



SA LEADS GROUP

Consolidated Appropriations Act 2021

January 6, 2021

The above legislation signed by President Trump on December 27, 2020 is one of the longest pieces of legislation ever passed by Congress (5,593 pages). To say that it has "something for everyone" would be an understatement.

In addition to enhancing and expanding certain provisions of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), it addresses a multitude of other areas including the following taken from the table of contents (Division A – EE).

If you are interested in reading the entire document here is the link.

<https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf>

Agriculture, Rural Development, Food and Drug Administration
Commerce Justice, Science & Related Agencies
Department of Defense Appropriations
Energy & Water Development and Related Agencies
Financial Services
Department of Homeland Security
Department of Interior and Environment
Department of Labor, Health & Human Resources
Legislative Branch
Military Construction, Veterans Affairs
Department of State, Foreign Operations
Transportation, Housing, & Urban Development
Additional Coronavirus Response and Relief

For the purposes of this presentation, we will primarily address some of the additional benefits to small businesses. Please note that additional clarification and instructions will need to be developed by the SBA and Treasury before these programs are activated.

- 1) Clarified that business expenses paid for using tax-free loans made under the CARES ACT's Paycheck Protection Program are tax-deductible. Clarified that income from PPP loans would not be considered taxable income.
- 2) \$284 billion for additional forgivable PPP loans.
- 3) PPP borrowers who already received a loan may obtain a second draw if:
 - a) They have 300 or fewer employees,
 - b) Have used or will use the full amount of their first PPP loan, and

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- c) Can show a 25% gross revenue decline in any 2020 quarter compared with the same quarter in 2019.
- 4) If an eligible Borrower did not receive a PPP loan in the first round of loans, they may now obtain a PPP loan under the original terms of the CARES Act.
- 5) 60% of PPP loans must be used to cover payroll.
- 6) For existing PPP loans less than \$150,000, the SBA must create a one-page simplified Borrower application form within 24 days of bill's enactment and may not require additional materials unless necessary to substantiate revenue loss requirements or satisfy statutory or regulatory requirements.
- 7) Borrowers with eligible SBA loans will receive an additional 3 monthly payments on their loans beginning in February 2021 up to a maximum amount of \$9,000/month.
- 8) CARES Act 1112 payments will not be considered tax able income.
- 9) EIDL advances will no longer be deducted from borrower's forgiveness amount for PPP loans.
- 10) EIDL loan deadline was extended to December 31, 2021. These loans are not related to PPP loans and are obtained directly from the Small Business Administration.

This list summarizes some of the most frequently asked questions concerning the recent legislation only.

I have attached 3 articles that address this topic that may provide additional areas addressed in the legislation. I am happy to try to answer any questions you may have about the program as it relates to banking and small business.

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Paycheck Protection Program Round 2 (or is it 3?)

By: Bruce E. Toppin, III

On Sunday evening, December 27, 2020, after a great deal of posturing about a possible veto, President Trump signed the Consolidated Appropriations Act, 2021, which contained, among other things, the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (which we will refer to as the “**PPP Continuation Act**” because “EAHHSBNV Act” is harder to remember than the name of the bill itself). For small businesses struggling to keep their doors open, the PPP Continuation Act provides much awaited relief in the form of a second round of funding available under the Paycheck Protection Program (“**PPP**”). (The PPP Continuation Act also contains a number of other provisions applicable to financial institutions—such as continued relief from the troubled debt restructuring rules under GAAP through January 1, 2022—though the focus of this Alert is the extension of PPP.)

The PPP Continuation Act appropriated \$284.5 billion for PPP loans (first time and “**Second Draw**”), of which \$15 billion was ear-marked for community financial institutions, and another \$15 billion was ear-marked for certain small depository institutions. First-time borrowers were allocated \$35 billion, \$15 billion of which is for smaller businesses with 10 or fewer employees, or loans under \$250,000 in low-income areas. These smaller businesses and businesses in low-income areas were allocated \$25 billion for PPP Second Draw loans.

PPP CONTINUATION ACT PROVISIONS

Specifically, the PPP Continuation Act provides that:

- Certain additional expenses are eligible for forgiveness, including:
 - Expenses related to software, cloud computing and other accounting and human resources needs;
 - Expenses related to property damage due to public disturbances occurring in 2020 and not covered by insurance;
 - Payments to a supplier under a contract, purchase order or order for goods in effect prior to the borrower’s receiving the loan that were essential to the borrower’s operations at the time the payments were made; expenditures for perishable goods are eligible before and during the life of the loan;

