

117TH CONGRESS
1ST SESSION

H. R. 2680

To amend the Internal Revenue Code of 1986 to provide a tax credit for investors in start-up businesses, to provide a credit for wages paid by start-up businesses to their first employees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 2021

Ms. CHU introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide a tax credit for investors in start-up businesses, to provide a credit for wages paid by start-up businesses to their first employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Providing Real Oppor-
5 tunities for Growth to Rising Entrepreneurs for Sustained
6 Success (PROGRESS) Act”.

1 **SEC. 2. SMALL BUSINESS INVESTOR TAX CREDIT.**

2 (a) IN GENERAL.—Subpart D of part IV of sub-
 3 chapter A of chapter 1 of the Internal Revenue Code of
 4 1986 is amended by adding at the end the following new
 5 section:

6 **“SEC. 45U. SMALL BUSINESS INVESTOR TAX CREDIT.**

7 “(a) GENERAL RULE.—For purposes of section 38,
 8 the small business investor credit determined under this
 9 section for any taxable year is an amount equal to the
 10 sum of the credit amounts determined for the taxable year
 11 for all qualified investments of the taxpayer.

12 “(b) CREDIT AMOUNT.—For purposes of this sec-
 13 tion—

14 “(1) IN GENERAL.—The term ‘credit amount’
 15 means, with respect to any qualified investment in a
 16 qualifying business entity, the lesser of—

17 “(A) 10 percent of the amount of the
 18 qualified investment determined under sub-
 19 section (c)(3) for the taxable year, or

20 “(B) an amount equal to—

21 “(i) 50 percent of such qualified in-
 22 vestment, reduced (but not below zero) by

23 “(ii) the amount of the credit deter-
 24 mined under this section with respect to
 25 such qualified investment of the taxpayer
 26 for all preceding taxable years.

1 “(2) OVERALL DOLLAR LIMITATION.—

2 “(A) IN GENERAL.—The credit amount de-
3 termined under paragraph (1) with respect to
4 any qualified investment of a taxpayer in a
5 qualifying business entity for any taxable year
6 shall not exceed the lesser of—

7 “(i) \$10,000 (as increased for the tax-
8 able year by the cost-of-living adjustment
9 under subsection (e)(2)), or

10 “(ii) an amount equal to—

11 “(I) an amount equal to 5 times
12 the amount under clause (i) for the
13 taxable year, reduced (but not below
14 zero) by

15 “(II) the amount of the credit
16 determined under this section with re-
17 spect to such qualified investment of
18 the taxpayer for all preceding taxable
19 years.

20 “(B) NO CREDIT AMOUNT BY REASON OF
21 COST-OF-LIVING ADJUSTMENT AFTER OVERALL
22 LIMIT FIRST REACHED.—No credit amount
23 shall be determined under this section with re-
24 spect to any qualified investment of a taxpayer
25 in a qualifying business entity for any taxable

year after the first taxable year for which the amount determined under subclause (II) of subparagraph (A)(ii) equals or exceeds the amount determined under subclause (I) of such subparagraph.

“(3) REDUCTION IN CREDIT AMOUNT WHERE
LOAN RATE EXCEEDS PRIME RATE.—

“(A) IN GENERAL.—If—

“(i) the rate of interest (expressed as an annual percentage rate) on a qualified investment which is a qualifying loan, exceeds

“(ii) the bank prime rate as of the first day of the month in which the loan is entered into (or such other time as the Secretary may specify),

then each of the amounts determined under subparagraphs (A) and (B)(i) of paragraph (1) shall be reduced (but not below zero) by the amount which bears the same ratio to such amount as the number of full percentage points by which such rate of interest exceeds such bank prime rate bears to 25.

“(B) SPECIAL RULES WHERE QUALIFYING
LOANS TREATED AS PART OF SINGLE INVEST-

MENT.—If 1 or more qualifying loans to which subparagraph (A) applies are treated as part of a single qualified investment under subsection (c)(1), then, for purposes of this subsection—

“(i) the credit amount under paragraph (1) for such single qualified investment shall be the sum of such credit amounts computed separately for each such qualifying loan and such credit amount computed for all other qualified investments treated as part of such single qualified investment, and

“(ii) the limitation under paragraph (2) shall be applied to such sum.

