

Merry COVID-19 Stimulus: A Summary of Key Business Stimulus and Tax Provisions in the “Consolidated Appropriations Act of 2021”

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**GREEN &
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About Green & Sklarz LLC and Jeff Sklarz

Green & Sklarz LLC is a business law boutique headquartered in New Haven, CT.

Jeff represents business and individuals around the country in matters involving bankruptcy, civil and criminal tax litigation, and business litigation.

Jeff is a Fellow of the American College of Tax Counsel (ACTC), and has been included in the 2021 Edition of *The Best Lawyers in America*® for Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law.

He received his J.D. from the University of Connecticut School of Law, and received his LL.M from Boston University School of Law.



Timeline

- 12/21/2020 Congress passed the *Consolidated Appropriations Act of 2021*
 - Funds government through September 2021
 - Added ~\$900 billion in stimulus
- Passed House after only about 6 hours to read and debate the bill
- Now up to the President to sign... but will he?
 - *"I'm asking Congress to amend this bill and increase the ridiculously low \$600 to \$2,000 or \$4,000 for a couple...."* 12/22/2020 Tweet from @realDonaldTrump

Key Contents for Businesses

- Additional PPP funding: \$284 billion to support small businesses and non-profits.
- Additional money for EIDL program
- Grants to venue operators
- Enhanced Unemployment Insurance.
- Continued 50% cost share for unemployment insurance for non-profits
- Direct stimulus checks.
- Extension and expansion of various tax provisions.

This is a brief summary and overview.
Once [if?] enacted into law and regulations
come out, we'll do a deeper dive.

New Round of PPP Loans

- \$284 billion allocation
 - \$15 billion allocation to community lenders serving non-traditional borrowers
- Open through March 31, 2021
- Allows for a “second draw” for prior recipients
- If you did not apply for a PPP loan previously, you can this time around
- Definition of “covered expenses” (§ 304(b)(2-9)) expanded from payroll costs, rent, secured debt, and utilities to also include:
 - Worker safety expenses, certain technology expenses, certain property damage, certain supplier/vendor expenses essential to the business, including perishable food
- 60% of PPP funds must still be spent on “payroll expenses” to receive full forgiveness, unless an exception applies.

Eligibility Requirements to Qualify for PPP-2

- Max. Amount: \$2 million
 - Entity must have been in business by Feb. 15, 2020
 - 2.5x payroll costs
 - *Note*, Food service businesses (NACIS Code 72) can get 3.5x average monthly payroll costs
- “Payroll Costs” now include group insurance payments
- 300 employees or fewer for 2nd draw
 - 500 employees or fewer if PPP-2 would be 1st draw
- Still must make “necessity” certification
 - *Can a business that survived and is limping along make this certification?*
 - SBA will not question certifications for loans under \$2 million, but other government actors (IRS, US Attorney) may.
- PRC affiliated businesses ineligible

Eligibility Requirements (cont.)

- 1st Draw – Old rules apply.
- 2nd Draw – Must show 25% reduction in *gross receipts* in any quarter of 2020 compared to the same quarter in 2019.
 - You have to compare the same quarter for 2019 with 2020, e.g. Q2 2019 with Q2 2020.
 - If only in business Q3 or Q4 2019 – compare Q4 2020 with Q3 or Q4 2019.
 - If only in business Q4 2019 – compare Q4 2020 with Q4 2019.
 - If not in business until Q1 2020 – compare Q1 2020 with any other quarter in 2020.
 - **NFPs:** Gross receipts defined as *revenue* on Form 990.
- Must wait 90 days between spending 1st draw funds and receiving 2nd draw
- Borrower cannot receive more than \$10 million total between 1st and 2nd draws.

Eligibility Requirements (cont.)

- Borrowers can amend 1st draw application to request more money or reapply if they returned money under the safe-harbor.
- Funds must be spent within 24 weeks (but borrower can choose a covered period of 8-24 weeks).
- If more than 1 location is eligible for a 2nd draw, each location must meet 2nd draw rules for eligibility.
- SBA must issue guidance and reopen program within 10 days.
- **PPP Loans in Bankruptcy:** After notice and hearing, bankruptcy judge can approve a DIP getting a PPP-2 loan if the debtor is otherwise eligible. *Only available for SBRA cases under Chapter 11 (subchapter V small business cases), and Chapter 12 or 13 debtors.*
- If you receive a *Shuttered Venue* grant, you cannot also get a PPP loan.

PPP-2 Misc.

- Special Rules for farmers, seasonal businesses, housing cooperatives, etc.
 - Make sure to check for special rules for unusual businesses.
- Receipt of EIDL loan or grant will *not* reduce PPP eligibility.
- **Forgiveness:** Loans of \$150,000 subject to easy forgiveness (1 page application).

Other Economic Stimulus

- \$20 billion added to EIDL program
 - Must show loss of 30% of gross revenue, less than 300 employees
 - \$10,000 “emergency” loan is now a grant
- \$15 billion for grants to venue operators (i.e. sports arenas, theaters, performing arts, museums, and others).
 - Must show loss of 25% of gross revenue, less than 50 FTEs
- Unemployment Insurance Support for NFPs
 - Federal government will cover 50% of NFPs self-insured liability through March 2021
- \$10 billion for states to disburse through the *Childcare Development Block Grant*
- States may use CARES Act state and local relief funds through December 31, 2020

Individual Stimulus

- Direct payment of stimulus funds
 - For those making \$75,000 or less (\$150,000 for a married filing jointly taxpayer). Benefit phases out between \$75,001 and \$99,000.
 - \$600 for each adult (\$1200 for joint filers) and dependents
- \$300 per week of enhanced unemployment benefits through March 14, 2021
- \$100 per week of *Pandemic Emergency Unemployment* for self-employed workers eligible for CARES Act unemployment payments

Tax Provisions

- Expenses paid with PPP funds are deductible.
- Expanded Employee Retention Tax Credit (ERTC):
 - Extended until June 2021
 - Increases tax credit from 50% to 70% of wages (up to \$10,000) for each quarter
 - Max. benefit is \$14,000
 - Businesses with 500 or fewer employees qualify for *small business treatment*
 - Employers who received PPP loans may use tax credit
- Extension of \$300 charitable universal (“above the line”) deduction for 2021 (\$600 for joint filers)
 - Extension of charitable itemized deductions to allow up to 100% of AGI to be donated
- Employ~~EE~~EE deferral of FICA extended to 12/31/2021 (though this is very dangerous since employer is on hook to collect)

Tax Provisions (cont.)

- **Treatment of S-Corps:** owners of S-corps: S-Corp owners will get a step-up in their basis upon loan forgiveness for the forgiven amount
 - If forgiveness does not occur until 2021, owners may not have flow-through loss on 1040.
 - Thus, for end of year tax planning, S-corp. owners may wish to make contributions now to increase their basis to be able to use the flow through loss for 2020.
 - Loss not used maybe used in 2021 if suspended due to lack of basis.

Tax Provisions (cont.)

- **Paid Leave:** Extension of refundable tax credit through March 31, 2021 for COVID-19 related leaves.
- Unspent FSA funds may be rolled over to 2021 without reducing 2021 benefits.
- Itemized Deduction for Medical Expenses: 7.5% of AGI floor made permanent
- Tax extenders for Opportunity Zones, New Market Credit, employer credits for paid FMLA
- 100% of meals and entertainment deductible in 2021-22
 - 12/22/2022: Wall Street Journal Editorial “Trump and the GOP revive the loophole for business meals. It’s bad policy and bad politics.”
- Makes permanent excise tax relief for beer, wine, and liquor producers

Questions?

Thank you!