clean hydrogen production.
- Provides special rules for direct payments in the case of partnerships, S corporations and tax-exempt entities and state, local and tribal governments.
- Impact: Allows taxpayers with insufficient taxable income to use the green-energy credits by monetizing the value through a tax refund when they qualify for the credit.

Section 136105. Investment Credit for Electric Transmission Property.

- Creates an investment tax credit (ITC) for electric transmission property with a base rate of 6% or a bonus rate of 30%. Qualifying electric transmission property is an electric transmission line that can transmit at least 275 kilowatts and has a capacity of 500 megawatts or is a related transmission property, which includes property listed as a "transmission plant" under FERC rules.
- Treats upgrades to existing lines as a replacement line and the 500-megawatt capacity requirement is increased by the transmission capacity. The basis for an existing transmission line is not eligible for a credit.
- Requires taxpayers claiming the bonus credit to satisfy the prevailing-wage and apprenticeship requirements during the property's construction and five years after the project is placed into service as well as domestic-content requirements.
- For taxpayers electing the direct-payment option in lieu of the credit, the direct-pay amount is reduced if the domestic-content requirements are not met beginning in 2024 and eliminated if the requirements are not met in 2026 or later.
- Applies to property placed in service in 2022 through 2032.
- Impact: Creates an investment incentive for electric transmission property.

Section 136106. Zero Emissions Facility Credit.

- Creates a 30% credit for qualified investment in a zero emissions facility, which generates electricity, does not generate greenhouse gases, and uses technology that is not in widespread use. A taxpayer may not claim the credit for a facility that otherwise qualifies for the section 45 PTC or section 45Q carbon-sequestration credit, is an advanced nuclear power facility, or is energy property under the section 48 ITC.
- Requires the Treasury Secretary, in consultation with the Energy Secretary and the EPA Administrator, to award credits to facilities based on the projects with the greatest reduction in greenhouse gases, greatest potential for technological innovation and deployment, and result in the greatest reduction of local environmental effects.
- Sets the annual amount of credits that can be awarded between 2022 and 2031 at $250 million, taking into account the prior year's unused credit allocations through 2031.
- Requires taxpayers claiming the credit to satisfy the prevailing-wage and apprenticeship requirements during the facility's construction and five years after the project is placed into service as well as domestic-content requirements.
- For taxpayers electing the direct-payment option in lieu of the credit, the direct-pay amount is reduced if the domestic-content requirements are not met beginning in 2024 and eliminated if the requirements are not met in 2026 or later.
- Applies to investments generally made in 2022 through 2031.

- Impact: Creates a tax incentive to encourage development of zero-emissions energy production based on technology with low market penetration and that is not already facilitated by existing tax incentives.

Section 136107. Extension of Credit for Carbon Oxide Sequestration.

- Extends and expands the section 45Q carbon oxide sequestration credit for facilities that begin construction before 2031. Direct-air capture (DAC) facilities qualify for the enhanced credit if they capture at least 1,000 metric tons of carbon oxide per year. Electricity generating facilities must capture at least 18,750 metric tons of carbon oxide and at least 75% of total carbon emissions that otherwise would have been released by the facility.
- For geological storage, the base credit rate is $10, and the bonus credit rate is $50 per metric ton of carbon oxide captured. For carbon oxide that is captured and utilized, the base credit is $7, and the bonus credit rate is $35 per metric ton. For the enhanced DAC credit applied to geological storage, the base credit rate is $36, and the bonus rate is $180 per metric ton. DAC carbon oxide that is utilized qualifies for an enhanced base credit rate of $26 and a bonus rate of $130 per metric ton.
- Requires taxpayers claiming the credit to satisfy the prevailing-wage and apprenticeship requirements during the facility’s construction and the 12-year credit period.
- Permits taxpayers to elect the direct-payment option in lieu of the credit.
- Applies to taxable years beginning after Dec. 31, 2021.
- Impact: Extends the carbon-capture credit and provides an additional incentive for investments in direct-air capture facilities that begin construction before the end of 2031.

Section 136108. Green Energy Publicly Traded Partnerships.

- Expands the definition of qualified income for publicly traded partnerships (PTP) to include income from green and renewable energy, including energy production eligible for the PTC, ITC, renewable fuels and carbon sequestration credits.
- Removes from the definition of qualified PTP income any income or gains derived from the transportation or storage of alcohol fuel, biodiesel, alternative fuels and alternative fuel mixtures.
- Applies to taxable years beginning after Dec. 31, 2021.
- Impact: Expands the definition of publicly traded partnerships to provide additional financing alternatives to encourage green and renewable energy production while limiting the use of PTPs in the fossil-fuel sector.

