

COVID-19 NEWS OF INTEREST

# Congress Passes \$900 Billion Stimulus Package

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## AUTHORS

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On Monday, December 21, 2020, the House and Senate voted to pass a new \$900 billion stimulus package, the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (the “Act”), which is a part of the larger Consolidated Appropriations Act, 2021. The Act was then signed into law by the President on Sunday, December 27, 2020.

In addition to the much-discussed direct stimulus checks and unemployment benefits, the bill will also renew several of the small business aid programs introduced in the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) passed in March as well as create some new programs. Notably, in relation to direct support for businesses, the Act includes:

- \$325 billion in aid to small businesses including the Paycheck Protection Program (“PPP”), Paycheck Protection Program Second Draw (“Second Draw”), renewing the Economic Injury Disaster Loan Advances (“EIDL Advance”); emergency grants to venues, and other small business relief and program expenses;
- \$45 billion on transportation-related programs including payroll support for airline workers, infrastructure grants, state highway funding, grants to services like buses and ferries, airport grants, and Amtrak funding; and
- \$30 billion in tax cuts including extending and expanding the employee retention tax credit and clarifying that businesses can deduct costs associated with SBA 7A programs.

Notably absent from the Act is the hotly contested liability shield for businesses, which could have provided businesses with immunity from any COVID-19-related lawsuits under certain conditions. Nor does the Act contain any funding for state and local governments. It is expected that Congress will revisit both potential policies when it returns from recess in January 2021.

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While the Act provides a sprawling stimulus package with funds covering several areas hard hit by the COVID-19 pandemic, this alert will focus on providing an overview of the provisions related to small business aid, transportation aid, the termination of Federal Reserve authority, and key tax breaks included in the Act.

### I. Small Business Aid

The Act provides for \$325 billion in aid to small businesses spread across multiple programs, the most notable of which are the PPP, the Second Draw, the resumption of EIDL Advances, and the grants for shuttered venue operators.

#### a. PPP and Second Draw Loans

The Act provides \$248 billion to the Small Business Administration (“SBA”) to restart the PPP and create the Second Draw. The additional funds added to the PPP allow small businesses who missed out on the PPP’s initial run or now find themselves needing the relief provided by PPP funds to apply for a PPP loan, while the Second Draw allows businesses who have already received a PPP loan and have used up or will use up their PPP loan prior to the disbursement of a Second Draw loan.

While the Second Draw mirrors the PPP in several respects, businesses hoping to receive additional funds under the Second Draw should ensure they meet the program’s stricter eligibility requirements. Firstly, businesses or organizations that were not in operation on February 15, 2020 will not be eligible for a first-time PPP loan. Additionally, the Second Draw is limited to businesses that employ **300 or fewer employees** and had gross receipts during the first, second, third, or fourth quarter in 2020 demonstrating at least a 25% reduction from the businesses’ gross receipts in the same quarter of 2019. Furthermore, the maximum loan amount for a Second Draw loan is \$2 million as opposed to the \$10 million permitted under the PPP.

The Second Draw regulations provide additional relief to NAICS 72 businesses, primarily restaurants and hotels, by increasing the calculation for the maximum amount of Second Draw loan funds they are eligible for to 3.5 times the average total monthly payment for payroll costs incurred or paid during the one-year period before the date on which the loan is made, or calendar year 2019. This amount is still capped at \$2 million for Second Draw loans and is in contrast to the 2.5 multiplier, which applies to the PPP and non-NAICS 72 businesses.

Businesses hoping to apply for a PPP loan or a Second Draw loan must carefully review the requirements to ensure that they are eligible for these funds and ensure they are up to date on the latest requirements and restrictions for both the PPP and Second Draw loan programs. We have also published a client alert titled [Congress Renews the Paycheck Protection Program and Provides Second Draw for Certain Eligible Businesses](#), which examines this section of the Act in more detail.

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### **b. EIDL Advances**

In addition to providing funds to restart the PPP, the Act also provides \$20 billion to the SBA to resume providing EIDL Advances to businesses that apply for EIDL loans. However, there are a few key changes to the program including the requirement of a determination that the applicant is eligible to receive an EIDL loan and increasing the waiting period for the disbursement of the advance from three to 21 days from the date the request is received. Additionally, the amount of an EIDL Advance is no longer deducted from the total loan forgiveness a business is eligible for under a PPP or Second Draw loan.

### **c. Grants for Shuttered Venues**

Section 324 of the Act provides \$15 billion in grants for live venue operators or promoters, theatrical producers, live performing arts organization operators, relevant museum operators, motion picture theatre operators, or talent representatives meeting specified requirements. An eligible recipient must have been operational prior to February 19, 2020 and experienced at least a 25% reduction in gross revenue between the recipient's choice of the same quarter of 2019 and 2020. Initial grants are capped at \$10 million and the program allows for supplemental grants capped at 50% the amount of the initial grant. These grants do not need to be repaid.

## **II. Transportation**

The Act provides 45 billion in transportation aid. This aid includes \$15 billion to provide payroll support to airlines, which will be made no later than 10 days after the enactment of the Act and \$2 billion for airports overseen by the Federal Aviation Administration.

The Act also provides a total of \$14 billion for transit infrastructure to aid public transportation service providers that experienced closures and significant reductions in ridership during the pandemic, \$10 billion for state highways spread across a number of different programs with funds earmarked for specific projects, and \$1 billion for Amtrak, overseen by the Federal Transit Administration, the Federal Highway Administration and the National Railroad Passenger Corporation, respectively.

## **III. Termination of Federal Reserve Authority**

The Act also severely curtails the Federal Reserve's ability to operate, modify, or otherwise administer the programs or facilities that it established under section 13(3) of the Federal Reserve Act in response to the COVID-19 pandemic. Specifically, other than a loan submitted on or before December 14, 2020 to the Main Street Lending Program's lender portal for the sale of a participation interest in a loan that is purchased on or before January 8, 2021, the Federal Reserve cannot make any loan, purchase any obligation, asset, security, or other interest, or make any extension of credit through any aforementioned program or facility after December 31, 2020. However, the Fed is permitted to modify or restructure a

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loan, obligation, asset, security, other interest, or extension of credit made or purchased through any such program or facility pursuant to a restrictive set of specified conditions.

### **IV. Tax Credits**

In addition to providing the funds to restart the PPP and providing grants to shuttered venues, the Act also clarifies that businesses will be permitted to deduct expenses incurred with cash from PPP loans and extends the employee retention and rehiring tax credit.

### **V. Conclusion**

The stimulus package contained in the Act is a sprawling relief effort aimed at protecting the economy from further harm. While the Act addresses several issues, areas such as state and local government funding ended up on the cutting floor due to the intense negotiation process and the need to quickly pass the stimulus package that is attached to the 2021 Consolidated Appropriations Act. We can expect additional rounds of negotiations and bills addressing the missing issues to begin floating around the Hill when Congress returns in the new year. Additionally, as with the CARES Act, we can expect a flurry of interim final rules and guidance documents from the government agencies tasked with implementing the provisions of, and disbursing the funds provided by, the Act.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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