Coronavirus Response and Relief Supplemental Appropriations Act

Key Highlights for ABA Members

On December 21, 2020, the House and Senate passed legislation to supply the latest round of COVID-19 relief, authorizing more than $900 billion in economic aid to small businesses and consumers—the second largest stimulus in history, behind only the CARES (Coronavirus Aid Relief and Economic Security) Act that Congress enacted in March. The bill also includes appropriations provisions to keep the government funded through September 30, 2021, as well as a host of miscellaneous items.

The American Bankers Association continues to review the nearly 5,600-page package, but our preliminary assessment has found it to have many provisions impactful to our industry, clients, and communities. The summary below focuses on key banking provisions while omitting significant provisions on many other important topics, including an extension of enhanced unemployment insurance and funding for vaccine distribution, school reopening, and the airline industry.

In particular, the banking aspects of the package include the following:

- An additional $284.6 billion in Paycheck Protection Program (PPP) funding for loans to small businesses, including for borrowers who have previously received a PPP loan.
- A one-page simplified forgiveness process for PPP loans under $150,000.
- Clarification to various CARES Act provisions, the tax treatment of PPP expenses, lender responsibilities for agent fees, and lender "hold harmless" protections under the PPP and other laws.
- A further delay in Troubled Debt Restructuring (TDR) accounting until 60 days after the termination of the national emergency, or January 1, 2022.
- A further optional delay in Current Expected Credit Loss (CECL) accounting until January 1, 2022.
- A new round of Economic Impact Payments (EIPs) for consumers, with aggressive distribution timelines and new exemptions from garnishments.
- Significant added support for Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs).
- Funding for agricultural support programs and for renter assistance programs.
- Termination of existing Federal Reserve emergency lending authority under the CARES Act, while preserving the Fed's general 13(3) emergency authority existing prior to that Act.

Summary

Paycheck Protection Program (PPP) and Small Business Relief

First Draw Changes. Provides $284.6 billion to the Small Business Administration (SBA) to reopen the PPP for first time and second time borrowers. Requires SBA to issue rules within 10 days of enactment.

- Re-opens the PPP for first time recipients, with an expansion of eligible entities including 501(c)(6)s, destination marketing organizations (DMOs), housing cooperatives, newspapers, broadcasters, and radio stations. Prohibits publicly traded companies from receiving PPP funds as well as those entities receiving a Shuttered Venue Operator Grants. Clarifies that a business must have been in operation on February 15, 2020.
- Set asides of $15 billion for CDFIs and MDIs, $15 billion for depository institutions under $10 billion in assets.
- $35 billion for first-time borrowers of which $15 billion for borrowers with 10 employees or fewer or loans less than $250,000 for low-income areas.
- Expands list of eligible expenses to include covered operations (software, cloud computing, and other human resources and accounting needs); property damage costs due to public disturbances that occurred during 2020 that are not covered by insurance; covered supplier costs; and covered worker protection expenditures (PPE).
- Sets up a new tiered fee structure for PPP loans: (1) Loans of less than $50,000 that is equal to the lesser of 50 percent of the loan principal or $2,500; (2) loans of more than $50,000 and not more than $350,000 equal to five percent of the loan principal; (3) loans of more than $350,000 and less than $2,00,000 equal to three percent of the loan principal; and (4) loans of more than $2,000,000 equal to one percent.
- The covered period for all first draw loans is extended to March 31, 2021 and is retroactive to the start of CARES. Borrowers may choose the end of their forgiveness covered period between 8 and 24 weeks after the loan origination.

Creation of a Second Draw. Includes a Second Draw of PPP funds for small businesses with 300 or fewer employees that have sustained a 25 percent drop in revenue in any quarter of 2020 when compared to the same quarter in 2019. A business must use or have used the full amount of their first PPP loan. The maximum loan amount is $2 million.

- SBA has 10 days to issue guidance on how the second draw program will operate. Additionally, they must supply guidance addressing access to capital issues for underserved communities.
- $25 billion set aside for borrowers with 10 or fewer employees or loans less than $250,000 in low-income areas.
- Maximum loan amount is 2.5 times the average monthly payroll based on the 2019 calendar year or a one year look back, capped at $2 million. NAICS 72 Businesses (Accommodations and Food Services) can receive 3.5 times average monthly payroll, capped at $2 million.
- Eligible entities must be businesses, certain non-profit organizations, housing cooperatives, veterans’ organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives.
- Ineligible entities include: entities listed in 13 C.F.R. 120.110 and subsequent regulations except for entities from that regulation which have otherwise been made eligible by statute or guidance, and except for nonprofits and religious organizations; entities involved in political and lobbying

activities including engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public document, entities affiliated with entities in the People's Republic of China; registrants under the Foreign Agents Registration Act; and entities that receive a grant under the Shuttered Venue Operator Grant program.

- The Administrator may reimburse a lender by a tiered structure: For loans up to $50,000, the lender processing fee will be the lesser of 50 percent of the principal amount or $2,500. For loans between $50,000 and $350,000, the lender fee will be five percent. For loans $350,000 and above, the lender fee will be three percent.

