



KEEPING BUSINESSES AFLOAT: AN OVERVIEW OF THE CONSOLIDATED APPROPRIATIONS ACT, 2021

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On December 27, 2020, the “Consolidated Appropriations Act, 2021” was signed into law. This behemoth 5,593 page act allocated \$1.4 trillion for omnibus federal budget spending and \$900 billion for COVID relief. The act includes the 12 regular appropriations bills for fiscal year 2021, along with supplemental appropriations for coronavirus response and relief. The law itself comprises of 32 divisions, but this article focuses on benefits to business owners from supplemental coronavirus relief appropriations.

Monetary Relief for Businesses

Paycheck Protection Program

The Consolidated Appropriations Act contains a \$325 billion boost to businesses to supplement coronavirus relief provided in March 2020, including approximately \$284 billion in loans through the Paycheck Protection Program (“PPP”). The act also revives and alters the Paycheck Protection Program Flexibility Act of 2020 (“PPP Act”) passed by Congress in June 2020. The PPP Act relaxed requirements on PPP loans that were established by the CARES Act and explained by guidance from the Small Business Administration (“SBA”). The act also extends the deadline to apply for PPP loans to March 31, 2021. The act expands the scope of recipients eligible for first-time PPP loans, including various media outlets, like radio broadcasters and newspapers. Further, some of the hardest-hit businesses are eligible to receive a second PPP loan, with extra relief allocated to the food services and hotels industries. This portion of the act expands the list of expenses that PPP funds may applied towards and makes those expenses covered with PPP funds deductible.

The act provides for relatively modest amounts of PPP loans compared to the first round of coronavirus relief stimulus. While loan amounts for most recipients will match the amount of their initial PPP loans, second wave loans are limited to \$2 million per recipient, while the initial PPP loans in the CARES Act were capped at a much higher \$10 million per recipient. The act, however, allows businesses in certain industries, including food services and hotels, to receive second wave loans of up to three-and-a-half times their monthly average payroll expenses.

Further, the act streamlines the loan forgiveness process for recipients of relatively small PPP loans that amount to \$150,000 or less. To initiate the loan forgiveness procedures, borrowers must submit a signed letter of certification that will be provided by the SBA within 24 days following act's enactment. These certification letters are short, one-page letters that verify the borrowers' eligibility for loans. The letters must provide details relating to the entities' loan including: (1) the number of employees the borrower retained because of the covered loan; (2) the estimated amount of the loan amount spent on payroll costs; and (3) the total loan amount.

Companies that meet certain eligibility criteria are eligible for a second PPP loan under the act. Businesses applying for a second loan must show that the entity, including any affiliates, "employ not more than 300 employees." Sensibly, to be eligible for a second loan, businesses must show they have or will use the full amount of their first PPP loan. Businesses must further show that their revenue decreased by at least 25% in any quarter of 2020, compared to gross receipts from the same quarter in 2019. Entities that submit applications on or after January 1, 2021, may use their gross receipts from the fourth quarter of 2020 in the application process. To be eligible for either round of PPP loans, however, entities must be in operation on or after February 15, 2021.

Notably, the new law also reverses the tax treatment for PPP loans. The CARES Act did not allow for taxable cancellation of indebted income, or a loss of tax attributes. The IRS previously issued guidance indicating that PPP loan proceeds were not tax deductible, even if those proceeds were used for authorized business expenses and could be forgivable. The new law reverses this rule and permits taxpayers whose PPP loans are forgiven to deduct the expenses relating to their loans to the extent they would otherwise qualify as ordinary and necessary business expenses. This rule change applies retroactively, so the PPP loan funds can be tax deductible, regardless of when the loan was forgiven. The tax treatment under the CARES Act is discussed in more detail by Bell Nunnally's Commercial Finance team [here](#).

[Specific Aid to Business Industries](#)

The act distributes grant funds incrementally and prioritizes the hardest-hit businesses first. Only eligible entities that experienced at least a 90% loss in revenue between April 1, 2020 and December 31, 2020, compared to the same period in 2019 are eligible to receive funds within the initial 14 days during which the SBA allocates funds. Next, entities that lost at least 70% in revenue during that applicable time period are eligible to receive funds after the initial 14-day period. Finally, after the first 28 days of issuing grants, the SBA is authorized to distribute grants to any eligible entity.[1]

The new act also allocates \$15 billion in funds for live venues, museums, independent movie theaters and cultural institutions. These “shuttered venue” businesses can apply for grants if they have fewer than 500 employees. Though a “shuttered venue” business may apply for a grant, receiving a grant bars them from receiving PPP funds.