Section 136109. Zero-Emission Nuclear Power Production Credit.

- Creates a new credit for electricity from a qualified nuclear facility. The base credit is 0.3 cents per kilowatt hour and a bonus credit rate of 1.5 cents per kilowatt hour. As the price of electricity increases, the credit is reduced. The credit reduction formula reduces the credit by 80% of the excess of gross receipts from electricity produced and sold over the product of 2.5 cents times the amount of electricity produced and sold during the year.
- Applies to a facility owned by the taxpayer that uses nuclear energy to produce electricity and was not awarded a credit under section 45J. The new credit may not be claimed for any power production for which the taxpayer claimed the new zero-emissions facility credit.
- Requires taxpayers claiming the bonus credit to satisfy the prevailing-wage and apprenticeship requirements during the year.
- Permits taxpayers to elect the direct-payment option in lieu of the credit.
- Applies to electricity produced and sold after Dec. 31, 2021; the credit expires after Dec. 31, 2026.
- Impact: Creates a credit to support power production by existing nuclear facilities and power sources not dependent on sources like wind and solar.

PART 2 – RENEWABLE FUELS

Section 136201. Extension of Excise Tax Credits Relating to Alternative Fuels.

- Extends the income and excise tax credits for biodiesel and biodiesel mixtures at $1.00 per gallon through 2031. Extends the $0.10 per gallon agri-biodiesel producer credit through 2031. Extends the $0.50 per gallon excise tax credit for alternative fuel and alternative fuel mixtures through 2031.
- Note that the bill repeals liquid hydrogen as an alternative fuel under the alternative fuel and alternative fuel mixture credit.
- Impact: Provides a 10-year extension of the tax incentives for the production of biodiesel, biodiesel mixture, agri-biodiesel producer, alternative fuels and alternative fuel mixtures affording greater certainty for these producers in the energy sector.

Section 136202. Extension of Second Generation Biofuel Incentives.

- Extends the second generation biofuel income tax credit through 2031.
- Impact: Provides a 10-year extension of the tax incentives for the second-generation biofuel income tax credit through 2031 affording greater certainty for these producers in the energy sector.

Section 136203. Sustainable Aviation Fuel Credit.

- Creates a refundable blenders credit for each gallon of sustainable aviation fuel sold as part of a qualified mixture starting in 2023. The credit operates on a sliding scale, providing $1.25 to $1.75 based on the fuel's reduction in lifecycle greenhouse emissions above 50%. The credit may be claimed against section 4041 excise tax liability.
- Requires taxpayers to certify that the fuel reduces emissions by at least 50%.
- Eliminates the $1.00 tax credit for aviation fuel produced from biodiesel under section 40A.
- Applies to fuel sold or used in 2023 through 2031.
- Impact: Creates a new tax incentive for the production of sustainable aviation fuel.

Section 136204. Clean Hydrogen.

- Creates a new tax credit for the production of clean hydrogen in the United States for sale or use by the taxpayer. Beginning in 2022, the credit applies to the 10-year period beginning on the date the clean-hydrogen facility is placed in service.
- The credit is based on (1) a base amount of $0.60 and the bonus amount of $3.00 (indexed to inflation), multiplied by (2) the kilograms of clean hydrogen produced, and multiplied by (3) an applicable percent representing reduction in the greenhouse gas emissions resulting from the clean hydrogen.
- For hydrogen that achieves a reduction in lifecycle greenhouse gas emissions of:
  - 40%–75%, the applicable percentage is 20%,
  - 75%–85%, the applicable percentage is 25%,
  - 85%–95%, the applicable percentage is 34%, and
  - 95%–100%, the applicable percentage is 100%.
- Permits taxpayers to claim the section 45 PTC for electricity produced from renewable resources that are used in a facility producing clean hydrogen.
- Permits taxpayers to elect to treat a qualified clean hydrogen facility as energy property under the section 48 ITC, in lieu of claiming the new credit for clean hydrogen. In that case, the section 48 credit is based on the reduction in lifecycle greenhouse gas emissions, and for hydrogen that reduces emissions by:
  - 40%–75%, the energy percentage is 6%,
  - 75%–85%, the energy percentage is 7.5%,
  - 85%–95%, the energy percentage is 10.2%, and

    - 95%–100%, the energy percentage is 30%.
- Precludes taxpayers claiming the new clean hydrogen credit from also claiming the section 45Q carbon sequestration credit on the facility's equipment.
- Requires the Treasury Secretary to issue regulations or guidance with respect to the determination of lifecycles for greenhouse gases emissions and verification of third-party sale and production of clean hydrogen.
- Requires taxpayers claiming the bonus credit to satisfy the prevailing-wage and apprenticeship requirements during the facility's construction and the 10-year credit period.
- Permits taxpayers to elect the direct-payment option in lieu of the credit.
- Applies to facilities that begin construction before 2029.
- Impact: Creates a new tax incentive for the production of clean hydrogen.

