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Congress Passes New Coronavirus Relief for Businesses, Nonprofits, and Families

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Within a few hours after its introduction on December 21, 2020 (and after months of partisan wrangling), the House of Representatives and the Senate overwhelmingly passed the first significant stimulus and relief legislation since the CARES Act was enacted in late March. The bill—dubbed the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the “Economic Aid Act”)—is expected to be signed into law by President Trump shortly.

The Economic Aid Act:

- **Reopens the Paycheck Protection Plan (“PPP”) for new loans.** The PPP program had expired for new loans in August.
- **Appropriates new PPP funding.** Appropriates \$284.5 billion of funding for new PPP loans.
- **Adds additional types of entities eligible for PPP loans.** In addition to the types of business and nonprofit entities previously eligible for PPP loans, the following may now borrow PPP loans:
 - Broadcast news stations with 500 or fewer employees
 - Newspapers with 500 or fewer employees
 - Public broadcasting services with 500 or fewer employees
 - 501(c)(6) not-for-profit organizations (such as business leagues, chambers of commerce, real estate boards, and boards of trades, but excluding professional sports leagues or promoters of political activities) with 300 or fewer employees and for which lobbying activities do not constitute more than 15% of their activities or produce more than 15% of their receipts and for which lobbying activities did not exceed \$1 million during the tax year ended before February 15, 2020.
 - “Destination marketing” nonprofit entities (such as tourism boards and certain live event providers) with 300 or fewer employees and for which lobbying activities do not constitute more than 15% of their activities or produce more than 15% of their receipts and for which lobbying activities did not exceed \$1 million during the tax year ended before February 15, 2020.

- Housing cooperatives with 300 or fewer employees
- Entities which are debtors in a bankruptcy proceeding, if the bankruptcy court approves. The PPP loan is given the priority of an administrative expense claim in bankruptcy.
- **Permits some previous or existing PPP borrowers to take a second PPP loan.** A previous borrower of a PPP loan can apply for and receive another forgivable PPP loan **if**:
 - It has 300 or fewer employees.
 - It can demonstrate a loss of at least 25% of revenue during any of the first three calendar quarters of 2020 compared with revenue during the same calendar quarter in 2019. (Slightly different rules apply for applicants which were not operating during one or all quarters in 2019.)
 - It has used (or will use) all proceeds of the prior PPP loan before receiving the second PPP loan.
 - The maximum amount of the second PPP loan is limited to the lesser of \$2 million or 2.5 times the average monthly payroll for the twelve-month period preceding the loan, or during calendar year 2019. Businesses with a NAICS code beginning with 72 (accommodations and food services) can receive up to 3.5 times the average monthly payroll or \$2 million, whichever is less.
 - As with the earlier PPP tranche, to maximize loan forgiveness, a borrower must spend at least 60% of loan proceeds on eligible payroll costs.
- **Excludes some entities from PPP loan eligibility.** The following types of entities may not take out new PPP loans:
 - Entities (other than non-profit entities) described in 13 CFR § 120.110, including entities engaged in the business of lending, many passive real estate investors, life insurance companies, businesses located outside the U.S., pyramid sale distribution plans, businesses deriving more than 1/3 of gross annual revenue from legal gambling activities, private clubs and businesses which limit the number of memberships for reasons other than capacity, government-owned businesses (other than Tribal entities), certain religious organizations, businesses associated with an indictee or convict of a felony or crime of moral turpitude, businesses which present live performances or sell products or services of a prurient sexual nature, most businesses which have previously defaulted on a federal guaranteed loan, businesses primarily engaged in political activity or lobbying activities, and speculative businesses. (Through rulemaking, the SBA had previously eased the restrictions for casinos and religious organizations, though it is not clear whether the Economic Aid Act overrides such rules.)
 - Publicly traded companies

- Lobbying entities
- Entities organized in or with significant operations in China or Hong Kong
- Companies with board members who are residents of China
- **Adds more ways for existing and new PPP borrowers to spend PPP loan proceeds.** Permits PPP borrowers to use proceeds of new and existing PPP loans for four additional types of eligible covered expenses:
 - Covered operations expenditures: Costs for software and cloud computing;
 - Covered property damage costs: Costs related to property damage and vandalism or looting which resulted from public disturbances during 2020 (to the extent not covered by insurance or other compensation);
 - Covered supplier costs: Payments to a vendor for goods that are:
 - (A) essential to the borrower's operations when paid; and
 - (B) made pursuant to a contract, order or purchase order (i) entered into before the funding of the PPP loan, or (ii) with respect to perishable goods, entered into before or after the funding of the PPP loan; and
 - Covered worker protection expenditures: Operating or capital expenditures made on or after March 1, 2020 and during the COVID-19 pandemic for workers' personal protective equipment (PPE) and for other improvements to make workplaces safer according to HHS, CDC, OSHA or state or local guidance and best practices.

These expenditures can include, among other things, the following:

 - Surgical masks, N95 filtering facepiece respirators, and nitrile gloves;
 - Drive-through window facilities;
 - Indoor, outdoor, or combined air ventilation or filtration systems;
 - Sneeze-guards and other physical barriers;
 - Expansion of additional indoor, outdoor, or combined business space; and
 - Establishment of onsite or offsite health screening capabilities.
- **Simplifies loan forgiveness for smaller loan amounts.** Borrowers who obtain PPP loans less than \$150,000 can receive forgiveness by completing a less complicated short form certification.
- **Overrides previous Treasury Department tax treatment guidance.** Reversing several earlier pronouncements by the

Treasury Department, the Economic Aid Act allows permitted expenses paid with forgiven PPP loans to be deductible for federal income tax purposes.

The Economic Aid Act is a relatively small part of a bill which will fund the federal government for its fiscal year ending September 30, 2021: the Consolidated Appropriations Act, 2021. In addition to the Economic Aid Act, the Consolidated Appropriations Act contains, among other things:

- \$20 billion in funding for SBA Economic Injury Disaster grants
- \$15 billion in grants to live entertainment venues, independent movie theaters and cultural institutions
- \$45 billion in relief for airlines and certain other transportation businesses
- Direct economic impact payments of \$600 for individuals earning up to \$75,000 per year and \$1,200 for married couples earning up to \$150,000 per year, plus \$600 for each dependent child
- Supplemental federal unemployment benefits of \$300 per week, through March 14, 2021, for workers then receiving unemployment benefits
- \$25 billion in rental assistance, to be distributed through state and local governments
- Extension of the Center for Disease Control and Prevention's existing eviction moratorium through January 31, 2021

The price tag of the stimulus provisions under the Consolidated Appropriations Act—including the business relief under the Economic Aid Act—is estimated to exceed \$900 billion. At 5,593 pages, the Consolidated Appropriations Act is the fifth longest bill passed by Congress in the history of the United States, according to an analysis by govtrack.us.