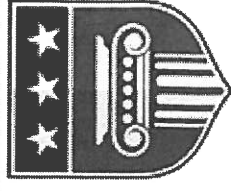
- PPP and adaptive investments to comply with federal and state health and safety guidelines related to COVID-19 between March 1, 2020 and the end of the national emergency declaration;
- Expanded eligible expenses apply to PPP loans made before or after enactment of the PPP Continuation Act, except to the extent that PPP loans have already been forgiven;
- Lenders may rely on certification by borrowers with respect to eligibility and forgiveness if lender acted in good faith and otherwise complied with all applicable federal, state and local laws and regulations;
- Borrowers may elect a covered period between eight and 24 weeks;
- Simplified forgiveness application process that allows for borrowers with loans under \$150,000 to submit a one-page certification to the lender;
- Covered period for first time PPP loans extended to March 31, 2021;
- PPP Second Draw loan eligibility:
 - Publicly traded companies are ineligible;
 - Businesses not in operation on or before February 15, 2020 are not eligible;
 - Businesses that receive Shuttered Venue Operator grants are not eligible;
 - Business may not have more than 300 employees (or 300 employees per physical location if the business has multiple locations);
 - Business must have used full amount of first PPP loan;
 - At least 25% reduction in gross receipts in first, second or third quarter of 2020 relative to same quarter in 2019; applications submitted after January 1, 2021 are able to utilize fourth quarter 2020 gross receipts;
- PPP Second Draw loan terms:
 - Maximum loan amount is \$2,000,000;
 - Business may receive loan of up to 2.5 times average monthly payroll costs in the 12 months prior to the loan or the calendar year; seasonal employers may calculate loan amount based on a 12-week period beginning February 15, 2019 through February 15, 2020; entities not in operation for a full year as of February 15, 2020 may use the sum of their average monthly payroll costs;
 - Businesses assigned NAICS code 72 (accommodations and food services) may receive loans up to 3.5x average monthly payroll costs;
 - Waiver of affiliation rules continue to apply;
- PPP Second Draw loans are eligible for forgiveness in amount equal to sum of payroll costs, covered mortgage, rent, utility payments, covered operations expenditures (described above), covered property damage costs (described above), covered supplier costs (described above) and covered worker protection expenditures (described above) incurred during the covered period;

- 60/40 allocation between payroll and non-payroll costs continues to apply;
- Tiered lender compensation for PPP Second Draw loans:
 - Loans up to \$50,000, lender processing fee is lesser of 50% of loan or \$2,500;
 - Loans between \$50,000 and \$350,000, lender processing fee is 5%;
 - Loans between \$350,000 and \$2,000,000, lender processing fee is 3%;
- Lenders are to be paid for processing fees within five days of disbursement of PPP Second Draw loan;
- Amount of loans to farmers and ranchers who operate as sole proprietors, independent contractors or self-employed individuals to be calculated using specific loan calculations utilizing gross income in 2019, as reported on Schedule F of federal income tax returns; PPP loans made prior to enactment of PPP Continuation Act may be adjusted to reflect new calculation methodology;
- On a case-by-case basis, SBA may allow businesses in bankruptcy to receive loans if bankruptcy court approves and the loan is given a superpriority claim in bankruptcy; and
- Forgiven amounts of first time PPP loans and PPP Second Draw loans that were used to pay otherwise deductible expenses for federal income tax purposes are not included in the calculation of the borrower's gross income; for S corporations and partnerships, the amount excluded from gross income described in the foregoing clause is treated as tax exempt income.

As before when PPP was initially introduced, we anticipate it will be a number of days before the Treasury Department issues formal guidance implementing these new provisions, and possibly further delays until the SBA begins accepting loan applications. In the meantime, we recommend that banks immediately begin marshalling resources to manage this new round of PPP lending.

We will continue to update our Alerts as and to the extent additional guidance becomes available. For any questions regarding the Paycheck Protection Program or other provisions of the PPP Continuation Act, please contact Bruce Toppin by e-mail at btoppin@langleybanack.com or by telephone at (210) 253-7102.

Trump Signs Economic Relief Package



Sunday night the President signed legislation for \$900 billion in coronavirus economic aid and \$1.4 trillion in government spending.

The Key provision in the bill includes:

- \$325 billion in aid for small businesses struggling after nine months of pandemic-induced economic hardships. The bill provides more than \$284 billion to the U.S. Small Business Association (SBA) for first and second PPP forgivable small business loans and allocates \$20 billion to provide Economic Injury Disaster Loan (EIDL) Grants to businesses in low-income communities. In addition, shuttered live venues, independent movie theaters, and cultural institutions will have access to \$15 billion in dedicated funding while \$12 billion will be set aside to help business in low-income and minority communities.

