Coronavirus Emergency Response and Relief: Summary

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On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021, which includes long-awaited measures in response to the COVID-19 pandemic and resulting economic crisis. The new law follows measures enacted earlier this year, including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Families First Coronavirus Response Act and the Paycheck Protection Program Flexibility Act of 2020.

The latest COVID relief legislation was enacted as part of Congress' fiscal year (FY) 2021 appropriations bill, and includes provisions impacting a wide variety of stakeholders. The following chart highlights some noteworthy provisions. Please note, however, that the situation surrounding COVID-19 is evolving and we encourage contacting your Holland & Knight lawyer for timely advice and the latest developments.

<table>
<tr><th colspan="2">Key Provisions of the Consolidated Appropriations Act</th></tr>
<tr><td>Paycheck Protection Program (PPP) ($284 billion)</td><td>

- Provides $284 billion for the Small Business Administration (SBA) Paycheck Protection Program (PPP), and extends the PPP through March 31, 2021. PPP changes include:
  - Opportunity for a second PPP forgivable loan of up to $2 million for small businesses and nonprofits with 300 or fewer employees that have already used their first draw PPP loan proceeds and can demonstrate a loss of 25% of gross receipts in any quarter during 2020 compared to the same quarter in 2019.
  - Requires the SBA Administrator to establish regulations implementing the new law no later than 10 days after enactment of this title (i.e. January 6, 2021).
  - Expands PPP eligibility to certain critical access hospitals, local newspapers and TV and radio broadcasters, housing cooperatives, and Section 501(c)(6) nonprofits, including tourism promotion organizations and local chambers of commerce.
  - Allows small businesses in the restaurant and hospitality industries to receive second draw loans totaling 3.5 times average total monthly payroll costs (rather than 2.5 times for all other businesses).
  - Waivers of affiliation rules for restaurants and hospitality companies that applied during initial PPP loans apply to a second loan.
  - Expands forgivable uses of PPP loan proceeds to include covered: operations expenditures, property damage costs, supplier costs, and worker protection expenditures. The

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	60/40 cost allocation between payroll and non-payroll costs in order to receive full forgiveness will continue to apply. o Allows the borrower to choose a covered period for the loan ending at the point between 8 and 24 weeks after origination. o Allows borrowers to deduct business expenses paid for with the proceeds of PPP loans. o Simplifies the loan forgiveness process for borrowers with PPP loans of $150,000 and streamlines the process for loans under $2 million. o Repeals a CARES Act provision requiring borrowers to deduct Economic Injury Disaster Loan (EIDL) advance from PPP loan amount. o Entities that receive a grant under the Shuttered Venue Operator Grant program (see below) are ineligible for a PPP loan. o Includes certain set-asides that may be adjusted by the SBA Administrator after 25 days: ▪ $15 billion for PPP loans (initial and second draw) issued by community financial institutions, including community development financial institutions (CDFIs) and minority depository intuitions (MDIs); ▪ $15 billion for PPP loans (initial and second draw) issued by certain small depository institutions. ▪ $35 billion for first-time borrowers, $15 billion of which for smaller, first-time borrowers with 10 or fewer employees, or loans less than $250,000 in low-income areas; ▪ $25 billion for second draw PPP loans for smaller borrowers with 10 or fewer employees, or loans less than $250,000 in low-income areas.
Economic Injury Disaster Loan (EIDL) Grant Program ($20 billion)	• Extends covered period for Emergency EIDL grants through December 31, 2021. • Allows more flexibility for the SBA to verify that Emergency EIDL grant applicants have submitted accurate information. • Extends time for SBA to approve and disburse Emergency EIDL grants from 3 to 21 days. • Repeals a CARES Act provision requiring borrowers to deduct EIDL advance grant from PPP loan amount. • $20 billion for Targeted EIDL Advance: o Makes entities in low-income communities that received an EIDL Advance under Section 1110 of the CARES Act eligible to receive an amount equal to the difference of what the entity received under the CARES Act and $10,000. o Provides $10,000 grants to eligible applicants in low-income communities that did not secure grants because funding had run out. o Includes $20 million for the SBA Inspector General.

