

## New COVID-19 Relief Package Signed Into Law

On December 21, 2020, Congress passed the Consolidated Appropriations Act of 2021 (HR 133) (the “CAA”) with significant bipartisan support in Congress. President Trump signed the CAA into law on December 27, 2020. It combines \$900 billion in stimulus relief for those affected by the COVID-19 pandemic in the United States with a \$1.4 trillion omnibus spending bill for the 2021 federal fiscal year.

The CAA is over 2,000 pages long and it addresses a wide variety of topics. Reviewing the bill in its entirety will take some time. As such, this Update is not intended to serve as a complete analysis of the CAA. Rather, this summary addresses some of the more relevant provisions for financial institutions.

**For Further Information.** Aldrich & Bonnefin, PLC will provide a discussion (and a detailed Handout) of the CAA at the January 15, 2021 BCG Monthly Telephone Briefing for BCG Members.

**Paycheck Protection Program (“PPP”) and Pre-CARES Act SBA Loan Protections.** The CAA clarifies that business expenses which are normally tax deductible are still deductible even if PPP loans were used to cover those expenses. Division N, Title II, Section 276. Title III of Division N is entitled “Continuing the [PPP] and Other Small Business Support” and includes the following provisions.

- Extension of PPP Loan Applications. The CAA provides an additional nearly \$285 billion in funding for PPP loans and will extend the deadline to apply for a PPP loan to March 31, 2021. Section 323.
- “Hold Harmless”: No Enforcement Actions Against PPP Lenders. Section 305 provides that an enforcement action may not be brought against a lender related to its PPP lending activities, so long as the lender: (1) relies in good faith on an applicant’s PPP loan certification; (2) originates or forgives the loan in good faith; and (3) complies with all other applicable relevant statutory and regulatory requirements with respect to the PPP loan.
- Forgivable Expenses Expansion. Section 304 expands the categories of expenses to which PPP funds may be applied. Originally, the CARES Act had limited coverage of PPP loans to payroll costs, mortgage and rental payments, and utility expenses. The CAA has expanded the categories of forgivable expenses to include business software, cloud computing services, supplier costs, certain costs to address property damage, and costs for purchasing personal protective equipment that businesses need in order to operate safely.
- Selection of Covered Period for Loan Forgiveness. Section 306 allows borrowers to choose a PPP loan “covered period” of 8 or 24 weeks, no matter when the borrower received the PPP loan. (Under the CARES Act, the covered period was 8 weeks. In June 2020, Congress

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changed it to the earlier of a 24-week period or December 31, 2020; however, pre-June 5, 2020 PPP loans could choose an 8-week covered period. 15 USC 9005(a)(3) and (l).) The “covered period” is the amount of time that the borrower has to spend PPP loan proceeds on qualified expenses for purposes of PPP loan forgiveness and starts the day the PPP loan is originated.