“(C) RULES RELATING TO INTEREST RATES.—

“(i) ANNUAL PERCENTAGE RATE.—
The Secretary shall prescribe guidance or regulations for the calculation of the annual percentage rate of interest on a loan for purposes of subparagraph (A)(i), including rules which provide for—

“(I) the calculation of the annual percentage rate in cases where there is a variable rate of interest,

1 “(II) the recalculation of the an-
2 nual percentage rate where the terms
3 of the loan are modified after the loan
4 is entered into, and

5 “(III) the proper taking into ac-
6 count of lump sum payments, orienta-
7 tion and application fees, closing fees,
8 invoice discounting fees and any other
9 loan fees.

10 “(ii) BANK PRIME RATE.—For pur-
11 poses of subparagraph (A)(ii), the term
12 ‘bank prime rate’ means the average pre-
13 dominant prime rate quoted by commercial
14 banks to large businesses, as determined
15 by the Board of Governors of the Federal
16 Reserve System.

17 “(4) SPECIAL RULES FOR PASS-THRU ENTI-
18 TIES.—For purposes of this subsection, if a qualified
19 investment in a qualifying business entity is made by
20 a partnership, trust, S corporation, or other pass-
21 thru entity, the limitations under this subsection
22 shall apply at the entity level.

23 “(c) QUALIFIED INVESTMENT.—For purposes of this
24 section—

1 “(1) IN GENERAL.—The term ‘qualified invest-
2 ment’ means, with respect to any qualifying business
3 entity, either of the following of the taxpayer:

4 “(A) The direct or indirect acquisition of
5 stock, or a capital interest, in the entity at its
6 original issue solely in exchange for cash.

7 “(B) A qualifying loan made to the entity.
8 If a taxpayer has or had more than 1 qualified in-
9 vestment in any qualifying business entity for the
10 taxable year or any prior taxable year, all such in-
11 vestments shall be treated as a single qualified in-
12 vestment for purposes of applying this section.

13 “(2) EXCEPTION FOR INVESTMENTS MADE BY
14 QUALIFIED ACTIVE INVESTORS AND RELATED PER-
15 SONS.—Such term shall not include any acquisition
16 or loan made by a taxpayer who, immediately before
17 the acquisition or loan, is a qualified active investor
18 in the qualifying business entity or is related to any
19 qualified active investor.

20 “(3) AMOUNT OF QUALIFIED INVESTMENT.—
21 The amount of a taxpayer’s qualified investment
22 with respect to any qualifying business entity for
23 any taxable year shall be the monthly average for
24 months ending within the taxable year of—

1 “(A) the taxpayer’s aggregate unadjusted
 2 bases in all stock or interests described in para-
 3 graph (1)(A) as of the close of each such
 4 month, and

5 “(B) the aggregate outstanding principal
 6 amount of all qualified loans described in para-
 7 graph (1)(B) as of the close of each such
 8 month.

9 “(4) SPECIAL RULES FOR TRANSFERS OF
 10 QUALIFYING LOANS.—

11 “(A) IN GENERAL.—If a taxpayer sells, ex-
 12 changes, or otherwise transfers all or any por-
 13 tion of a qualifying loan which is a qualified in-
 14 vestment in a qualifying business entity, such
 15 investment shall be treated as a qualified in-
 16 vestment in the hands of the transferee (and
 17 not of the transferor) for periods after the
 18 transfer. This paragraph shall also apply to any
 19 subsequent transfer of such interest.

20 “(B) COORDINATION OF LIMITS.—In ap-
 21 plying subsection (b) to any qualifying loan
 22 treated as a qualified investment of a transferee
 23 under this paragraph—

24 “(i) all credits determined under this
 25 section for any periods before the transfer

with respect to the qualified investment of any prior holder of such investment shall be taken into account under paragraphs (1)(B)(ii) and (2)(A)(ii)(II) of such subsection in the same manner as if such credits were determined for the transferee for prior taxable years, and

“(ii) if only a portion of the qualified investment was transferred, the amount taken into account under such paragraphs by reason of clause (i) shall be ratably reduced to reflect only the portion so transferred.