The new act also allocates funds for the heavily impacted transportation industries, and other industries as follows:

- \$20 billion for businesses in low-income communities
- \$15 billion for airlines
- \$2 billion for airports
- \$12 billion for lenders in low-income communities
- \$15 billion in entertainment venues
- \$12 billion to farmers and ranchers
- \$1 billion for Amtrak
- \$14 billion for transit systems
- \$2 billion for the bus industry
- \$10 billion for state highways

Economic Injury Disaster Loans

The new law also includes \$20 billion for Economic Injury Disaster Loans. These Economic Injury Disaster Loans provide federal loan assistance to small businesses or private, non-profit organizations that suffered substantial economic injury as a result of declared disasters, regardless of whether the applicant sustained physical damage. The Economic Injury Disaster Loans are discussed in more detail by Bell Nunnally's Commercial Finance team [here](#).

No Liability Protections for Businesses

The law does not include liability protection for businesses and other entities from COVID-19-related lawsuits for businesses, universities and health care centers. The lack of statutory liability protection will impact the way businesses continue to operate safely. The measures business owners can take to minimize liability due to COVID is discussed in more detail by Bell Nunnally's Litigation team [here](#).

Individual Relief, Paid Sick Relief, and Enhanced Unemployment

In addition to the “business boost,” the act also appropriates \$166 billion for relief payments to individuals. The act extends programs contained in the historic expansion to the national unemployment system

under the \$2 trillion CARES Act in late March 2020, but does not make significant amendments to the leave policy outlined in the Families First Coronavirus Response Act ("FFCRA").

Further, the new act authorizes individuals to receive stimulus checks of \$600. Individuals making up to \$75,000 a year will receive a payment of \$600, while couples making up to \$150,000 will receive \$1,200, in addition to \$600 per child. The new administration has indicated its intention to issue further individual stimulus checks.

Paid Family and Sick Leave

As many employers are aware, the CARES Act allowed eligible employees to receive two weeks of paid sick leave to either: (1) self-quarantine; or (2) seek a COVID-19 diagnosis or preventive care. Employees could also receive two weeks of paid sick leave if the employee was caring for a family member with a COVID-19 diagnosis or to care for a child whose school or daycare was closed in response to concerns about the virus. A violation of this leave policy could result in a violation of the Fair Labor Standards Act ("FLSA"). Under the CARES Act, this policy expired on December 31, 2020.

Under the new act, employers are no longer required to provide FFCRA leave after December 31, 2020, but employers of less than 500 employees may voluntarily decide to provide their employees with such leave until March 31, 2021. Employers who do choose to voluntarily provide paid sick leave will be entitled to receive employer tax credits for leave granted until March 31, 2021.[2]

Enhanced Unemployment

Under the CARES Act, the Pandemic Unemployment Assistance ("PUA") program allowed independent contractors, the self-employed, freelancers and gig workers to qualify for unemployment insurance. This program would have expired on December 31, 2020, but the new act extends the program through March 14, 2021. According to the U.S. Department of Labor, under the new act, the PUA program extends to those weeks of unemployment ending on or before March 14, 2021. In states where the week of unemployment ends on a Sunday, the last payable week of PUA is the week ending in March 14, 2021 (March 13 if weeks of unemployment end on Saturday). If an individual on PUA has not exhausted their benefit eligibility of 50 weeks, the individual may continue receiving benefits through April 5, 2021.

The Federal Pandemic Unemployment Compensation ("FPUC") expired July 31, 2020, but was reauthorized by the act, which modified the FPUC to provide \$300 per week to supplement benefits for weeks of unemployment beginning after December 26, 2020, and ending on or before March 14, 2021.

[1] <https://www.sba.gov/sites/default/files/2020-12/3508-Instructions-PPP%20Loan%20Forgiveness%20Application%20Instructions%20%28Revised%2012.29.2020%29-508.pdf>

[2] Information about claiming refundable tax credits for qualified leave wages can be found on the IRS website (<http://www.irs.gov/coronavirus/new-employer-tax-credits>).

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