Live Venues Grants ($15 billion)	• Provides $15 billion to the SBA to issue grants to eligible live venue operators or promoters, theatrical producers, or live performing arts organization operators, nonprofit museum operators (as defined in 20 U.S.C. 9172), a motion picture theatre operator, or a talent representative. • Eligible entities must have been fully operational on February 29, 2020, have not received a PPP loan, and had gross revenue reduction of at least 25% as compared to gross revenue during the same quarter(s) in 2019. • If an eligible entity owns multiple business entities, each business eligible entity that also meets the definition of an eligible entity is treated as an independent, non-affiliated entity for the grant program. • Recipients can use the funds for eligible payroll costs, rent obligations, utility payments, payments to independent contractors, advertising, state and local taxes and fees, production transportation, certain mortgage and debt payments, maintenance expenses, insurance costs, and administrative costs. o They cannot use the grants to purchase real estate, repay loans issued after February 15, 2020, invest or re-lend funds, donations to political parties or candidates, or any other use as may be prohibited by the Administrator. • Initial grants would be the lesser of 45% of an entity's gross revenue in 2019 or $10 million. At least $2 billion in initial grant funds would be set aside for entities with 50 or fewer employees. They would be prioritized at the outset for entities with significant revenue losses. Initial grants would cover costs incurred from March 1, 2020, through Dec. 31, 2021 and must be expended within one year of disbursement. Not more than five business entities that would be considered affiliates may receive an initial grant. • Entities with recent quarterly revenue losses of at least 30% as of April 1, 2021, could qualify for supplemental grants, which would be half the amount of initial grants. They could cover costs incurred through June 30, 2022, and must be expended within 18 months of disbursement. • Entities cannot receive more than $10 million in total grant funds. • Ineligible entities include those that are publicly traded, operate venues in multiple countries or more than 10 states, employ more than 500 workers, receive more than 10% of their gross revenue from federal funding, or hold performances of a "prurient sexual nature," with some exceptions.

Airline Payroll Support Program (PSP) ($15 billion)	• Provides an additional financial assistance of $15 billion for passenger air carriers, and $1 billion for contractors, for the continued payment of wages, salaries, and benefits.
	• To be eligible for funds, air carriers and contractors are required to:
	    o refrain from conducting involuntary furloughs or reducing pay rates and benefits until March 31, 2021, or, in the case of contractors, the date on which the contractor expends the financial assistance, whichever is later;
	    o refrain from conducting stock buybacks;
	    o refrain from paying dividends or making other capital distributions with respect to common stock;

	o recall any employees involuntarily furloughed since October 1, 2020, and provide certain compensation, or, in the case of new Payroll Support Program (PSP) agreements, recall employees involuntarily furloughed since March 27, 2020. • New financial assistance requires certain employee compensation limits until October 1, 2022, and authorizes the Secretary of Transportation to require maintenance of scheduled air transportation. • Amends the CARES Act to extend the prohibitions on involuntary furloughs, stock buybacks, or capital distributions for any contractor that expends any prior PSP funds after December 27, 2020. • Creates a "Special Rule" requiring the repayment of any CARES Act PSP funds that remain unspent on April 30, 2021. • Requires any contractor with unspent CARES Act PSP funds to attempt to recall any employees involuntarily furloughed between March 27, 2020, and the date of their PSP agreement.
Transportation	**Mass Transit** • Provides $14 billion for public transportation agencies for operational aid due to COVID-related revenue shortfalls o The Federal Transit Administration (FTA) must allocate the funding not later than 30 days after the date of enactment of this Act. o Funding distributed through the following formulas: ▪ $13,271,310,572 by FTA Section 5307 Urbanized Area ▪ Formula (including FTA Section 5337 State of Good Repair formula funds) ▪ $50 billion for paratransit ▪ $679 million for grants to rural areas **Highways and State DOTs** • Provides $10 billion for state and local transportation departments. • Funds are available to replace amounts lost as a result of COVID-19 for preventive maintenance, routine maintenance, operations and personnel costs, including salaries of employees (including those employees who have been placed on administrative leave) or contractors, debt service payments, availability payments and coverage for other revenue losses. o Surface Transportation Block Grant (STBG) funds will be apportioned to states in the same ratio as the obligation limitation for FY 2021. Has to be apportioned not later than 30 days after the date of enactment of this bill. o Funds will be sub-allocated within the state to urbanized areas with populations greater than 200,000. **Amtrak** • Provides $1 billion for the National Railroad Passenger Corporation (Amtrak). **Aviation** • Provides $2 billion for operational aid and to disinfect locations for the safety of passengers.