“(d) QUALIFYING BUSINESS ENTITY.—For purposes of this section—

“(1) DEFINITION.—

“(A) IN GENERAL.—The term ‘qualifying business entity’ means, with respect to any qualified investment, any entity which is engaged in 1 or more trades or businesses and with respect to which—

“(i) the qualified active investor ownership requirements of paragraph (2) are met immediately before and after the qualified investment,

1 “(ii) the wage requirements of para-
2 graph (3) are met, and

3 “(iii) the certification requirements of
4 paragraph (4) are met.

5 “(B) ENTITIES UNDER COMMON CON-
6 TROL.—For purposes of this section, all quali-
7 fying business entities treated as a single em-
8 ployer under subsection (a) or (b) of section 52
9 or subsection (m) or (o) of section 414 shall be
10 treated as a single qualifying business entity.

11 “(2) QUALIFIED ACTIVE INVESTOR OWNERSHIP
12 REQUIREMENTS.—The requirements of this para-
13 graph are met with respect to any entity if qualified
14 active investors own directly or indirectly—

15 “(A) in the case of a corporation, more
16 than 50 percent (by vote and value) of the
17 stock in the corporation, and

18 “(B) in the case of any other entity, more
19 than 50 percent of the capital or profits inter-
20 ests in the entity.

21 “(3) WAGE REQUIREMENTS.—

22 “(A) IN GENERAL.—The requirements of
23 this paragraph are met with respect to any enti-
24 ty if the entity, during the taxable year of the

1 entity preceding the taxable year in which the
2 qualified investment is made—

3 “(i) employed at least 1 full-time em-
4 ployee, or employees constituting a full-
5 time equivalent employee, in 1 or more
6 trades or businesses of the entity, and

7 “(ii) paid W-2 wages to such em-
8 ployee or employees with respect to such
9 employment.

10 “(B) CERTAIN WAGES NOT TAKEN INTO
11 ACCOUNT.—W-2 wages shall not be taken into
12 account under subparagraph (A) if paid by an
13 entity to an employee, and such employee shall
14 not be taken into account under subparagraph
15 (A)(i), during any period the employee is—

16 “(i) a qualified active investor, or

17 “(ii) an employee other than a quali-
18 fied active investor who is a 5-percent
19 owner (as defined in section
20 416(i)(1)(B)(i)) of the entity.

21 “(C) W-2 WAGES.—The term ‘W-2 wages’
22 means, with respect to any entity, the amounts
23 described in paragraphs (3) and (8) of section
24 6051(a) paid by the entity with respect to em-
25 ployment of employees by the entity.

1 “(D) FULL-TIME EMPLOYEES AND
2 EQUIVALENTS.—For purposes of this para-
3 graph—

4 “(i) the term ‘full-time employee’ has
5 the meaning given to such term by section
6 4980H(c)(4), and

7 “(ii) the determination of the number
8 of employees constituting a full-time equiv-
9 alent shall be made in the same manner as
10 under section 4980H(c)(2)(E).

11 “(4) CERTIFICATION REQUIREMENTS.—

12 “(A) IN GENERAL.—The requirements of
13 this paragraph are met with respect to any enti-
14 ty if the entity certifies, in such form and man-
15 ner and at such time as the Secretary may pre-
16 scribe, that, at the time of the qualified invest-
17 ment, the entity—

18 “(i) is engaged in 1 or more trades or
19 businesses, and

20 “(ii) meets the requirements of para-
21 graphs (2) and (3) to be treated as a
22 qualifying business entity.

23 “(B) CERTIFICATION PROVIDED TO INVES-
24 TORS AND SECRETARY.—An entity shall—

1 “(i) provide the certification under
2 subparagraph (A) to the person making
3 the qualified investment at the time such
4 investment is made, and

5 “(ii) include such certification, and
6 the names, addresses, and taxpayer identi-
7 fication numbers of the entity’s qualified
8 active investors and the persons making
9 the qualified investment, with its return of
10 tax for the taxable year which includes the
11 date of the qualified investment.