PART 3 – GREEN ENERGY AND ENERGY EFFICIENCY INCENTIVES FOR INDIVIDUALS

Section 136301. Extension, Increase and Modifications of Nonbusiness Energy Property Credit.

- Extends the nonbusiness energy property credit under section 25C to property placed in service before the end of 2031. The credit generally applies to residential improvements like windows, doors, furnaces, water heaters and other energy-efficient property.
- Beginning in 2022, the credit for installing qualified energy-efficiency improvements is increased from 10% to 30%, the lifetime cap on credits is replaced with a $1,200 annual credit limitation, and various standards will be updated to reflect advances in energy efficiency. Home energy audits will also qualify under the credit up to $150.
- Beginning in 2024, manufacturers and taxpayers will be required to report the identification number of certain properties placed in service in order to qualify for the credit.
- Impact: Expands the credit amount and eliminates the lifetime cap to encourage individuals to invest in qualified residential energy-efficient improvements.

Section 136302. Residential Energy Efficient Property.

- Extends the section 25D credit through 2033 for the cost of qualified residential energy-efficient property such as solar electric, solar water heating, fuel cell, small wind energy, and geothermal heat pumps.
- Permits the full 30% credit for eligible expenditures in 2022 through 2031. The credit phases down to 26% in 2032 and 22% in 2033 and expires thereafter.
- Expands the definition of eligible property to include residential battery storage technology.
- Applies to qualifying expenditures after Dec. 31, 2021.
- Impact: Expands the credit amount and extends the property qualifying for the credit to encourage individual investments in resident energy-production and energy-efficiency property.

Section 136303. Energy Efficient Commercial Buildings Deduction.

- Modifies the section 179D deduction to move from the current beginning-of-construction requirement to a placed-in-service requirement beginning in 2022.
- Updates the eligibility requirements to require property to reduce the associated energy costs by 25% or more (rather than the current 50%) in comparison to a building with baseline energy efficiency.
- Revises the deduction to provide a base deduction of $0.50 per square foot and a bonus deduction of $2.50 per square foot. The deduction increases by $0.02 and $0.10, respectively, for every percentage point by which the designed energy cost savings exceed 25%, limited to $5.00 per square foot.
- Allows certain tax-exempt entities to allocate the deduction to architects or other persons primarily responsible for designing the property.

- Provides an alternative deduction for energy-efficient retrofit building property equal to the lessor of ordinary section 179D deduction or the aggregate adjusted basis of energy-efficient retrofit building property placed in service pursuant to a qualified retrofit plan.
- Requires taxpayers claiming the bonus deduction to satisfy the prevailing-wage and apprenticeship requirements.
- Applies to taxable years and energy-efficient retrofit property placed in service in 2022 through 2031.
- Impact: Expands the tax incentive for energy-efficient buildings and encourages retrofits of existing property to enhance energy efficiency.

Section 136304. Extension, Increase and Modifications of New Energy Efficient Home Credit.

- Extends the section 45L new energy efficient home credit through 2031.
- Provides an increased credit of $2,500 beginning in 2022 for single-family and manufactured homes eligible to participate in the Energy Star Residential New Construction Program or Manufactured Homes Program. The credit is increased to $5,000 for homes certified as a zero energy ready home under the Department of Energy Zero Energy Ready Home Program.
- Provides a base credit of $500 for multifamily homes with a bonus credit of $2,500 for units meeting Energy Star Manufactured Home requirements. The base and bonus credits are increased to $1,000 and $5,000, respectively, for homes certified as zero energy ready.
- Requires taxpayers claiming the bonus credit to satisfy the prevailing-wage and apprenticeship requirements.
- Applies to single- and multi-family homes acquired in 2022 through 2031
- Impact: Enhances the manufacturing incentive for new single- and multi-family homes that meet certain energy-efficiency standards.

Section 136305. Modifications to Income Exclusion for Conservation Subsidies.

