Milbank

Insights

Consolidated Appropriations Act, 2021: Phase IV Coronavirus Relief

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Overview

On December 27, 2020, the US federal government enacted the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260, the "Act"), including, among other things, a "Phase IV" package of federal assistance and legislation to address continuing economic and other concerns arising from the COVID-19 pandemic. The Act provides roughly $900 billion in COVID-19-related relief for individuals, businesses, healthcare providers, and tribal and local governments, plus various extensions to renewable energy tax credits for wind and solar power and alternative fuels.

Set out below is a summary of the key portions of the Act. Please note that the enabling regulations defining program eligibility requirements and procedures for accessing financial relief set out in the Act are being completed by the federal government. We are available to discuss the applicability of the new law and the enabling regulations to particular companies and situations.

Energy Incentives

The Act contains several provisions designed to boost investment in clean energy, extending federal tax credits that incentivize construction of new wind and solar power plants, as well as tax credits for carbon capture, biofuels and alternative fuels, fuel cells and energy efficiency. Specifically, the Act extends two existing tax credits for renewable energy—the 26% Investment Tax Credit (ITC), and the 60% Production Tax Credit (PTC)—for two years and one year, respectively. Offshore wind projects will benefit from a five-year extension to the ITC at 30%. Excise tax credits for alternative fuels and income tax credits for biofuels under section 40 of the tax code will also be extended. Production tax credits for coal mined on tribal lands are also being increased and extended in the Act. More details on the Act's incentives for clean power and energy efficiency may be found at https://www.milbank.com/en/news/partner-allan-marks-authors-forbes-article-on-extension-of-renewable-energy-tax-credits-in-year-end-federal-spending-and-relief-bill.html.

Small Business Loans

$325 billion is dedicated to small-business aid under the Act, including more than $284 billion to reopen the Paycheck Protection Program (PPP), which stopped accepting applications for the first round of forgivable loans in August. As under the CARES Act, the reopened PPP will grant first-time applicants with fewer than 500 employees forgivable loans up to $2 million to cover payroll, rent, and utilities. The PPP will be available to all qualifying businesses, including those that have previously applied and received funding in the first round, provided they have 300 or fewer employees, have used the full amount of their first PPP loan, and can show a 25% gross revenue decline in any 2020 quarter compared with the same 2019 quarter. The Act specifically designates $12 billion for small businesses in low-income and minority communities, and $15 billion for live venues, independent movie theaters and cultural institutions.

Critically, businesses that receive PPP loans will be able to deduct expenses associated with those loans, overturning a Treasury Department decision denying such deductions in the wake of the CARES Act.

Federal Reserve Programs

The Act provides a number of changes to existing Federal Reserve programs under previous rounds of Coronavirus Relief. Primarily, the Act resolves a legal ambiguity in the CARES Act which granted the Treasury authority to originate new loans and purchase new assets through credit facilities established by the Federal Reserve. These credit facilities were set to expire on December 31, 2020, but the CARES Act did not explicitly mandate discontinuing the facilities on that date. Under the new Act, those facilities—the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility, the Main Street Lending Program, the Municipal Credit Facility, and the Term Asset-Backed Securities Loan Facility—ceased originating any new loans or making new asset purchases upon their expiration on December 31, 2020. Additionally, the Act immediately rescinds the $429 million of unused funding allocated under the CARES Act to those facilities, and as of January 9, 2021, further rescinds any surplus funds that will not be needed to meet the then-outstanding commitments of the existing facilities.

The Act also provides that the Federal Reserve will be forbidden from using funds from the Exchange Stabilization Fund (ESF) to reestablish the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility, the Main Street Lending Program, and the Municipal Credit Facility in the future.[1] Each of these facilities – as well as the other facilities that the Federal Reserve established in response to the pandemic – were established pursuant to section 13(3) of the Federal Reserve Act. Section 13(3), which was originally enacted in response to the Great Depression, complements the Federal Reserve's ordinary lending authority by allowing the Federal Reserve to extend credit in "unusual and exigent circumstances." After the Federal Reserve made extensive use of section 13(3) in response to the 2008 financial crisis, the Dodd-Frank Act narrowed the Federal Reserve's authority under the statute in a number of respects: in particular, pursuant to the Dodd-Frank Act, the Federal Reserve (i) may only extend credit under section 13(3) through a program or facility with "broad-based eligibility," (ii) cannot extend credit to failing or insolvent firms or for the purpose of aiding specific companies, and (iii) may not establish a program or facility under section 13(3) without the prior approval of the Secretary of the Treasury. In a Congressional compromise, the Act will prohibit the Federal Reserve from using ESF funds to reestablish the four credit facilities discussed above, but it will not prohibit the Federal Reserve from establishing similar programs or otherwise abrogate the Federal Reserve's authority under section 13(3) as it existed prior to the CARES Act.

Airline Support

The new Act provides $16 billion in payroll support to airlines and airline contractors, requiring the airlines to rehire previously furloughed employees and commit to refrain from conducting any further furloughs or pay reductions for the requisite period. The support for salaries and benefits under the new Act will run through the end of March. The Act also includes $2 billion in airport grants, to be used for costs related to operations, personnel, sanitation, and debt service payments.

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[1] The bill does not prohibit the Federal Reserve from reestablishing the Term Asset-Backed Securities Loan Facility, and also does not prohibit the Federal Reserve from establishing programs that are substantially similar (but not identical) to the other discontinued programs in the future.

Vaccine Funding

The Act provides $20 billion for the purchase of vaccines, as well as another $8.75 billion for vaccine distribution. It also earmarks $27 billion to assist states with their testing programs.

Stimulus Checks and Unemployment Benefits

As under the CARES Act, the new Act provides individuals with direct stimulus payments of $600 per person, with eligible families receiving an additional $600 per child. Payments begin phasing out when individual adjusted gross income exceeds $75,000, head-of-household income exceeds $112,500, and income for married couples filing jointly exceeds $150,000.

The new Act also provides unemployed individuals with a $300 weekly federal enhancement in benefits for 11 weeks, from the end of December 2020 through March 14, 2021. The Pandemic Unemployment Assistance Program, which provides benefits to independent contractors and the self-employed, and the Pandemic Emergency Unemployment Compensation Program, which provides 13 additional weeks of payments for those exhausting their state benefits, are also extended.

Rental Assistance

The Act extends existing eviction protections—which were previously set to expire at the end of 2020—until January 31, 2021. Additionally, the Act provides roughly $25 billion in rental assistance to individuals who lost their source of income during the pandemic.

Paid Sick Leave

The Act will continue a policy established in the Families First Coronavirus Response Act, providing tax credits to support employers offering paid sick leave during the pendency of the COVID-19 pandemic, through March 31, 2021.

Other Relief: Nutrition Assistance, Public Transit, Education and Child Care

The Act offers an array of other benefits for individuals, including designating $82 billion in aid for K-12 schools and colleges, and $10 billion to support child care providers; increases to SNAP benefits by 15% for six months; expansion of the Pandemic-EBT program to families with children under age six; designation of $45 billion for public transit systems; designation of $7 billion for expansion of broadband services; and designation of $26 billion for nutrition services and agricultural and rural programs.

For additional insights related to business and legal implications as a result of COVID-19, please visit our **Knowledge Center**.

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