H. R.

To provide for improvements related to the employee retention tax credit.

IN THE HOUSE OF REPRESENTATIVES

Mrs. Murphy (for herself, Mr. Katko, Ms. DelBene, Mr. Fitzpatrick, and Mr. Pappas) introduced the following bill; which was referred to the Committee on

A BILL

To provide for improvements related to the employee retention tax credit.

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 “Jumpstarting Our
5 Businesses’ Success Credit Act of 2020” or as the “JOBS
6 Credit Act of 2020”.

(Original Signature of Member)
SEC. 2. IMPROVEMENTS TO EMPLOYEE RETENTION CREDIT.

(a) INCREASE IN CREDIT PERCENTAGE.—Section 2301(a) of the CARES Act is amended by striking “50 percent” and inserting “80 percent”.

(b) INCREASE IN PER EMPLOYEE LIMITATION.—Section 2301(b)(1) of the CARES Act is amended by striking “for all calendar quarters shall not exceed $10,000.” and inserting “shall not exceed—

“(A) $15,000 in any calendar quarter, and

“(B) $45,000 in the aggregate for all calendar quarters.”.

(c) MODIFICATION OF THRESHOLD FOR TREATMENT AS A LARGE EMPLOYER.—

(1) IN GENERAL.—Section 2301(c)(3)(A) of the CARES Act is amended—

(A) by striking “for which the average number of full-time employees (within the meaning of section 4980H of the Internal Revenue Code of 1986) employed by such eligible employer during 2019 was greater than 100” in clause (i) and inserting “which is a large employer”, and

(B) by striking “for which the average number of full-time employees (within the meaning of section 4980H of the Internal Rev-
enue Code of 1986) employed by such eligible employer during 2019 was not greater than 100” in clause (ii) and inserting “which is not a large employer”.

(2) LARGE EMPLOYER DEFINED.—Section 2301(c) of the CARES Act is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

“(6) LARGE EMPLOYER.—The term ‘large employer’ means any eligible employer if—

“(A) the average number of full-time employees (as determined for purposes of determining whether an employer is an applicable large employer for purposes of section 4980H(c)(2) of the Internal Revenue Code of 1986) employed by such eligible employer during calendar year 2019 was greater than 1,500, and

“(B) the gross receipts (within the meaning of section 448(c) of the Internal Revenue Code of 1986) of such eligible employer during calendar year 2019 was greater than $41,500,000.”.
(d) Phase-in of Eligibility Based on Reduction in Gross Receipts.—

(1) Decrease of reduction in gross receipts necessary to qualify for credit.—Section 2301(c)(2)(B)(i) of the CARES Act is amended by striking “50 percent” and inserting “80 percent”.

(2) Phase-in of credit if reduction in gross receipts is less than 50 percent.—Section 2301(c)(2) of the CARES Act is amended by adding at the end the following new subparagraph:

“(D) Phase-in of credit where business not suspended and reduction in gross receipts less than 50 percent.—

“(i) In general.—In the case of any calendar quarter with respect to which an eligible employer would not be an eligible employer if subparagraph (B)(i) were applied by substituting ‘50 percent’ for ‘80 percent’, the amount of the credit allowed under subsection (a) shall be reduced by the amount which bears the same ratio to the amount of such credit (determined without regard to this subparagraph) as—
“(I) the excess gross receipts percentage point amount, bears to

“(II) 30 percentage points.

“(ii) Excess gross receipts percentage point amount.—For purposes of this subparagraph, the term ‘excess gross receipts percentage point amount’ means, with respect to any calendar quarter, the excess of—

“(I) the lowest of the gross receipts percentage point amounts determined with respect to any calendar quarter during the period ending with such calendar quarter and beginning with the first calendar quarter during the period described in subparagraph (B), over

“(II) 50 percentage points.

“(iii) Gross receipts percentage point amounts.—For purposes of this subparagraph, the term ‘gross receipts percentage point amount’ means, with respect to any calendar quarter, the percentage (expressed as a number of percentage points) obtained by dividing—
“(I) the gross receipts (within the meaning of subparagraph (B)) for such calendar quarter, by

“(II) the gross receipts for the same calendar quarter in calendar year 2019.”.

(3) GROSS RECEIPTS OF TAX-EXEMPT ORGANIZATIONS.—Section 2301(c)(2)(C) of the CARES Act is amended—

(A) by striking “of such Code, clauses (i) and (ii)(I)” and inserting “of such Code—

“(i) clauses (i) and (ii)(I),

(B) by striking the period at the end and inserting “, and”, and

(C) by adding at the end the following new clause:

“(ii) any reference in this section to gross receipts shall be treated as a reference to gross receipts within the meaning of section 6033 of such Code.”.