- Expands the current exclusion from income of certain conservation subsidies to include water conservation, storm water management and wastewater management subsidies provided by public utilities, state or local governments or storm water management providers.
- Applies to subsidies received after Dec. 31, 2018.
- Impact: Reduces the tax burden on individuals receiving a subsidy provided by a public utility to encourage energy conservation.

PART 4 – GREENING THE FLEET AND ALTERNATIVE VEHICLES

Section 136401. Refundable New Qualified Plug-In Electric Drive Motor Vehicle Credit for Individuals.

- Creates a refundable income tax credit for new qualified plug-in electric drive motor vehicles. The amount of the credit is equal to a base amount of $4,000, plus the sum of the following:
  - $3,500 for vehicles placed into service with battery capacity meeting certain requirements (40+ kwh battery for vehicles before 2027 and 50 kwh battery after 2026);
  - $4,500 for vehicles satisfying domestic assembly qualifications; and
  - $500 for vehicles assembled by a manufacturer utilizing no less than 50% domestic content in component parts, provided that such vehicles are powered by battery cells manufactured within the United States.
- Limits the credit to 50% of the purchase price of the vehicle.
- Disallows the credit after 2026 if final assembly of the vehicle is outside the United States.
- Limits the credit to vehicles weighing less than 14,000 pounds.
- Disallows the credit for vehicles by which the manufacturer’s suggested retail price exceeds:
  - $55,000 for sedans,

- $64,000 for vans,
- $69,000 for SUVs, and
- $74,000 for pickup trucks.

- The credit phases out by $200 for each $1,000 the taxpayer's income exceeds $400,000 ($800,000 for married filing jointly and $600,000 for head of household).
  Impact: The new section 36C credit can exceed the old section 36B credit by as much as $5,000 and allows GM and Tesla to benefit again.
- Impact: Encourages the purchase of plug-in electric vehicles.

Section 136402. Credit for Previously-Owned Qualified Plug-In Electric Drive Motor Vehicles.

- Creates a new refundable income tax credit for used qualified plug-in electric drive motor vehicles equal to a base amount of $1,250, with additional amounts for battery capacity.
- Caps the credit at the lesser of $2,500 credit or 30% of the sale price (which cannot exceed $25,000).
- The credit phases out by $200 for each $1,000 the single taxpayer's income exceeds $75,000 (fully phased out at $88,000).
- Incorporates many of the rules applicable to the new section 36C credit for new plug-in electric drive vehicles.
- Requires the electric vehicle to be at least two years old.
- Impact: Encourages the sale of electric vehicles in the used car market.

Section 136403. Credit for Qualified Commercial Electric Vehicles.

- Creates a new investment tax credit equal to 30% for the cost of a qualified commercial electric vehicle that is placed into service meeting certain requirements:
  - Vehicle is acquired for use or lease but not for resale.
  - Vehicle is propelled by an electric motor which draws electricity from a battery with a capacity of at least 30 kWh, and is not powered by an internal combustion engine.
- New fuel cell motor vehicles may qualify.
- VIN must be reported to the IRS by both the taxpayer and the manufacturer.
- Persons selling qualified vehicles to tax-exempt entities shall be treated as the taxpayer that placed such vehicle into service.
- Impact: Promotes the purchase of electric vehicles at the commercial level.

Section 136404. Qualified Fuel Cell Motor Vehicles.

- Extends the credit for the purchase of a qualified fuel cell motor vehicle through 2031, but only with respect to non-depreciable vehicles.
- Beginning in 2022, commercial fuel cell vehicles otherwise eligible for this credit will be eligible for the new section 45V credit for qualified commercial electric vehicles.
- Impact: Promotes the purchase and sale of fuel cell motor vehicles.

Section 136405. Alternative Fuel Refueling Property Credit.

- Extends the alternative fuel vehicle refueling property credit through 2031.
- Expands the credit to provide a base credit of 6% for expenses up to $100,000 and 4% for allowable expenses in excess of such limitation if certain requirements are met.
- Provides a higher alternative bonus credit level of 30% for expenses of up to $100,000 and 20% thereafter, provided that the taxpayer meets both prevailing wage payment and apprenticeship requirements.
- Establishes similar rates for two- and three-wheeled vehicles.
- The property must be intended for general public use and either accept credit cards as a form of payment or not charge a fee or be intended for exclusive use by government or commercial vehicle fleets.

- Impact: Promotes and incentivizes placing into service electric vehicle refueling property for public use.