- Simplified Forgiveness Application. For PPP loans of \$150,000 or less, Section 307 simplifies the loan forgiveness process. Section 307 requires the SBA Administrator to create a certification letter within 24 days following the CAA’s enactment, which will be January 20, 2021. To initiate the loan forgiveness process, an eligible PPP borrower must provide this certification letter to its lender, certifying the borrower’s eligibility for PPP loan forgiveness. The letter must include certain information pertaining to the borrower’s loan, such as: (i) the number of employees the borrower was able to retain as a result of the PPP loan; (ii) the estimated amount of the PPP loan that the borrower actually spent on payroll costs; and (iii) the total loan value.
- Expanded PPP Coverage and New Limits. The CAA expands the categories of businesses that may apply for PPP loans. For example, 501(c)(6) organizations (which are non-profit business associations whose purpose is to promote business activity, such as chambers of commerce), housing cooperatives, newspapers, broadcasting stations, and destination marketing organizations (which are businesses that promote a location as an attractive travel destination) may now apply for PPP loans. See Sections 316, 317, and 318. In contrast, the CAA specifically prohibits publicly traded companies from receiving PPP funds, and also requires businesses to have been in operation as of February 15, 2020 to qualify for a new PPP loan. See Sections 310, 342.
- New Tiered Fee Structure for First-time PPP Loans. Section 340 establishes the following new tiered structure for processing the first PPP loan a borrower receives (refer to the next bullet for second PPP loans): (i) for loans of \$50,000 or less, the reimbursement amount is the lesser of 50 percent of the loan principal or \$2,500; (ii) for loans greater than \$50,000 and up to \$350,000, the reimbursement amount is five percent of the loan amount; (iii) for loans greater than \$350,000 and up to \$2,00,000, the reimbursement amount is three percent of the loan amount; and (iv) for loans greater than \$2,000,000, the reimbursement amount is one percent of the loan amount.
- Second PPP Loans. Under Section 311, certain businesses that received a PPP loan under the CARES Act may apply for a second PPP loan. The second PPP loan amount is capped at \$2 million. To qualify for a second PPP loan, these businesses must meet certain eligibility criteria. For example, the business must: (i) employ no more than 300 employees; (ii) have used or will use the full amount of their original PPP loan; and (iii) have experienced at least a 25 percent loss of revenue during any quarter of 2020 as compared to that same quarter in 2019. Section 311 excludes certain entities from eligibility, including certain political lobbying groups, entities affiliated with entities in the People’s Republic of China, and entities registered under the Foreign Agents Registration Act. Section 311 also provides for a tiered fee structure, under which the SBA Administrator may reimburse a lender as follows: (i) if the loan amount is \$50,000 or less, the lender processing fee will be the lesser of 50 percent of the principal amount or \$2,500; (ii) if the loan amount is between \$50,000 and \$350,000, the lender fee will be five percent; (iii) if the loan amount is \$350,000 or more, the lender fee will be three percent.
- Bankruptcy Not a Roadblock to PPP Loan. Section 320 provides that a business in bankruptcy may apply for a PPP loan.
- Extension of the SBA Debt Relief Program. Section 1112 of the CARES Act required the SBA to make the principal and interest payments on Section 7(a) (non-PPP) SBA loans in regular servicing status, and also provided that any such payments made by the SBA would relieve the

Section 7(a) borrower of the obligation to pay that amount. Section 325 of the CAA grants the SBA the authority to continue making the loan payments on Section 7(a) (non-PPP loans) SBA loans through March 31, 2021. Further, beginning in February 2021, the SBA will provide qualifying Section 7(a) borrowers with an additional three months of principal and interest, up to \$9,000 per borrower per month. After this three-month period, the SBA will provide certain “hard[est] hit” borrowers (primarily small businesses or businesses most significantly impacted by the COVID-19 pandemic such as concert venues) with an additional five months of principal and interest payments, up to \$9,000 per borrower per month.

- **Additional Enhancements for SBA Loans.** Sections 326 and 327 provide additional enhancements for the SBA Section 7(a) loan program. For example, Section 326 increases the guarantee amount for Section 7(a) loans to 90 percent until October 1, 2021. After that: (i) for loans with a balance of \$150,000 or less, the guarantee amount will be 85 percent; and (ii) for loans with a balance greater than \$150,000, the guarantee amount will be 75 percent. Section 327 temporarily waives borrower and lender fees for SBA Section 7(a) and Section 504 loans beginning on December 27, 2020 (the date of the CAA’s enactment), through September 30, 2021.
- **Economic Injury Disaster Loan (EIDL) Program.** Section 331 restarts and extends the SBA’s EIDL grant program through December 31, 2021. The EIDL grant program is intended to provide aid to small businesses in low-income areas. Eligible employers are entitled to receive a \$10,000 SBA grant if they meet the following criteria: (i) are located in a low-income area as defined by the Internal Revenue Code; (ii) employ no more than 300 employees; and (ii) have suffered an economic loss of more than 30 percent. Section 331 also retroactively removes the CARES Act’s requirement that EIDL grants be deducted from the calculation of any PPP loan forgiveness amount.