(e) MODIFICATION OF TREATMENT OF HEALTH PLAN EXPENSES.—

(1) IN GENERAL.—Section 2301(e)(5) of the CARES Act is amended to read as follows:

“(5) WAGES.—
“(A) IN GENERAL.—The term ‘wages’ means wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) and compensation (as defined in section 3231(e) of such Code).

“(B) ALLOWANCE FOR CERTAIN HEALTH PLAN EXPENSES.—

“(i) IN GENERAL.—Such term shall include amounts paid or incurred by the eligible employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

“(ii) ALLOCATION RULES.—For purposes of this section, amounts treated as wages under clause (i) shall be treated as paid with respect to any employee (and with respect to any period) to the extent that such amounts are properly allocable to such employee (and to such period) in such manner as the Secretary may prescribe. Except as otherwise provided by the Sec-
retary, such allocation shall be treated as
properly made if made on the basis of
being pro rata among periods of cov-
erage.”.

(2) CONFORMING AMENDMENT.—Section
2301(c)(3) of the CARES Act is amended by strik-
ing subparagraph (C).

(f) QUALIFIED WAGES PERMITTED TO INCLUDE
AMOUNTS FOR TIP REPLACEMENT.—

(1) IN GENERAL.—Section 2301(c)(3)(B) of the
CARES Act is amended by inserting “(including tips
which would have been deemed to be paid by the em-
ployer under section 3121(q))” after “would have
been paid”.

(2) CONFORMING AMENDMENT.—Section
2301(h)(2) of the CARES Act is amended by insert-
ing “45B or” before “45S”.

(g) CERTAIN GOVERNMENTAL EMPLOYERS ELIGIBLE
FOR CREDIT.—

(1) IN GENERAL.—Section 2301(f) of the
CARES Act is amended to read as follows:
“(f) CERTAIN GOVERNMENTAL EMPLOYERS.—
“(1) IN GENERAL.—The credit under this sec-
tion shall not be allowed to the Federal Government
or any agency or instrumentality thereof.
“(2) EXCEPTION.—Paragraph (1) shall not apply to any organization described in section 501(c)(1) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

“(3) SPECIAL RULES.—In the case of any State government, Indian tribal government, or any agency, instrumentality, or political subdivision of the foregoing—

“(A) clauses (i) and (ii)(I) of subsection (c)(2)(A) shall apply to all operations of such entity, and

“(B) subclause (II) of subsection (c)(2)(A)(ii) shall not apply.”.

(2) COORDINATION WITH APPLICATION OF CERTAIN DEFINITIONS.—

(A) IN GENERAL.—Section 2301(c)(5)(A) of the CARES Act, as amended by the preceding provisions of this Act, is amended by adding at the end the following: “For purposes of the preceding sentence (other than for purposes of subsection (b)(2)), wages as defined in section 3121(a) of the Internal Revenue Code of 1986 shall be determined without regard to paragraphs (1), (5), (6), (7), (8), (10), (13), (18), (19), and (22) of section 3212(b) of such
Code (except with respect to services performed
in a penal institution by an inmate thereof).”.

(B) CONFORMING AMENDMENTS.—Sections 2301(c)(6) of the CARES Act is amended by striking “Any term” and inserting “Except as otherwise provided in this section, any term”.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 2301 of the CARES Act.

SEC. 3. IMPROVED COORDINATION BETWEEN PAYCHECK PROTECTION PROGRAM AND EMPLOYEE RETENTION TAX CREDIT.

(a) AMENDMENT TO PAYCHECK PROTECTION PROGRAM.—Section 1106(a)(8) of the CARES Act is amended by inserting “, except that such costs shall not include qualified wages taken into account in determining the credit allowed under section 2301 of this Act” before the period at the end.

(b) AMENDMENTS TO EMPLOYEE RETENTION TAX CREDIT.—

(1) IN GENERAL.—Section 2301(g) of the CARES Act is amended to read as follows:

“(g) ELECTION TO NOT TAKE CERTAIN WAGES INTO ACCOUNT.—
“(1) IN GENERAL.—This section shall not apply to qualified wages paid by an eligible employer with respect to which such employer makes an election (at such time and in such manner as the Secretary may prescribe) to have this section not apply to such wages.

“(2) COORDINATION WITH PAYCHECK PROTECTION PROGRAM.—The Secretary, in consultation with the Administrator of the Small Business Administration, shall issue guidance providing that payroll costs paid or incurred during the covered period shall not fail to be treated as qualified wages under this section by reason of an election under paragraph (1) to the extent that a covered loan of the eligible employer is not forgiven by reason of a decision under section 1106(g). Terms used in the preceding sentence which are also used in section 1106 shall have the same meaning as when used in such section.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 2301 of the CARES Act is amended by striking subsection (j).

(B) Section 2301(l) of the CARES Act is amended by striking paragraph (3) and by re-
designating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the CARES Act to which they relate.