Section 135406. Reinstatement and Expansion of Employer Provided Fringe Benefits for Bicycle Commuting.

- Repeals the TCJA temporary suspension of the exclusion for qualified bicycle commuting benefits and increases the maximum benefit from $20 per month to $52.50 per month.
- Expands the benefit to include (1) employer provision of qualified commuting property and (2) employer reimbursement of expenses incurred by the employee for the purchase, financing, lease, rental (including a bikeshare), improvement or storage of qualified commuting property.
- Defines qualified commuting property to include bicycles, electric bicycles, two- or three-wheeled scooters (other than scooters equipped with motors), and any two- or three-wheeled scooter propelled by an electric motor if the maximum speed of such motor does not exceed 20 miles per hour.
- Impact: Reinstatement of the credit that incentivizes commuters to utilize environment-friendly methods of travel to and from work.

Section 136407. Credit for Certain New Electric Bicycles.

- Provides for a 15% refundable tax credit for qualified electric bicycles placed into service before Jan. 1, 2032.
- Limits the credit to $750 per bicycle.
- Phases out the credit starting at $75,000 of income ($112,500 for heads of household and $150,000 for married filing jointly) at a rate of $200 per $1,000 of additional income.
- Defines qualified electric bicycles as equipped with fully operable pedals, a saddle or seat for the rider, an electric motor of less than 750 watts and does not provide assistance if the bicycle is moving in excess of 20 miles per hour.
- Excludes bicycles costing more than $8,000.
- Impact: The credit incentivizes individuals to purchase electric bicycles.

PART 5 – INVESTMENT IN THE GREEN WORKFORCE

Section 136501. Extension of the Advanced Energy Project Credit.

- Amends the Section 48C qualified energy property credit to allocate an additional $2.5 billion in credits for each calendar year from 2022 through 2031, taking into account the prior year's unused credit allocations through 2036. Of this amount, $400 million in credits are reserved during this period for qualified investments in automotive communities.
- Requires taxpayers applying for the 30% credit to provide substantiation to the Treasury Secretary that the credit requirements have been met. An applicant receiving a credit must place the project into service within two years of receiving the credit certification.
- Requires the Treasury Secretary, in consultation with the Energy Secretary, to award credits based on the existing section 48C selection criteria (section 48C(d)(3)(B)) along with the following additional criteria:
    - Projects that will provide the greatest net impact in avoiding or reducing greenhouse gas emissions.
    - Projects that will result in the greatest domestic job creation, particularly with respect to low-income communities, communities of color, dislocated workers who were previously employed in manufacturing, coal power plans or coal mining, or communities experiencing higher or more adverse human health or environmental effects.
    - The highest priority will be given to projects that (1) manufacture property described in section 48C(c)(1)(A)(i); (2) are not primarily for the assembly of parts; and (3) have the greatest potential for commercial deployment of new applications.
- Requires taxpayers claiming the credit to satisfy the prevailing-wage and apprenticeship requirements.
- Permits taxpayers to elect the direct-payment option in lieu of the credit.

- Modifies the definition of several qualifying advanced energy projects under section 48C(c)(1)(A)(i), relating to water, energy-storage systems, electric-grid property, use of captured carbon, electric and fuel-cell vehicles, hydrogen-production property, and recycling.
- Impact: Provides additional incentives for certain types of qualifying advanced energy projects, prioritizing projects that create jobs or reduce carbon emissions.

Section 136502. Labor costs of installing mechanical insulation property.

- Creates a new credit equal to 10% of the labor costs associated with the installation of mechanical insulation. Mechanical insulation labor costs is defined as the cost of installing mechanical insulation property with respect to a mechanical system that was originally placed in service at least one year before the date on which such mechanical insulation property is installed. Mechanical insulation property includes insulation materials, facings and accessory products.
- Applies to costs paid or incurred starting in 2022 through the end of 2031.
- Impact: Provides a new tax incentive for the labor costs associated with energy-efficiency mechanical insulation property that is located in the United States.

PART 6 – ENVIRONMENTAL JUSTICE

Section 136601. Qualified Environmental Justice Program Credit.

- Creates a refundable competitive tax credit for higher education programs relating to environmental justice. Up to $1 billion of credit will be allocated by the Treasury Secretary, in consultation with the secretaries of Energy, Education, and Health and Human Services, each year from 2022 through 2031 to eligible educational institutions.
- The base credit is 20% of the program costs, with a 30% credit available for Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs). Program cost may be incurred over five years after receiving the credit.
- Requires that credit awards be based on the following selection criteria:
  - The extent of participation of faculty and students of an institution described in section 371(a) of the Higher Education Act of 1965,
  - The extent of the expected effect on the health or economic outcomes of individuals residing in areas within the United States that are low-income areas or areas that experience, or are at risk of experiencing, multiple exposures to qualified environmental stressors, and
  - The creation or significant expansion of qualified environmental justice programs.
- Impact: Creates a federally funded environmental justice program for higher education institutions.