EIDL (Economic Injury Disaster Loan) Advance Program. Provides $20 billion dollars to restart and extend the SBA's EIDL Advance Grant for small businesses in low-income communities.

- Creates a process for existing EIDL Advance grantees that received less than $10,000 dollars to reapply for the difference between what they received and the maximum EIDL Advance Grant of $10,000 dollars.
- Repeals section 1110(e)(6) of the CARES Act, which requires PPP borrowers to deduct the amount of their EIDL advance from their PPP forgiveness amount. Clarifies this change is retroactive to the start of CARES. Requires SBA to make borrowers whole if they have already received forgiveness and the EIDL Advance was deducted from that amount.
- SBA has 15 days from date of enactment to issue rules related to how the repeal works and how they will make borrowers whole.

Forgiveness. Creates a simplified PPP loan forgiveness application for loans under $150,000 dollars whereby the borrower signs and submits a one-page certification to the lender. The form requires the borrower to list the loan amount, the number of employees retained, and the estimated total amount of the loan spent on payroll costs.

- SBA must create this form within 24 days of enactment. SBA must create an audit plan within 45 days of enactment.
- The borrower must attest they have accurately supplied the required certification and followed relevant requirements in the program. Borrowers must keep employment records for four years and other records for three years. Borrowers may submit voluntary demographic information.

Hold Harmless. The bill includes a hold harmless safe harbor that protects lenders from enforcement and penalties if the lender relies on certifications from the borrower or applicants in good faith. However, at the same time, the lender must have satisfied all existing relevant federal, state, and local statutory and regulatory requirements. ABA is concerned that this will prevent banks from conducting expedited underwriting for these loans.

Tax. Supplies tax relief for borrowers on forgiven PPP loans by overriding Treasury/IRS guidance that disallowed the deductibility of qualified expenses related to the forgiveness.

Bankruptcy and PPP. A business in bankruptcy is entitled to receive a PPP loan.

Section 1112 Debt Relief. Provides $3.5 billion to resume the principal and interest (P&I) payments of new and existing small business loans guaranteed by the SBA under the 7(a), 504, and Microloan programs. SBA is granted the authority to continue to make principal and interest payments on existing SBA loan products (not PPP), through March 31, 2021.

- All borrowers with qualifying loans approved by the SBA prior to the CARES Act will receive an additional three months of P&I, starting in February 2021. Going forward, those payments will be capped at $9,000 per borrower per month.
- After the three-month period described above, borrowers considered to be underserved—namely the smallest or hardest-hit by the pandemic—will receive an additional five months of P&I payments, also capped at $9,000 per borrower per month.
- If the SBA projects that appropriations supporting the debt relief program are insufficient to fund the extensions provided, the Administrator may proportionally reduce the number of months provided in each extension.

Agent Fees. The lender reimbursement language in the CARES Act is clarified so that lenders are required to pay agent fees only where there is a direct contract in place with the agent. If a borrower knowingly retains an agent, the borrower pays the agent out of funds that are not from the PPP loan. This change is retroactive to the beginning of CARES.

Enhancement of Existing SBA Loan Programs. Supplies $2 billion to enhance the SBA's existing government guarantee loan programs, including the 7(a) Loan Program, the 504 Loan Program and the Microloan Program.

- Waives borrower and lender fees within the 7(a) and 504 loan programs.
- Increases the 7(a)-loan guarantee to 90 percent through October 1, 2021 after which the guarantee drops to 85% for loans with a balance under $150,000 and 75% for loans with a balance above $150,000.
- Extends the $1 million loan limit for SBA Express Loans until October 1, 2021 after which it drops to $500,000. For loans under $350,000 the guarantee is increased to 75% until October 1, 2021 after which the guarantee reverts to 50%.
- Establishes a 504 Express Loan Program.
- Enhances the Microloan program to supply financial and technical aid to businesses affected by the COVID-19 pandemic.

EIPs and Garnishment

- The legislation provides for a new round of EIPs. The maximum payment for an individual is $600; $600 limit will also apply to dependents. This means that a family of four could receive a payment of $2,400. The maximum benefits are subject to phaseouts for incomes above $75,000, or $150,000 for joint filers, based on 2019 tax returns.
  - **Timing:** The IRS will begin consolidating payment files as soon as the legislation is signed. It is possible that banks will be receiving ACH files over the Christmas weekend. We expect more than 130 million payments to be made via ACH in the first week prior to year-end. This may strain bank and payment network resources.
- Direct deposit EIPs that are coded are exempt from garnishment orders under procedures currently applicable to garnishment exemption of Social Security payments and other federal

benefits. Other EIPs (e.g., checks, other electronic payments) may be exempted from garnishment upon the request of the recipient.

Banking/Accounting Provisions

Troubled Debt Restructuring Relief. Includes an extension of the TDR relief provided in CARES Act section 4013 through January 1, 2022 or 60 days after the end of the national emergency.

Current Expected Credit Loss Relief. Includes a one-year extension of the optional CECL relief provided in CARES Act section 4014 through January 1, 2022 and corrects a CARES Act drafting issue that could have negated relief for those that chose to delay CECL in 2020.