12 “(C) CERTIFICATION INCLUDED WITH RE-
13 TURN CLAIMING CREDIT.—No credit shall be
14 determined under subsection (a) with respect to
15 any taxpayer making a qualified investment in
16 a qualifying business entity unless the taxpayer
17 includes the certification under subparagraph
18 (A) with respect to the investment with its re-
19 turn of tax for any taxable year for which such
20 credit is being claimed.

21 “(D) TIMELY FILED RETURN REQUIRED.—
22 The requirements of subparagraph (B)(ii) or
23 (C) shall be treated as met only if the return
24 described in such subparagraph is filed on or
25 before its due date (including extensions).

1 “(5) QUALIFIED ACTIVE INVESTOR.—

2 “(A) IN GENERAL.—The term ‘qualified
3 active investor’ means, with respect to any enti-
4 ty, an individual who—

5 “(i) is a citizen or resident of the
6 United States,

7 “(ii) materially participates (within
8 the meaning of section 469(h)) in 1 or
9 more trades or businesses of the entity,

10 “(iii) holds stock, or a capital or prof-
11 its interest, in the entity, and

12 “(iv) meets the income requirements
13 of subparagraph (B).

14 “(B) INCOME REQUIREMENTS.—The re-
15 quirements of this subparagraph are met with
16 respect to an individual if the average annual
17 adjusted taxable income of the individual for
18 the 3 taxable years of the individual imme-
19 diately preceding the taxable year in which the
20 qualified investment is made does not exceed
21 the applicable amount.

22 “(C) APPLICABLE AMOUNT.—For purposes
23 of this paragraph, the term ‘applicable amount’
24 means, with respect to any taxable year in
25 which a qualified investment is made—

1 “(i) in the case of an individual not
2 described in clause (ii), \$100,000 (as in-
3 creased for the taxable year by the cost-of-
4 living adjustment under subsection (e)(2)),
5 and

6 “(ii) in the case of an individual who
7 is a married individual filing a joint return
8 or who is a head of household (as defined
9 in section 2(b)) for the taxable year, an
10 amount equal to 2 times the amount in ef-
11 fect under clause (i) for the taxable year.

12 “(D) RULES FOR DETERMINING AVERAGE
13 TAXABLE INCOME.—For purposes of this para-
14 graph—

15 “(i) a married individual filing a sepa-
16 rate return of tax for any taxable year
17 shall include the adjusted taxable income
18 of their spouse in computing the individ-
19 ual’s average adjusted taxable income for
20 any period unless the Secretary determines
21 that the spouse’s information is not avail-
22 able to the individual, and

23 “(ii) the Secretary shall prescribe
24 rules for the determination of average ad-
25 justed taxable income in cases where the

1 individual had different filing statuses for
2 the 3 taxable years described in subpara-
3 graph (B).

4 “(E) ADJUSTED TAXABLE INCOME.—The
5 term ‘adjusted taxable income’ means taxable
6 income computed without regard to the deduc-
7 tions under sections 172 and 199A.

8 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
9 poses of this section—

10 “(1) RELATED PERSONS.—A person shall be
11 treated as related to another person if the person
12 bears a relationship to such other person described
13 in section 267(b), except that section 267(b) shall be
14 applied by substituting ‘5 percent’ for ‘50 percent’
15 each place it appears.

16 “(2) COST-OF-LIVING ADJUSTMENTS.—In the
17 case of any taxable year beginning after 2022, the
18 \$10,000 amount under subsection (b)(2)(A)(i) and
19 the \$100,000 amount under subsection (d)(5)(C)(i)
20 shall each be increased by an amount equal to—

21 “(A) such dollar amount, multiplied by

22 “(B) the cost-of-living adjustment under
23 section 1(f)(3) for the calendar year in which
24 the taxable year begins, determined by sub-

1 stituting ‘2021’ for ‘2016’ in subparagraph
2 (A)(ii) thereof.

3 If any increase in such \$10,000 amount is not a
4 multiple of \$100, such increase shall be rounded to
5 the next lowest multiple of \$100 and if any increase
6 in such \$100,000 amount is not a multiple of
7 \$1,000, such increase shall be rounded to the next
8 lowest multiple of \$1,000.