PART 7 – SUPERFUND

Section 136701. Reinstatement of Superfund.

- Reinstates the Hazardous Substance Superfund Financing Rate on crude oil and imported petroleum products at the rate of 16.4 cents per gallon, indexed to inflation.
- Applies to crude oil and petroleum products from 2022 until the end of 2031.
- Impact: Increases the tax on crude oil and petroleum products, which will likely increase consumer costs for petroleum products and may encourage the transition to renewable fuel sources.

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PART 8 – APPROPRIATIONS

Section 136801. Appropriations.

- Appropriates $3,831,000,000 to the IRS for use through 2031.
- Impact: Provides long-term funding for the IRS to implement and administer the new clean-energy provisions, allowing more of the IRS' annual appropriations to be used for taxpayer service and enforcement.

SUBTITLE H - STRENGTHENING THE SOCIAL SAFETY NET AND SUPPORTING STATE AND LOCAL GOVERNMENTS

PART 1 – CHILD TAX CREDIT

Section 137101. Modifications Applicable Beginning in 2021.

- Provides an exception to the safe harbor rule that states that certain taxpayers who receive a larger advanced payment amount than they are eligible to claim do not have to repay the excess.
- Clarifies that the safe harbor does not apply if the Treasury Secretary determines that a child was fraudulently taken into account for purposes of the advance payment.
- Clarifies that a taxpayer is fraudulently taking a child into account for the purposes of the advance payment if the taxpayer made arrangements with, or expected, another taxpayer to take the child into account in determining the credit.
- Amends section 7527A to allow the Treasury Secretary to provide advance payment based on any other information known to the ssecretary.
- Impact: Denies taxpayers the advance payment if they fraudulently attempt to claim a child.

Section 137102. Extension and Modification of Child Tax Credit and Advance Payment for 2022.

- Extends through 2022 the special rules applicable to the child tax credit (CTC) for 2021. This includes a one-year extension of the credit amount to $3,000 in the case of a qualifying child over age 6 $3,600 for a qualifying child under the age of 6, and $500 in the case of another qualifying dependent who is not a child. The $3,000, $3,600 and $500 amounts are indexed for inflation in 2022.
- Makes changes to automatic advance payments of the credit. After the due date of the taxpayer's return for the 2021 taxable year, such taxpayer must make an affirmative election to receive advance payment by filing a return, submitting information through the online portal, or in any manner provided by the Treasury Secretary.
- Eliminates the Social Security Number requirement for qualifying children, which was added by the Tax Cuts and Jobs Act (TCJA).
- Impact: Extends the American Rescue Plan Act's (ARPA's) expanded version of the CTC through 2022, including automatic advance payments.

Section 137103. Establishment of Monthly Child Tax Credit with Advance Payment Through 2025.

- Adds new Sections 24A and 7527B to establish a fully refundable, monthly CTC with an option to claim an advance payment through 2025.
- Allows children ages 0–17 to qualify for the credit for this period, as long as the child's principal place of abode is the same as the taxpayer's for more than half the month and the child receives care from the taxpayer.
- Includes "tie-breaker" rules in the event that two taxpayers claim the same qualifying child.
- Specifies that the amount of credit on a monthly basis is $250 per qualifying child over the age of 6 and $300 for a qualifying child under age 6.
- Begins phaseout for households with income above $150,000 (for joint filers) and $112,500 (in any other case), and finishes phasing out at $400,000 (for joint filers) and $200,000 (in any other case).

- Includes a "look-back rule" for the phaseout threshold that allows taxpayers to use prior-year (or prior-prior year) income for purposes of determining the phaseout of the credit. This rule avoids an artificial income cliff by allowing taxpayers to remain eligible for the credit even when their income rises above the phaseout range in a single year.
- Eliminates the Social Security Number requirement for qualifying children, which was added by the TCJA.
- Extends the fully refundable CTC to the territories.
- Adds new Section 24B to extend the $500 nonrefundable tax credit for non-child dependents, and indexes the value of this credit for inflation. The credit terminates for taxable years beginning after 2025.
- Impact: Extends ARPA's expanded version of the CTC through 2025, shifting the advance payments from an opt-out to an opt-in system. A family of four with two children could receive up to $7,200 in payments annually.