Main Street Lending Program/Federal Reserve 13(3) Emergency Lending Authority.

- The legislation terminates Federal Reserve authority for emergency lending facilities established by the CARES Act as of December 31, 2020.
    - The Federal Reserve cannot modify any of these facilities after December 31, 2020, but is permitted to modify individual loans if necessary, to mitigate a loss due to a loan default.
    - Main Street Lending Program loans that were submitted by December 14, 2020, and which the Federal Reserve purchases by January 8, 2021, remain permitted.
- The Federal Reserve’s general authority to establish emergency lending programs for entities outside the banking industry remains unchanged from its status before passage of the CARES Act. The language does appear to make Treasury’s Exchange Stabilization Fund (ESF) unavailable to provide credit support to any program or facility that is “the same as” one the Treasury Secretary invested in pursuant to Title IV of the CARES Act, except the Term Asset-Backed Securities Loan Facility (TALF).

Housing/Rental Assistance and Eviction Moratorium

- Provides $25 billion in rental assistance.
- The funds provide direct financial assistance to renters, including rent, rental arrears, utilities and home energy costs and other expenses related to housing. Eligible households are defined as renter households who:
    - Have a household income not more than 80 percent of AMI,
    - Have one or more household members who can demonstrate a risk of experiencing homelessness or housing instability; and
    - Have one or more household members who qualify for unemployment benefits or have experienced financial hardship due, directly or indirectly, to the pandemic.
- Extends the current eviction moratorium imposed by the CDC until January 31, 2021.

Tax

- Supplies tax relief for borrowers who received forgiveness or subsidy payments under the CARES Act. Taxpayers will receive non-taxable treatment without any restrictions on deductibility for expenses paid with program proceeds.
- Tax Extenders: Extension through 2025 for New Markets Tax Credits, Work Opportunity Tax Credit, CFC look-through and avoidance of cancellation of indebtedness income on principal residences up to $750,000. One year extension for deduction for mortgage insurance premiums.
- Expands employee retention credit eligibility by decreasing required revenue loss to 20% and increasing the amount of the credit. In addition, employers with 500 or less employees may qualify for an increased credit compared to the CARES Act. Applies for periods January 1- June 30th, 2021.

CDFI/MDI Lenders

Supplies $12 billion in targeted emergency investments to help low-income and minority communities.

- $9 billion to be used by Treasury to create an Emergency Capital Investment Program to make direct and indirect capital investments in low- and moderate-income (LMI) financial institutions.
- $4 billion is set aside for eligible institutions with total assets of $2 billion or less, of which no less than $2 billion is set aside for eligible institutions with total assets of $500 million or less.
- Lenders must be LMI community financial institutions and excludes those that have been designated as troubled institutions or that are subject to a formal enforcement action.
- Treasury's authority to make new investments in LMI community financial institutions terminates 6 months after the termination of the national emergency.

This section also provides $3 billion to the CDFI Fund.

- $1.25 billion (available until September 30, 2021) to support, prepare for, and respond to the economic impact of COVID-19; and
- $1.75 billion (available until expended) to CDFIs to respond to the economic impact of COVID-19, of which $1.2 billion is for financial assistance, technical assistance, awards, and training and outreach.

Agricultural Issues

Provides $13 billion in funding to address COVID-related impacts on farmers, ranchers, growers and rural communities.

- The legislation provides nearly $11.9 billion for agricultural producers and processors through USDA (United States Department of Agriculture) which includes:
    - Supplemental aid to price trigger crops and flat rate crops of $20 per acre
    - Directs the Secretary to make payments to livestock and poultry producers for losses incurred due to the depopulation of livestock and poultry due to insufficient processing access
    - Extends the term of marketing help loans for any loan commodity to 12 months

- Additionally, the legislation provides:
    - $100 million for Specialty Crop Block Grants
    - $100 million for Local Agricultural Marketing Programs
    - $400 million for a Dairy Donation Program in which dairy farmers can be reimbursed
    - $28 million in grants to State Departments of Agriculture to expand or sustain stress assistance programs

Other/Miscellaneous

Other Bankruptcy

Includes several bankruptcy provisions affecting creditors (including banks) but most are temporary and expire after one year, and the problematic homestead exemption from the HEROES Act was not included:

- For consumer-related bankruptcies: exempts federal coronavirus relief from the reach of creditors; allows an extra grace period for missed mortgage payments when a consumer is in a bankruptcy repayment plan – the consumer can miss three or fewer mortgage payments and still be discharged of unsecured debt; and creates a new procedure for creditors who file claims that result from mortgage forbearance and eviction relief.
- For business bankruptcies: small businesses are given more time to make decisions related to continuing with property leases (a company would have up to 300 days to determine whether to keep or get rid of certain leases for real property); and protects rent deferral agreements from being set aside in bankruptcy.

Livestock Dealer Trust

- Establishes a livestock dealer trust to help unpaid sellers of livestock. The trust will be used to pay livestock sellers when a livestock dealer does not pay the seller due to various circumstances. This is troublesome for lenders as there is the potential to lose first lien in case of foreclosure or bankruptcy. The trust will be administered by USDA.