9 “(3) RULES RELATING TO ENTITIES.—

10 “(A) SOLE PROPRIETORSHIPS.—If a tax-
11 payer carries on 1 or more trades or businesses
12 as sole proprietorships, all such trades or busi-
13 nesses shall be treated as a single entity for
14 purposes of applying this section.

15 “(B) APPLICATION TO DISREGARDED EN-
16 TITIES.—In the case of any entity with a single
17 owner which is disregarded as an entity sepa-
18 rate from its owner for purposes of this title,
19 this section shall be applied in the same manner
20 as if such entity were a corporation.

21 “(f) REGULATIONS.—The Secretary shall prescribe
22 such regulations or other guidance as may be necessary
23 to carry out the provisions of this section.”.

24 (b) CREDIT TO BE PART OF GENERAL BUSINESS
25 CREDIT.—Section 38(b) of such Code is amended by strik-

1 ing “plus” at the end of paragraph (32), by striking the
 2 period at the end of paragraph (33) and inserting “, plus”,
 3 and by adding at the end the following new paragraph:

4 “(34) the small business investor credit deter-
 5 mined under section 45U(a).”.

6 (c) CREDIT ALLOWED AGAINST ALTERNATIVE MIN-
 7 IMUM TAX.—Section 38(c)(4)(B) of such Code is amended
 8 by redesignating clauses (x), (xi), and (xii) as clauses (xi),
 9 (xii), and (xiii), respectively, and by inserting after clause
 10 (ix) the following new clause:

11 “(x) the credit determined under sec-
 12 tion 45U,”.

13 (d) CLERICAL AMENDMENT.—The table of sections
 14 for subpart D of part IV of subchapter A of chapter 1
 15 of such Code is amended by adding at the end the fol-
 16 lowing new item:

“Sec. 45U. Small business investor tax credit.”.

17 (e) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to qualified investments made in
 19 taxable years beginning after December 31, 2021.

20 **SEC. 3. FIRST EMPLOYEE BUSINESS WAGE CREDIT.**

21 (a) ALLOWANCE OF CREDIT.—

22 (1) IN GENERAL.—Subpart D of part IV of
 23 subchapter A of chapter 1 of the Internal Revenue
 24 Code of 1986, as amended by section 2, is amended
 25 by adding at the end the following new section:

1 **“SEC. 45V. FIRST EMPLOYEE BUSINESS WAGE CREDIT.**

2 “(a) GENERAL RULE.—For purposes of section 38,
3 in the case of a qualifying business entity, the first em-
4 ployee business wage credit determined under this section
5 for any taxable year is an amount equal to 25 percent
6 of the qualified wages of the entity for the taxable year.

7 “(b) DOLLAR LIMITATIONS.—

8 “(1) IN GENERAL.—The amount of the credit
9 determined under subsection (a) with respect to any
10 qualifying business entity for any taxable year shall
11 not exceed the lesser of—

12 “(A) \$10,000 (as increased for the taxable
13 year by the cost-of-living adjustment under sub-
14 section (f)), or

15 “(B) the excess (if any) of—

16 “(i) an amount equal to 4 times the
17 amount under subparagraph (A) for the
18 taxable year, over

19 “(ii) the amount of the credit deter-
20 mined under this section with respect to
21 such entity for all preceding taxable years.

22 “(2) NO CREDIT BY REASON OF COST-OF-LIV-
23 ING ADJUSTMENT AFTER OVERALL LIMIT FIRST
24 REACHED.—No credit shall be determined under this
25 section with respect to any qualifying business entity
26 for any taxable year after the first taxable year for

1 which the amount determined under clause (ii) of
2 paragraph (1)(B) equals or exceeds the amount de-
3 termined under clause (i) of such paragraph.

4 “(3) PASS-THRU ENTITIES.—If a qualifying
5 business entity is a partnership, trust, S corporation,
6 or other pass-thru entity, the limitations under this
7 subsection shall apply at the entity level.

8 “(c) QUALIFIED WAGES.—For purposes of this sec-
9 tion—

10 “(1) IN GENERAL.—The term ‘qualified wages’
11 means, with respect to any qualifying business enti-
12 ty, the amount of W-2 wages paid or incurred dur-
13 ing any eligible taxable year to employees for serv-
14 ices performed in connection with a trade or busi-
15 ness of the entity.