	- As a condition of accepting these funds, large, medium and small-hub airports are required to retain at least 90% of workers employed as of March 27, 2020, through February 15, 2021. $200 million is set aside for airports that provide rent and minimum annual guarantee relief to on-airport car rental, on-airport parking and in-terminal airport concessions from the date of enactment. **Buses and U.S. Vessels** - Provides $2 billion for bus companies, including private motorcoaches, school buses, and U.S.-flagged small passenger vessels.
Tax	**COVID Relief Tax Provisions** Several tax provisions expand or improve upon tax provisions previously enacted as a part of the COVID-19 response. **SBA PPP Loans** - Allows recipients of SBA PPP loans to deduct expenses paid with forgiven loan proceeds, overturning controversial Treasury guidance to the contrary. **Employee Retention Credit (ERC)** - The law extends the credit for wages paid from January 1, 2021 through June 30, 2021, increases its value, and expands the category of employers who are eligible. For example, the law: - Increases the credit rate from 50% to 70% of qualified wages and increases limits per employee; - Increases the 100-employee limitation to 500 employees; and - Allows certain public instrumentalities to claim the credit. - Establishes that those who took SBA PPP loans could also claim ERC so long as wages were not paid by a forgiven SBA PPP loan. **Extension of Paid Leave Credits** - Extends the availability of paid sick and paid family leave tax credits, as established in the Families First Coronavirus Relief Act through March 31, 2021. **General Tax Extenders** Many tax provisions, known as "tax extenders" because they generally expire at the end of the year, were either permanently or significantly extended. The following is a list of significant extenders included in the bill: **Permanent Extenders** - Energy-efficient commercial buildings deduction – allowing an increased deduction for buildings that meet above-industry standards of energy efficiency in the year they are placed in service.

- Railroad track maintenance credit – permanent tax credit to shortline railroads for rail line maintenance expenditures, at a reduced rate from 50% to 40%.
- Craft breweries and distillers – permanently reduced excise tax rates, along with certain anti-abuse rules.

- **Five-Year Extensions (through 2025)**
  - Look-thru rule for related controlled foreign corporations.
  - New Markets Tax Credit.
  - Work Opportunity Tax Credit.
  - Seven-year recovery period for motorsports entertainment complexes.
  - Energy credit for offshore wind facilities.
  - Empowerment zone tax incentives.
  - Employer tax credit for paid family and medical leave.

- **Two-Year Extensions**
  - Extension of carbon oxide sequestration credit.
  - Energy investment tax credit for solar and residential energy-efficient property credit.

- **One-Year Extensions**
  - Credit for electricity produced from certain renewable resources.
  - Mortgage insurance premiums as qualified residence interest.
  - Mine rescue team training credit.
  - Second generation biofuel producer credit.
  - Nonbusiness energy property credit.
  - Fuel cell motor vehicles credit.
  - Alternative fuel refueling property credit.
  - 2-wheeled electric vehicle credit.
  - Energy-efficient homes credit.
  - Alternative fuel and Alternative fuel mixture credit.

Other Tax Provisions

Congress included several other provisions, some of which are aimed at alleviating the impact of the pandemic.

- **Business**
  - Creates employee retention credit for disaster zones.
  - Increases the deduction for business meal food and beverage expenses from 50% to 100% for the 2021 and 2022 years.

- **Individual**
  - Includes special rules for Earned Income Tax Credit and the Child Tax Credit under which individuals can calculate their 2020 credit using 2019 income.
  - Allows residents of disaster areas to borrow $100,000 from a retirement plan or IRA without penalty. Amounts must be repaid within prescribed period.

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Extends for one year the $300 above-the-line deduction for charitable giving as established in the CARES Act and increases the amount to $600 for couples. Also extends CARES Act increased limits on deducible charitable contributions through 2021.

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<td>Healthcare</td>
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Department of Health and Human Services (HHS)

$73 million to support the public health; research, development, manufacturing, procurement, and distribution of vaccines and therapeutics; diagnostic testing and contract tracing; and mental health and substance abuse prevention and treatment services.

Centers for Disease Control and Prevention (CDC)

$8.75 billion to support efforts at the federal, state, local, territorial, and tribal levels to track the COVID-19 vaccination and ensure broad access to the vaccine, including $4.5 billion for state, local, territorial and tribal public health departments; $300 million will be available specifically for high-risk and underserved populations.