**Main Street Lending Program Ended December 31, 2020.** The CAA did not extend the Main Street Lending Program or other CARES Act loan aid that was administered by the Federal Reserve. Specifically, Section 1005 terminates the Federal Reserve’s CARES Act lending programs, including the Main Street Lending Program. Pursuant to Section 1005, beginning January 1, 2021, the Federal Reserve is no longer able to modify any of its CARES Act lending programs. However, the CAA permits the Federal Reserve to modify individual loans as needed for purposes of loss mitigation if a borrower defaults. Section 1005 provides that applications for Main Street Lending Program loans that were submitted by December 14, 2020, and which the Federal Reserve purchases by January 8, 2021 are still valid.

**Troubled Debt Restructuring.** Section 541 extends the CARES Act’s suspension of certain accounting and reporting requirements for certain “Troubled Debt Restructurings” as set forth in CARES Act Section 4013 through January 1, 2022. Section 4013 of the CARES Act was set to expire December 31, 2020. This extension is intended to continue to ease financial institutions’ ability to modify commercial loan terms to accommodate troubled borrowers.

**Current Expected Credit Loss Relief (CECL).** Section 540 extends the optional delay in CECL accounting set forth in CARES Act Section 4014 through January 1, 2022. Section 4014 of the CARES Act was set to expire December 31, 2020.

**Community Development Financial Institutions (CDFIs) and Minority Lending Institutions (MLIs).** The CAA provides for additional short-term funding of certain CDFIs and MLIs, which are financial institutions that often make loans and grants to businesses that may not be able to obtain funding from traditional financial institutions. Some of the funding earmarked by the CAA for this purpose is intended for use to “expand lending, grant making, or investment activity in low- or

moderate-income minority communities and to minorities that have significant unmet capital needs.”  
Section 523.

**Eviction Moratorium Extended.** Section 502 extends the CDC’s current residential eviction moratorium (as set forth in 85 FR 55292) through January 31, 2021. (Note that the terms “evict” and “eviction” do not include a foreclosure on a home mortgage. 85 FR at 55293.)

**COVID-19 Consumer Protection Act.** Title XIV of the CAA contains the “COVID-19 Consumer Protection Act.” Title XIV makes it unlawful for any person, partnership, or corporation to engage in a deceptive act or practice that would be unlawful under Section 5(a) of the FTC Act (UDAP) that is associated with: (i) the treatment, cure, prevention, mitigation, or diagnosis of COVID-19; or (ii) a government benefit related to COVID-19. Although not specific to financial institutions, Title XIV makes it clear that UDAPs related to COVID-19 may be subject to heightened scrutiny. Furthermore, it is possible that PPP lending could be seen as a “government benefit related to COVID-19,” and as such institutions are encouraged to ensure that any activities related to PPP lending are scrutinized for UDAP compliance.

**New Economic Impact Payments (EIPs) Exempt from Garnishment.** Unlike the prior economic impact payments provided under the CARES Act, the new EIPs are completely exempt from garnishment or levy by private creditors. The term “garnishment order” is defined very broadly to include a writ, order, notice, summons, judgment, levy or similar instruction issued by a court, state or local agency or a child support enforcement agency. It does not appear, however, that the exemption would apply to an IRS levy. Refer to Section 272 of the “COVID-related Tax Relief Act of 2020.”

Under the CAA, EIPs are to be treated similarly to the exemptions provided under the current federal garnishment regulation (31 CFR Part 212) which provides an automatic exemption for directly deposited government payments from the Social Security Administration, Department of Veterans Affairs, Railroad Retirement Board and Office of Personnel Management. Financial institutions should follow the same federal benefits exemption procedures for the new EIPs exemption, such as performing an account review within two business days following receipt of a garnishment and establishing a protected amount during the two-calendar-month lookback period.

Any EIPs paid via ACH by the U.S. Treasury are required to use a unique identifier that is reasonably sufficient to allow a financial institution to identify the payment as an EIP. However, for those payments that are either not encoded with a unique identifier or otherwise deposited by check, at the request of an account holder, the financial institution is required to treat the deposit as exempt from the garnishment.

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**Aldrich & Bonnefin, PLC encourages BCG Members to join us for the January 15, 2021 Monthly Telephone Briefing, during which we will discuss the CAA in greater detail. To join Bankers’ Compliance Group or for information regarding BCG membership, contact us at [info@bankerscompliancegroup.com](mailto:info@bankerscompliancegroup.com).**