

December 2020

Client Advisory

Consolidated Appropriations Act, 2021 Signed Into Law – Includes Important Covid Relief Programs for Individuals and Businesses

On December 27th, the [Consolidated Appropriations Act, 2021](#) (the “Act”) was signed into law. The Act funds \$2.3 trillion in federal government spending over the next year; \$900 billion of which is specifically directed to pandemic relief for individuals and businesses. The following is a summary of some of the COVID-related funding included in the 3,000+ page Act.

Pandemic Relief for Individuals

In the coming days, certain qualifying individuals will receive \$600 stimulus checks from the United States Treasury. These direct stimulus payments are limited to \$1,200 for married taxpayers filing jointly and an additional \$600 is available for qualified dependents. (While the President has indicated a desire for \$2,000 stimulus checks and the House has approved a bill increasing stimulus checks to that amount, its fate in the Senate is uncertain.) In addition to stimulus checks, the Act funds numerous programs including:

- \$300 supplemental jobless benefits (“Enhanced UI”) for workers – including those self-employed and in the “gig economy” – displaced due to the pandemic.
- \$25 billion to states to administer rental assistance programs and housing stability services (with a priority toward low-income households and households with unemployed individuals).
- A 15% increase to the Supplemental Nutrition Assistance Program (“SNAP”) benefits.

Pandemic Relief for Businesses – Paycheck Protection Program and Second Draw Paycheck Protection Program Loans

Title III of the Act (“Continuing the Paycheck Protection Program and other Small Business Support”) provides \$325 billion in assistance for small businesses impacted by Covid and, of that, \$284 billion is being made available to fund Paycheck Protection Program (“PPP”) loans, including new “second draw” loans (“Second Draw PPP Loans”) as detailed below. The Act makes numerous material changes to the PPP including:

- Who can receive PPP loans – The Act expands eligibility for the PPP and Second Draw PPP Loans to 501(c)(6) entities and “destination marketing organizations” having less than 300 employees and not receiving more than 15% of their receipts from lobbying activities, as well as local newspapers, TV and radio stations.
- What borrowers can use the money for – The Act expands the permitted (and potentially forgivable) uses of loan proceeds. Previously, PPP borrowers were limited by the CARES Act and Paycheck Protection Program Flexibility Act to utilizing PPP loan proceeds to fund payroll costs and certain qualified expenses such as utilities and rent payments. Borrowers may now use loan proceeds for expenses relating to the following categories (although it should be noted that 60% of proceeds must still be used toward payroll costs to maximize loan forgiveness):
 - Operational Expenditures – costs incurred to deploy technology, accounting and human resources to support the operations of the entity, including the expansion of remote workplace operations.
 - Property Damage – expenditures and repairs related to property damage and vandalism due to public disturbances not otherwise covered by insurance.
 - Supplier Costs – expenditures for contractually purchased goods that are essential to the current operations of the borrower.
 - Worker Protection – items such as personal protective equipment necessary to prevent the spread of the COVID virus and comply with health and safety guidelines.
 - Payroll Costs – employer-provided group insurance coverages are now specifically included as eligible costs.
- When borrowers can use the money – The Act allows PPP borrowers to select a covered loan period between 8-24 weeks following loan origination.
- How to obtain loan forgiveness – Title III of the

Act significantly eases the loan forgiveness process by allowing borrowers who received less than \$150,000 to submit a one-page certification in support of loan forgiveness. Loans over \$150,000 would remain subject to the current loan forgiveness application process and audit requirements. Nothing in Title III or elsewhere in the Act addresses the loan forgiveness questionnaires required by the SBA for loans in excess of \$2 million.

- How to maximize loan forgiveness – \$10,000 Economic Injury Disaster Loans will no longer be deducted from an applicant's loan forgiveness amount.

With respect to the new Second Draw PPP Loans, qualifying business entities that have used the full amount of their initial PPP loan for permitted purposes under the CARES Act and Paycheck Protection Program Flexibility Act may apply for a subsequent additional loan. In order to do so, they must show a 25% (or greater) decline in revenues for any quarter in 2020 when compared to the same quarter in 2019. The criteria for these loans are generally more restrictive than the original PPP. Some important items to note regarding these new Second Draw PPP Loans:

- Eligible borrowers are limited to those entities having less than 300 full-time employees that were in business prior to February 15, 2020 and were eligible for the initial round of PPP loans.
- The maximum amount of a Second Draw PPP Loan is \$2 million (but not more than \$10 million when combined with the initial PPP loan). However, individual borrower loan amounts are again capped at 2.5 times the average total monthly payroll costs for the one-year period prior to the date the loan is made or calendar year 2019 (at the election of the borrower).
- Borrowers must wait 90 days between spending their initial PPP loan and receiving Second Draw PPP Loan proceeds.
- Second Draw PPP Loan recipients are eligible for loan forgiveness should they utilize loan proceeds for the expanded list of eligible PPP loan purposes set forth above. To qualify for full forgiveness, however, at least 60% of the loan must be used to fund payroll expenses.

In addition to providing direct appropriations for the PPP, \$20 billion has been allocated under the Act

to fund additional Economic Impact Disaster loans administered by the Small Business Administration.

The Act also provides industry-specific pandemic relief funding including:

- Grants totaling \$15 billion for shuttered entertainment venues (movie theaters, concert halls, museums etc.) are being made available to operators, promoters, producers who demonstrate a 25% reduction in revenues.
- \$16 billion is being made available for passenger air carriers and aviation contractors.
- Certain eligible providers of transportation services (including bus and ferry operators) can benefit from \$2 billion in assistance.
- \$11.2 billion is being set aside to support agricultural producers, growers and processors.

Of note, the Act does not provide direct financial relief to states, counties or towns, but it does extend the deadline by which certain monies made available through the initial CARES Act must be spent.

As stated above, the Act is 3,000+ pages and is designed to fund federal government operations throughout the next year while providing relief to individuals and business impacted by the Covid-19 pandemic. In the coming days and weeks, Archer attorneys will continue to evaluate the bill and provide updates on programs that may benefit our clients.

Should you have any questions in the meantime, please reach out to your Archer attorney or any member of Archer's [COVID-19 Task Force](#).

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