16 “(2) EXCEPTION FOR QUALIFIED ACTIVE IN-
17 VESTORS AND 5-PERCENT OWNER-EMPLOYEES.—W-
18 2 wages shall not be taken into account under para-
19 graph (1) if paid by an entity to an employee, and
20 such employee shall not be taken into account under
21 paragraph (3)(A), during any period the employee
22 is—

23 “(A) a qualified active investor, or

1 “(B) an employee other than a qualified
2 active investor who is a 5-percent owner (as de-
3 fined in section 416(i)(1)(B)(i)) of the entity.

4 “(3) ELIGIBLE TAXABLE YEAR.—

5 “(A) IN GENERAL.—The term ‘eligible tax-
6 able year’ means any taxable year of a quali-
7 fying business entity—

8 “(i) which occurs during the period—

9 “(I) beginning with the first tax-
10 able year of the entity in which the
11 entity employed at least 1 full-time
12 employee (or employees constituting a
13 full-time equivalent employee) in 1 or
14 more trades or businesses of the enti-
15 ty during the taxable year and paid
16 W-2 wages to such employee or em-
17 ployees with respect to such employ-
18 ment, and

19 “(II) ending with the last taxable
20 year for which a credit may be deter-
21 mined for the entity under this section
22 by reason of the limitation under sub-
23 section (b)(2), and

24 “(ii) in the case of a taxable year
25 other than the first taxable year described

1 in clause (i)(I), with respect to which the
 2 entity meets the employment and wage re-
 3 quirements of such clause.

4 Such term shall not include any taxable year
 5 during such a period if the first taxable year
 6 described in clause (i)(I) of the entity (or any
 7 predecessor) begins before January 1, 2020.

8 “(B) W-2 WAGES; FULL-TIME EMPLOY-
 9 EES.—For purposes of this subsection, W-2
 10 wages, full-time employees, and full-time em-
 11 ployee equivalents shall be determined in the
 12 same manner as under section 45U.

13 “(d) QUALIFYING BUSINESS ENTITY.—For purposes
 14 of this section—

15 “(1) QUALIFYING BUSINESS ENTITY DE-
 16 FINED.—

17 “(A) IN GENERAL.—The term ‘qualifying
 18 business entity’ means, with respect to any tax-
 19 able year for which a credit under this section
 20 is being determined, any entity—

21 “(i) which is engaged in 1 or more
 22 trades or businesses,

23 “(ii) with respect to which the quali-
 24 fied active investor ownership requirements
 25 of paragraph (2) of section 45U(d) are met

as of the close of such taxable year (rather than immediately before and after the qualified investment), and

“(iii) with respect to which the certification requirements of paragraph (2) are met.

“(B) ENTITIES UNDER COMMON CONTROL.—For purposes of this section—

“(i) IN GENERAL.—All qualifying business entities treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as a single qualifying business entity.

“(ii) ALLOCATION OF CREDIT.—Except as provided in regulations, the credit under this section shall be allocated among the entities comprising the single entity described in clause (i) in proportion to the qualified wages of each such entity taken into account under subsection (a).

“(2) CERTIFICATION REQUIREMENTS.—

“(A) IN GENERAL.—The requirements of this paragraph are met with respect to any entity for any taxable year described in paragraph

1 (1) if the entity certifies, in such form and
2 manner and at such time as the Secretary may
3 prescribe, that the entity meets the require-
4 ments described in clauses (i) and (ii) of para-
5 graph (1)(A).

6 “(B) CERTIFICATION PROVIDED TO SEC-
7 RETARY.—An entity shall include the certifi-
8 cation under subparagraph (A), and the names,
9 addresses, and taxpayer identification numbers
10 of the entity’s qualified active investors (and
11 employees who are 5-percent owners described
12 in subsection (c)(2)(B)), with its return of tax
13 for the taxable year to which the certification
14 relates. The requirement of this subparagraph
15 is met only if such return is filed before its due
16 date (including extensions).