National Institutes of Health (NIH)

$1.25 billion to support research and clinical trials into the long-term effects of COVID-19.

Food and Drug Administration (FDA)

$55 million to respond to COVID-19, including $30.5 million for advanced manufacturing for medical products, $1.4 million for data operation tools, and $1.5 million for monitoring of medical product supply chains.

Public Health and Social Services Emergency Fund

$25.4 billion to support testing and contact tracing to monitor and combat COVID-19, including $22.4 billion for testing, contact, tracing and $2.5 billion to improve testing capabilities and contact tracing in high-risk and underserved populations.

Office of the HHS Assistant Secretary for Preparedness and Response (ASPR)

$22.945 billion to respond to COVID-19, including $19.695 billion for the Biomedical Advanced Research and Development Authority (BARDA) for manufacturing of vaccines and therapeutics and ancillary supplies and $3.25 billion for the Strategic National Stockpile.

Substance Abuse and Mental Health Services Administration (SAMHSA)

$4.25 billion to provide increased mental health and substance abuse services, including $1.65 billion each to the Substance Abuse and prevention Treatment Block Grant and the Mental Health Services Block Grant. The legislation also provided $600 million for Certified Community Behavioral Health Clinics.

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Nutrition and Agriculture ($26 billion)	• Provides a temporary, 15% increase in monthly Supplemental Nutrition Assistance Program (SNAP) benefits for all participants. The uniform benefit increase will take effect from January 1, 2021 through June 30, 2021. • Includes new flexibilities for low-income college students enrolled half-time to receive SNAP by temporarily waiving work requirements. • Allocates $400 million for The Emergency Food Assistance Program (TEFAP) to fund the continued work of foodbanks. • $13 million for the Commodity Supplemental Food Program to provide food for seniors and includes $175 million for senior nutrition programs through the Older Americans Act (e.g. Meals on Wheels).
Broadband ($7 billion)	• $3.2 billion in emergency funds for low-income families to access broadband through a Federal Communications Commission (FCC) fund. The bill establishes the Emergency Broadband Benefit Program at the FCC, under which eligible households may receive a discount of up to $50, or up to $75 on tribal lands, off the cost of internet service and a subsidy for low-cost devices such as computers and tablets. Internet service providers that provide the discounted service or devices to customers can receive a reimbursement from the FCC for such costs. • $250 million for the COVID-19 Telehealth Program, authorized under the CARES Act. • $285 million to help address broadband needs of Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSI). Establishes an Office of Minority Broadband Initiatives at the National Telecommunications and Information Administration (NTIA) to focus on broadband access and adoption at HBCUs and MSIs, including the students, faculty, and staff of such institutions and their surrounding communities. It creates a pilot program to award grants to these institutions and certain businesses and nonprofit organizations in the community to support connectivity. • $65 million to complete broadband maps so that the government can effectively disperse funding to the areas that need it most. • $300 million for a broadband deployment program to support broadband infrastructure deployment to areas lacking broadband, especially rural areas. The grants would be issued to qualifying partnerships between state and local governments and fixed broadband providers. Priority for grants would be given to networks that would reach the most unserved consumers.
Coronavirus Relief Fund Extension	• Extends the deadline for state, territorial, local, and tribal governments to spend funds from the CARES Act's Coronavirus Relief Fund by one year, to December 31, 2021.

Contractor Payment Extension	• The CARES Act allowed federal agencies to modify and extend contracts through September 30, 2020. This allows federal contractors to keep employees and subcontractors in a "ready state" during the pandemic. The new law extended that date through March 31, 2021.

Education ($82 billion)	• Provides $82 billion for the Education Stabilization Fund created by the CARES Act, in the following amounts:
	    ○ $54.3 billion for elementary and secondary schools.
	        ▪ Funds are distributed based on states' allocations under Title I, Part A of the Elementary and Secondary Education Act and allocated to school districts based on their Title I, Part A allocation.
	    ○ $22.7 billion for higher education institutions, broken out as follows:
	        ▪ $20.2 billion for nonprofit colleges distributed through a formula that accounts for an institution's total number of students (headcount) and relative share of full-time equivalent (FTE) students.
	        ▪ $1.7 billion for HBCUs, MSIs and tribal colleges.
	        ▪ $113 million for Institutions of Higher Education (IHE) with the greatest unmet need.
	        ▪ $908 million for financial aid for students at for-profit colleges.
	        ▪ Institutions can use this aid money for lost revenue, reimbursement for expenses and technology costs due to the shift to online learning, financial aid for students and more. The bill directs schools to prioritize grants for students with exceptional need.
	        ▪ Colleges and universities cannot use the funds for recruitment activities, athletics facilities, religious instruction or senior administrator salaries or bonuses.
	    ○ $4.1 billion for emergency relief grants to states, $2.75 of which would be for private schools.
	    ○ $818.8 million for the Bureau of Indian Education.
	• Extends the deadline for the exclusion of certain employer payments of student loans from January 1, 2021, to January 1, 2026.