Coleman Certified SBA 7(a) Loan Training

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Summary of Second COVID-19 Stimulus Relief Bill and COVID-19 Funding Included in Consolidated Appropriations Act, 2021

Dec 27, 2020

On December 21, 2020, both houses of the United States Congress passed the Consolidated Appropriations Act, 2021 (the Act), a nearly 6,000-page omnibus spending bill, which includes within it a COVID-19 stimulus package that provides approximately \$900 billion in emergency relief to individuals and businesses as the pandemic continues. It also includes COVID-19-related funding. The Act was signed by the President this evening. This Act includes the second COVID-19 stimulus bill passed by the federal government; the first stimulus bill, the Coronavirus Aid, Relief and Economic Security Act (or CARES Act), was enacted in March.

Much of the Act pertains to appropriations for the operation of the federal government that are unrelated to COVID-19. Principal takeaways of the Act that do pertain to COVID-19 are summarized below. Please note that because the pagination of the copy of the Act accompanying this Briefing (i.e., the copy printed by the House Rules Committee, which remains as of the date hereof the only version available) restarts three times, the references to pages below are to the physical pages of the pdf copy of the Act accompanying this Briefing.

- **Small business loans.** The Act clarifies that business expenses paid for using tax-free loans made under the CARES Act's Paycheck Protection Program (PPP) are tax-deductible. The Act also includes more than \$284 billion for additional PPP loans to small businesses. See Act, p. 2117.
- **Individual stimulus checks.** The Act authorizes one-time direct, economic stimulus payments of up to \$600 for individuals and \$2,400 for families of four. *Id.*, p. 1966. The payments are less than those included in the CARES Act, which authorized amounts of \$1,200 to individuals and \$2,400 to couples.
- **Unemployment benefits.** The Act extends (for 11 weeks) federal unemployment insurance benefits by \$300 a week for unemployed individuals. *Id.*, pp. 1934-35.
- **Broadband access.** The Act includes several billion dollars in funding to increase broadband access to help individuals connect remotely during the pandemic. See *Id.*, p. 2390.

- **Transportation services.** The Act allocates billions to support transportation services. This includes \$2 billion for airports and \$16 billion in payroll support for airline workers and contractors. *Id.*, pp. 1897, 2210-11.
- **Tax credits.** The Act provides various tax credits, including a tax credit for companies offering paid sick leave to workers during the pandemic. See *Id.*, p. 2033.
- **Vaccine distribution and development.** The Act funds vaccine distribution. Specifically, the Act provides that over \$8 billion shall remain available until September 30, 2024, for “activities to plan, prepare for, promote distribute, administer, monitor, and track coronavirus vaccines to ensure broad-based distribution, access, and vaccine coverage.” *Id.*, p. 1827. Additionally, the Act funds vaccine development. It states that over \$22 billion shall remain available until September 30, 2024, for “the development of necessary countermeasures and vaccines, . . . the purchase of vaccines, therapeutics, diagnostics, [and] necessary medical supplies, . . . and other preparedness and response activities.” *Id.*, p. 1840.
- **Testing-related expenses.** Another \$22.4 billion through September 30, 2022, is designated for “necessary expenses for testing, contact tracing, surveillance, containment, and mitigation to monitor and suppress COVID-19.” *Id.*, p. 1844. Among the testing-related expenses covered by this funding are “tests for both active infection and prior exposure, including molecular, antigen, and serological tests, the manufacturing, procurement and distribution of tests, testing equipment and testing supplies, including personal protective equipment needed for administering tests, the development and validation of rapid, molecular point-of-care tests, and other tests, support for workforce, epidemiology, to scale up academic, commercial, public health, and hospital laboratories, to conduct surveillance and contact tracing, support development of COVID-19 testing plans, and other related activities related to COVID-19 testing and mitigation.” *Id.*
- **Clinical research.** The Act allocates over \$1 billion “for research and clinical trials related to long-term studies of COVID-19.” *Id.*, p. 1831.
- **Health care reimbursements.** The Act allocates \$3 billion “to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus.” *Id.*, p. 1849.
- **Mental health services.** Over \$4 billion is provided for substance abuse and mental health services. *Id.*, p. 1833. For example, the Act provides that not less than \$50 million of these funds “shall be available for suicide prevention programs,” and \$10 million of such funds “shall be for the National Child Traumatic Stress Network.” *Id.*
- **Child care assistance.** The Act provides an additional \$10 billion as a supplement to state revenue funds for child care assistance for low-income families. *Id.*, p. 1834.
- **Moratorium on evictions and rental assistance.** The Act extends the temporary eviction moratorium through January 31, 2021. *Id.*, p. 2281. It also provides \$25 billion in tax-free rental assistance. *Id.*, p. 2255.

The Act does not provide broad COVID-19 liability shields for businesses, nor funding for state and local governments. While lawmakers debated including such provisions in the Act, they ultimately were not included.

We note that COVID-19 legislation at both the state and federal levels is changing every day, and the information contained in this Briefing is accurate only as of the date set forth above. For questions related to the Act, please contact your Winston relationship attorney.