17 “(3) QUALIFIED ACTIVE INVESTOR.—For pur-
18 poses of this section (including applying the require-
19 ments of paragraph (2) of section 45U(d) for pur-
20 poses of paragraph (1)(A)(ii)), the term ‘qualified
21 active investor’ has the same meaning given such
22 term by section 45U(d)(5), except that such section
23 shall be applied separately for each taxable year de-
24 scribed in paragraph (1) (rather than the taxable
25 year of the qualified investment).

1 “(e) ELECTION TO APPLY CREDIT AGAINST PAY-
2 ROLL TAXES.—

3 “(1) IN GENERAL.—At the election of a quali-
4 fying business entity, section 3111(g) shall apply to
5 the payroll tax credit portion of the credit otherwise
6 determined under subsection (a) for the taxable year
7 and such portion shall not be treated (other than for
8 purposes of section 280C) as a credit determined
9 under subsection (a).

10 “(2) PAYROLL TAX CREDIT PORTION.—For
11 purposes of this subsection, the payroll tax credit
12 portion of the credit determined under subsection
13 (a) with respect to any qualifying business entity for
14 any taxable year is the least of—

15 “(A) the amount specified in the election
16 made under this subsection,

17 “(B) the credit determined under sub-
18 section (a) for the taxable year (determined be-
19 fore the application of this subsection), or

20 “(C) in the case of a qualifying business
21 entity other than a partnership, estate, S cor-
22 poration or other pass-thru entity, the amount
23 of the business credit carryforward under sec-
24 tion 39 carried from the taxable year (deter-

1 mined before the application of this subsection
2 to the taxable year).

3 “(3) ELECTION.—

4 “(A) IN GENERAL.—Any election under
5 this subsection for any taxable year—

6 “(i) shall specify the amount of the
7 credit to which such election applies,

8 “(ii) shall be made on or before the
9 due date (including extensions) of the re-
10 turn for the taxable year, and

11 “(iii) may be revoked only with the
12 consent of the Secretary.

13 “(B) SPECIAL RULE FOR PASS-THRU ENTI-
14 TIES.—In the case of a partnership, estate, S
15 corporation, or other pass-thru entity, the elec-
16 tion made under this subsection shall be made
17 at the entity level.

18 “(f) COST-OF-LIVING ADJUSTMENTS.—In the case of
19 any taxable year beginning after 2022, the \$10,000
20 amount under subsection (b)(1)(A) shall be increased by
21 an amount equal to—

22 “(1) such dollar amount, multiplied by

23 “(2) the cost-of-living adjustment under section
24 1(f)(3) for the calendar year in which the taxable

1 year begins, determined by substituting ‘2021’ for
2 ‘2016’ in subparagraph (A)(ii) thereof.

3 If any increase in such amount is not a multiple of \$100,
4 such increase shall be rounded to the next lowest multiple
5 of \$100.

6 “(g) OTHER RULES.—For purposes of this section—

7 “(1) RULES RELATING TO ENTITIES.—Rules
8 similar to the rules of section 45U(e)(3) shall apply.

9 “(2) ELECTION NOT TO HAVE CREDIT APPLY.—

10 “(A) IN GENERAL.—A taxpayer may elect
11 not to have this section apply for any taxable
12 year.

13 “(B) OTHER RULES.—Rules similar to the
14 rules of paragraphs (2) and (3) of section 51(j)
15 shall apply for purposes of this paragraph.

16 “(3) CERTAIN OTHER RULES MADE APPLICA-
17 BLE.—Rules similar to the rules of subsections (c),
18 (d), and (e) of section 52 shall apply.

19 “(h) REGULATIONS.—The Secretary shall prescribe
20 such regulations or other guidance as may be necessary
21 to carrying out the provisions of this section, including
22 regulations—

23 “(1) preventing the avoidance of the limitations
24 under this section in cases in which there is a suc-
25 cessor or new qualified business entity with respect

1 to the same trade or business for which a prede-
 2 cessor qualified business entity already claimed the
 3 credit under this section,

4 “(2) to minimize compliance and recordkeeping
 5 burdens under the provisions of this section, and

6 “(3) for recapturing the benefit of credits deter-
 7 mined under section 3111(g) in cases where there is
 8 a recapture or a subsequent adjustment to the pay-
 9 roll tax credit portion of the credit determined under
 10 subsection (a), including requiring amended income
 11 tax returns in the cases where there is such an ad-
 12 justment.”.