Unemployment Insurance ($120 billion)	• $120 billion in Unemployment Insurance:
	    ○ Provides an additional $300 per week insurance benefits through the Federal Pandemic Unemployment Compensation (FPUC) program for individuals impacted by COVID-19 receiving unemployment benefits for 11 weeks from December 26, 2020, through March 14, 2021.
	    ○ Extends the Pandemic Unemployment Assistance (PUA) program, with expanded coverage to the self-employed, gig workers, and others in nontraditional employment.
	    ○ Extends the Pandemic Emergency Unemployment Compensation (PEUC) program, which provides additional

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weeks of federally-funded employment benefits to individuals who exhaust their regular state benefits.
Increases the maximum number of weeks an individual may claim benefits through regular state unemployment plus the PEUC program, or through the PUA program, to 50 weeks.

Provides an extra benefit of $100 per week for certain workers who have both wage and self-employment income but whose base unemployment benefit calculation does not take their self-employment into account.

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<td>Employer Considerations</td>
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Workforce Retention

Extended the Employee Retention Credit – a refundable and advanceable tax credit for those employers who have been harmed by the pandemic through June 30, 2021.
Did not extend the requirement to offer paid sick and paid family leave as established in the Families First Coronavirus Relief Act into 2021, but offers a refundable tax credit for those employers that chose to offer such leave through March 31, 2021. Extended unemployment benefits and restarted an extra federal benefit provided on top of the usual state benefit. But instead of $600 a week, the federal benefit will only be $300 per week through March 14, 2021.
Extends by five years the work opportunity tax credit designed to incentivize the hiring of individuals from certain targeted groups who have faced unemployment including, for example, certain veterans.

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<td>Individual Assistance</td>
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Individual Assistance

Economic Impact Payments of $600 per individuals making up to $75,000 and $1,200 for couples making up to $150,000. An extra $600 per eligible dependent child.
Allows employees to rollover unused amounts in health and dependent flexible savings accounts and allows employees to make 2021 midyear changes in contribution amounts.
Includes special rules for Earned Income Tax Credit and the Child Tax Credit under which individuals can calculate their 2020 credit using 2019 income.

Emergency Rental Assistance

$25 billion for emergency rental assistance that would be funded through the CRF and administered by the Department of Treasury.

$400 million for U.S. territories and $800 million for tribal communities.
Remaining funds would be distributed within 30 days to states and cities with populations of 200,000 or more.
Each state would receive a minimum of $200 million.

Ease of Funds: At least 90% of the funds must be used to provide financial assistance, including back and forward rent and utility payments, and other housing expenses. Assistance can be provided for 12 months. States and localities can provide an additional three months of assistance "if necessary to ensure housing stability for a household."

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	• Eligibility: Funds must be used for households with incomes below 80% of area median income (AMI), and states and localities must prioritize households below 50% of AMI or those who are unemployed and have been unemployed for 90-days. States and localities can provide additional prioritization of funds. ○ Rental assistance provided through the CRF would not be regarded as income or considered when determining eligibility for federal benefits or federally assisted programs. • Allows landlords and property owners to aid tenants in applying for assistance or applying on the renter's behalf. If a landlord applies for assistance on behalf of their tenant, the tenant must cosign the application, the landlord must provide the tenant documentation of the application, and the payments must be used to pay the tenant's rental obligations.

This summary was compiled by members of Holland & Knight's Public Policy & Regulation Group. If you have questions or need further information, please contact the authors.

DISCLAIMER: Please note that the situation surrounding COVID-19 is evolving and that the subject matter discussed in these publications may change on a daily basis. Please contact the your responsible Holland & Knight lawyer for timely advice.