

Consolidated Appropriations Act, 2021

A new stimulus bill (the “Consolidated Appropriations Act, 2021”) is expected to be signed into law very soon.

Due to its length, our partners at CBIZ have provided a high-level summary below. Healthcare-specific items, such as an allotted \$42.9 billion in funding for the National Institutes of Health (NIH), a moratorium on 2% Medicare cuts, medical billing transparency and other provisions are included in the bill.

However, the stimulus expansions appear to be along the same lines as the earlier stimulus bills and apply to small businesses broadly. We anticipate additional detail and guidance to be provided over the coming weeks and months. Many small businesses will be impacted or benefited by the provisions listed below:

PPP

PPP2 for Previous PPP recipients: PPP borrowers may apply for a PPP2 loan of up to \$2 million, but must meet the following rules:

- Borrowers must have 300 or fewer employees.
- Borrowers must have used or will use all of their first PPP loan funds.
- Must be able to show at least a 25% decline in gross revenue for any 2020 quarter compared with the same quarter in 2019.

PPP2 for first time PPP borrowers must meet the following rules:

- Businesses with 500 or fewer employees that are eligible for other SBA 7(a) loans.
- Sole proprietors, independent contractors, and eligible self-employed individuals.
- Not-for-profits, including churches.
- Accommodation and food services operations (those with North American Industry Classification System (NAICS) codes starting with 72) with fewer than 300 employees per physical location.
- The bill allows borrowers that returned all or part of a previous PPP loan to reapply for the maximum amount available to them.

PPP2 Loan Terms:

- The costs eligible for loan forgiveness in PPP2 include payroll, rent, covered mortgage interest, and utilities.
- PPP2 also makes the following potentially forgivable:
 - Covered worker protection and facility modification expenditures, including personal protective equipment, to comply with COVID-19 federal health and safety guidelines.
 - Expenditures to suppliers that are essential at the time of purchase to the recipient’s current operations.
 - Covered operating costs such as software and cloud computing services and accounting needs.
- To be eligible for full loan forgiveness, PPP borrowers will have to spend no less than 60% of the funds on payroll over a covered period of either eight or 24 weeks — the same parameters PPP1 had when it stopped accepting applications in August.

- PPP borrowers may receive a loan amount of up to 2.5 times their average monthly payroll costs in the year prior to the loan or the calendar year, the same as with PPP1, but the maximum loan amount has been cut from \$10 million in the first round to the previously mentioned \$2 million maximum. PPP borrowers with NAICS codes starting with 72 (hotels and restaurants) can get up to 3.5 times their average monthly payroll costs, again subject to a \$2 million maximum.

PPP Loan Forgiveness Application/Calculation Simplification:

- For loans of \$150,000 or less the borrower will complete a one-page loan forgiveness application, and the borrower will not be required to submit supporting documentation but will be required to maintain it on file.
- Borrowers no longer will deduct the EIDL advance from their PPP forgiveness amount.

Tax Deductibility of PPP expenses:

- The bill provides that “no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided.” Thus, the PPP loan forgiveness will not be taxable, and the expenses paid with forgiven PPP loan funds will be deductible for tax purposes.

EIDL & SBA Debt Relief Payments

- \$20 billion for new EIDL grants (economic injury disaster loan program) for businesses in low-income communities.
- \$43.5 billion for continued Small Business Administration (SBA) debt relief payments.
- \$15 billion of dedicated funding is set aside for live venues, independent movie theatres, and cultural institutions.

Employee Retention Credit

- Extension of the Employee Retention Tax Credit through July 1, 2021. The bill increases the refundable payroll tax credit from a maximum of \$5,000 to \$14,000 by changing the calculation from 50 percent of wages paid up to \$10,000 to 70 percent of wages paid up to \$10,000 for any quarter. The bill clarifies that businesses will now be able to take the Employee Retention Tax Credit and participate in the PPP (you likely won’t be able to claim the same wages for both which is consistent with previous guidance).

Employer Social Security Payroll/FFCRA Tax Credits

- Extension through March 2021 of the employer-side Social Security payroll tax credits to offset paid sick and family leave related to the coronavirus created in the Families First Coronavirus Response Act.

Business Meal Deduction

- Expansion of the deduction for business meals to 100 percent for 2021 and 2022.

Low-Income Housing Tax Credit

- Increases allocations to states for the Low-Income Housing Tax Credit (LIHTC).

Tax Extenders

- Extension or permanence for tax extenders.

Other Tax Provisions

- Child Tax Credit and Earned Income Tax Credit
 - This provision would use 2019 income to determine an individual's credit eligibility for the 2020 tax year for those in whose credits would be reduced due to lower incomes in 2020.
- Charitable Contributions
 - The above-the-line charitable contribution is extended through 2021 at \$600 for those married filing jointly and \$300 for other filers. Taxpayers will be able to take the standard deduction and deduct up to \$600 in charitable giving when calculating their taxable income. For the 2020 tax year, taxpayers could deduct up to \$300 above-the-line for charitable contributions.
- Flexible Spending Accounts
 - Flexible Savings Account (FSA) balances can be rolled from the 2020 tax year into 2021, and 2021 balances can be rolled into 2022.
- Payroll Tax Deferral
 - For those opting into the White House's employee-side payroll tax deferral, the repayment deadline has been extended from April 2021 to December 31, 2021. Note: this wasn't forgiven in this bill. It is still required to be paid back which may be an issue for both employers and employees who participated.

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