13 (2) CREDIT TO BE PART OF GENERAL BUSI-
 14 NESS CREDIT.—Section 38(b) of such Code, as
 15 amended by section 2, is amended by striking “plus”
 16 at the end of paragraph (33), by striking the period
 17 at the end of paragraph (34) and inserting “, plus”,
 18 and by adding at the end the following new para-
 19 graph:

20 “(35) the first employee business wage credit
 21 determined under section 45V(a).”.

22 (3) CREDIT ALLOWED AGAINST ALTERNATIVE
 23 MINIMUM TAX.—Section 38(c)(4)(B) of such Code,
 24 as amended by section 2, is amended by redesign-
 25 ating clauses (xi), (xii), and (xiii) as clauses (xii),

1 (xiii), and (xiv), respectively, and by inserting after
 2 clause (x) the following new clause:

3 “(xi) the credit determined under sec-
 4 tion 45V,”.

5 (4) CLERICAL AMENDMENT.—The table of sec-
 6 tions for subpart D of part IV of subchapter A of
 7 chapter 1 of such Code, as amended by section 2, is
 8 amended by adding at the end the following new
 9 item:

“Sec. 45V. First employee business wage credit.”.

10 (b) PAYROLL TAX CREDIT.—Section 3111 of the In-
 11 ternal Revenue Code of 1986 is amended by adding at the
 12 end the following new subsection:

13 “(g) CREDIT FOR FIRST EMPLOYEE BUSINESS WAGE
 14 EXPENSES.—

15 “(1) IN GENERAL.—In the case of a taxpayer
 16 who has made an election under section 45V(e) for
 17 a taxable year, there shall be allowed as a credit
 18 against the tax imposed by subsection (a) for the
 19 first calendar quarter which begins after the date on
 20 which the taxpayer files the return for the taxable
 21 year an amount equal to the payroll tax credit por-
 22 tion determined under section 45V(e)(2).

23 “(2) LIMITATION.—The credit allowed by para-
 24 graph (1) shall not exceed the tax imposed by sub-
 25 section (a) for any calendar quarter on the wages

1 paid with respect to the employment of all individ-
2 uals in the employ of the employer.

3 “(3) CARRYOVER OF UNUSED CREDIT.—If the
4 amount of the credit under paragraph (1) exceeds
5 the limitation of paragraph (2) for any calendar
6 quarter, such excess shall be carried to the suc-
7 ceeding calendar quarter and allowed as a credit
8 under paragraph (1) for such quarter.

9 “(4) DEDUCTION ALLOWED FOR CREDITED
10 AMOUNTS.—Notwithstanding section 280C(a), the
11 credit allowed under paragraph (1) shall not be
12 taken into account for purposes of determining the
13 amount of any deduction allowed under chapter 1
14 for taxes imposed under subsection (a).”.

15 (c) COORDINATION WITH DEDUCTIONS AND OTHER
16 CREDITS.—

17 (1) DEDUCTIONS.—Section 280C(a) of the In-
18 ternal Revenue Code of 1986 is amended by insert-
19 ing “45V(a),” after “45S(a),”.

20 (2) OTHER CREDITS.—

21 (A) Section 41(b)(2)(D) of such Code is
22 amended by adding at the end the following:

23 “(iv) EXCLUSION FOR WAGES TO
24 WHICH FIRST EMPLOYEE WAGE CREDIT
25 APPLIES.—The term ‘wages’ shall not in-

1 clude any amount taken into account in
2 determining the credit under section
3 45V.”.

4 (B) Section 45A(b)(1) of such Code is
5 amended by adding at the end the following:

6 “(C) COORDINATION WITH FIRST EM-
7 PLOYEE WAGE CREDIT.—The term ‘qualified
8 wages’ shall not include wages if any portion of
9 such wages is taken into account in determining
10 the credit under section 45V.”.

11 (C) Section 1396(c)(3) of such Code is
12 amended—

13 (i) by striking “section 51” each place
14 it appears and inserting “section 45V or
15 51”, and

16 (ii) by inserting “AND FIRST EM-
17 PLOYEE WAGE” after “OPPORTUNITY” in
18 the heading thereof.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 2021.

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