Section 138104. Refundable Child Tax Credit After 2025.

- Makes the CTC fully refundable for taxable years after 2025, even after the sunset of the enhanced Section 24A and 24B credit amounts.
- Impact: Once the CTC reverts to pre-2021 levels starting in 2026, the lower credit amount will remain fully refundable.

Section 137105. Appropriations.

- Provides the Internal Revenue Service(IRS) with $9 billion through Sept. 30, 2026, to administer provisions related to the CTC.
- Provides the Treasury Department with $1 billion to increase enrollment of eligible families in the CTC and for advance payments of the credit.
- Impact: Provides the IRS and Treasury Department with funding to administer the expanded CTC.

PART 2 – CHILD AND DEPENDENT CARE TAX CREDIT

Section 137201. Certain Improvements to the Child and Dependent Care Credit Made Permanent.

- Makes ARPA's modifications to the child and dependent care tax credit (CDCTC) permanent.
- The modifications under ARPA include:
  - Making the CDCTC fully refundable and increasing the maximum credit rate to 50%, with a phaseout threshold of $125,000. The credit then plateaus at 20% and this rate is phased out for taxpayers with Adjusted Gross Income over $400,000. The credit completely phases out at $500,000.
  - Increasing qualifying child care expenses to $8,000 for one child and $16,000 for two or more children, with a maximum credit amount of $4,000 for one child and $8,000 for two or more children.
  - Both the maximum credit amount and the phaseout threshold are indexed for inflation.
- Provides for a reimbursement to mirror code territories for the costs of this refundable credit in 2021.
- Impact: Updates the CDCTC to reflect the true cost of child care for working families by increasing the maximum value of the credit from its 2020 value of $2,100 to $8,000. Increases to the income phaseout threshold will also allow more families to qualify for the credit.

Section 137202. Increase in Exclusion for Employer-Provided Dependent Care Made Permanent.

- Makes ARPA's modifications to the exclusion for employer-provided dependent care assistance permanent. The maximum exclusion is permanently increased to $10,500. These dollar amounts are indexed for inflation.
- Impact: Increases the value of the dependent care assistance exclusion to better reflect the cost of care.

PART 3 – SUPPORTING CAREGIVERS

Section 137301. Payroll Tax Credit for Childcare Workers.

- Adds a refundable payroll tax credit that is applied against the employer-side HI tax for 50% of qualified child care wages paid by an employer that operates a HHS Participating Child Care Provider, as defined by the Secretary of Health and Human Services.
- The maximum wages that can be taken into account are $2,500 per quarter per employee or $10,000 for the year, for a maximum $5,000 annual credit per employee.
- Qualified child care wages are wages that must be paid above the GS-3 step 1 rate for the applicable time period and locality. Wages must be paid to employees other than highly compensated employees, defined as those earning $130,000 or above.
- Health plan expenses allocable to qualified wages are included as wages.
- This credit cannot be taken for wages that are covered under a forgiven PPP loan or a venue or restaurant grant under ARPA. The bill does not discuss the interaction between this provision and the child care stabilization grants under the Consolidated Appropriations Act and ARPA.
- Impact: Incentivizes child care businesses to increase educator and staff wages, while offsetting the increased payroll costs.

Section 137302. Credit for Caregiver Expenses

- Adds a new credit equal to 50% of qualified caregiving expenses paid or incurred by the taxpayer while caring for a qualified care recipient.
- The maximum value of the credit is $4,000. The amount of the credit is reduced by 1 percentage point for every $2,500 by which the taxpayer's adjusted gross income exceeds $75,000.
- A qualified care recipient is defined as a spouse or other individual who has been certified by a Medicare, Medicaid or CHIP-enrolled provider as having long-term care needs expected to last for at least 180 consecutive days and who lives in a personal residence (not an institutional care facility).
- "Individuals with long-term care needs" are defined as (1) individuals at least 6 years of age who are: unable to independently perform at least two activities of daily living (ADL) or at least one ADL without substantial supervision or assistance; (2) individuals age 2 through 6 who require substantial assistance to eat, transfer or be mobile; and (3) individuals under age 2 who require specific durable medical equipment to address their condition in the absence of their parents.
- "Qualified expenses" are defined as goods, services and supports that assist a qualified care recipient with accomplishing ADLs. These expenses include: human assistance, supervision, cuing, and standby assistance; health maintenance tasks; respite care; assistive technologies and devices; accessibility modifications of the qualified care recipient's residence; counseling, support groups, training; and other items determined by the secretaries of HHS and the Treasury Department. Such qualified expenses shall not be compensated for by insurance or otherwise.
- Impact: Provides a tax credit for caregiving expenses.

PART 4 – EARNED INCOME TAX CREDIT

Section 137401. Certain Improvements to the Earned Income Tax Credit Made Permanent.

- Makes permanent the temporary expansion of the childless EITC under the ARPA.
- Reduces the minimum age requirement for eligibility for the EITC from 25 to 19 in general, to 24 for specified students, and to 18 for qualified former foster youth or homeless youth.
- Eliminates the age limit of 65.
- Increases the credit phaseout percentage for the childless EITC from 7.65% to 15.3%.

- Raises the earned income amount from $4,220 to $9,820 and raises the phaseout amount from $5,280 to $11,610.
- Adjusts for inflation.
- These changes apply to taxable years beginning after Dec. 31, 2021.
- Impact: Increases the maximum potential childless EITC credit amount from $543 to $1,502.

Section 137402. Funds for Administration of the Earned Income Tax Credit in the Territories.

- Authorizes the Treasury Secretary to make payments to Puerto Rico for reasonable administrative costs associated with the EITC not in excess of $4 million.
- Authorizes the Treasury Secretary to make payments to possessions with mirror tax code systems for reasonable administrative costs associated with the EITC not in excess of $200,000.
- These changes apply to payments made for calendar years beginning after Dec. 31, 2021.
- Impact: This section provides funds for Puerto Rico and other U.S. possessions for the administration of the EITC.

PART 7 – HIGHER EDUCATION

Sec. 137701. Public University Research Infrastructure Credit.

- Provides a new business-related credit for Public University Research Infrastructure.
- Taxpayers may take a credit of up to 40% of the qualified cash contributions the taxpayer makes toward a qualifying project, even if the contribution would normally be treated as a charitable contribution. Such contributions will still count toward charitable contribution percentage limitations. Qualified cash contributions made after 2033 will not be eligible for this credit.
- Qualifying projects include all projects that improve, purchase or construct any portion of an eligible educational institution's (as defined by the Higher Education Act of 1965) property or building that is used for research.
- The Treasury Department, in consultation with the Department of Education, will certify and allocate credit amounts for qualifying projects to eligible educational institutions.
- Each certified educational institution may not receive more than $50 million in credits per calendar year. The total amount of allocated credits may not exceed more than $500 million through 2026, at which point the credit allowance will be reduced to $0. Unused credits may be reallocated by the Treasury Department.
- Educational institutions must apply in order to be eligible for the credit. Selection criteria will be based on the extent of the expected expansion of research within science, mathematics, engineering and technology, and in a manner in which institutions with less than 12,000 full-time students are still able to compete for credits.
- Impact: This section allows colleges and universities to receive a tax credit for STEM research infrastructure investments they make to their campuses.

Sec. 137702. Modification of Excise Tax on Investment Income of Private Colleges and Universities.

- This section phases out the Investment Income Excise Tax for Private Colleges and Universities if they provide sufficient grants and scholarships.
- The tax amount will be reduced (but not below zero) by a ratio of the aggregate amount of qualified aid awards provided by the institution to first-time undergraduate students over an amount equal to 20% of the aggregate undergraduate tuition received by the institution from first-time students, as it bears to an amount equal to 13% of the aggregate undergraduate tuition and fees received by the institution.
- In order to be eligible, institutions must report the average aggregate amount of federal student loans taken by students for attendance at the institution.
- Impact: Private colleges and universities may partially offset their investment excise tax obligations by providing grants and scholarships to first-time, full-time students enrolled at the institution.

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Sec. 137703. Treatment of Federal Pell Grants for Income Tax Purposes.

- Clarifies that scholarships, fellowship grants and Pell grants used for qualified tuition and related expenses will not be treated as gross income for tax purposes.
- Impact: Pell grants recipients will not have to report their Pell grants as income for purposes of the American Opportunity Tax Credit and Lifetime Learning Credit.

Sec. 137704. Repeal of Denial for American Opportunity Tax Credit on Basis of Felony Drug Conviction.

- Makes individuals convicted of a federal or state felony drug offense eligible for the American Opportunity Tax Credit.
- Impact: Repeals the prohibition that excluded students convicted of a state or federal felony drug offense from claiming the American Opportunity Tax Credit.

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