

116 HR 133 – Consolidated Appropriations Act, 2021

Division N – Additional Coronavirus Response and Relief

Title II – Assistance to Individuals, Families, and Businesses

Subtitle A – Unemployment Insurance

Chapter 1 – Continued Assistance to Unemployed Workers

Subchapter I – Extension of the CARES Act Unemployment Provisions

Section 201 – Extension and Benefit Phaseout rule for Pandemic Unemployment Assistance

Extends the benefits until March 14, 2021. The extension applies only to individuals who have not exhausted the benefits as of December 31, 2020. However, the Act also increases the maximum number of weeks to receive the benefit from 39 weeks to 50 weeks. No pandemic benefits will be received after April 5, 2021.

The State is required to demand repayment from any individual who received pandemic benefits to which they were not entitled. However, this requirement may be waived if the payment of such pandemic benefits was without fault on the individual, and such repayment would be contrary to equity and good conscience.

Section 203 – Extension of Federal Pandemic Unemployment Compensation

Extends the benefit to weeks of unemployment from December 26, 2020, to March 14, 2021. The additional benefit for the extended period is \$300. Benefits may be paid until April 5, 2021.

Subtitle B – COVID-related Tax Relief Act of 2020

Section 272 – Additional 2020 Recovery Rebates for Individuals

Established another stimulus payment of \$600 per individual (\$1,200 for married individuals filing joint returns) plus \$600 per qualifying children. Benefit phase-out is 5% per each dollar in excess of certain adjusted gross income figures (\$150,000 for married couples, \$112,500 for head of households and \$75,000 for other taxpayers). Nonresident alien individuals, taxpayers who can be claimed as a dependent in a return and estates and trusts are not eligible to receive the stimulus payment.

Section 274 – Extension of Certain Deferred Payroll Taxes

Orders the Secretary of Treasury to extend the application of IRS Notice 2020-65 to April 30, 2021.

Section 276 – Clarification of Tax Treatment of Forgiveness of Covered Loans

No deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied by reason of the exclusion from gross income on the debt forgiveness under the PPP and EIDL.

Section 286 – Extension of Credits for Paid Sick and Family Leave

Tax credits under the FFCRA are extended until March 31, 2021.

Section 287 – Election to Use Prior Year Net Earnings from Self-Employment in Determining Average Daily Self-Employment Income for Purposes of Credits for Paid Sick and Family Leave

Provides an election in the case of self-employed individuals to use prior taxable year earnings to calculate the credits under FFCRA.

Section 288 – Certain Technical Improvements to Credits for Paid Sick and Family Leave

Title III – Continuing the Paycheck Protection Program and Other Small Business Support

Section 301 – Short Title

“Economic Aid to Hard-Hit Small Business, Nonprofits, and Venues Act”

Section 303 – Emergency Rulemaking Authority

SBA has 10 days after the enactment of the Act to issue regulations.

Section 304 – Additional Eligible Expenses

Includes as eligible expenses for the use of the loan under the PPP the “covered operations expenditures”, “covered property damage costs”, “covered supplies costs”, and “covered worker protection expenditures”. Such items are also subject to the forgiveness provisions of the PPP. This is applicable as if it was enacted originally in the CARES Act, unless forgiveness was already received on such loan.

“Covered operations expenditures” is defined as a payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses.

“Covered property damage cost” means a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation.

“Covered supplier cost” means an expenditure made by an entity to a supplier of goods for the supply of goods that—

- (A) are essential to the operations of the entity at the time at which the expenditure is made; and
- (B) is made pursuant to a contract, order, or purchase order—
 - (i) in effect at any time before the covered period with respect to the applicable covered loan; or
 - (ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan.

“Covered worker protection expenditure” means an operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or OSHA with

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respect to COVID-19 related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement, including purchase, maintenance or renovation of assets that create or expand physical facilities.

Section 306 – Selection of covered Period for Forgiveness

Covered periods may end after December 31, 2020.

Section 307 – Simplified Forgiveness Application

Loans under the PPP not in excess of \$150,000 shall be forgiven if within 24 days after the enactment of this Act the borrower provides a one-page certification to the lender stating the number of employees retained, estimated amount of the loan spent on payroll costs, the total loan value, and an attestation stating that the borrower has met all requirements under the PPP and that all records will be retained to prove compliance with the PPP for four years. No other documentation will be required to substantiate forgiveness.

Section 308 – Specific Group Insurance Payments as Payroll Costs

Group life, disability, vision, and dental insurance benefits are included as part of eligible costs.

Section 311 – Paycheck Protection Program Second Draw Loans

Provides a second round of loans similar to the one provided under the PPP (only one additional loan allowed). It modifies the term “eligible entity” to include only entities with 300 or less employees and that had a reduction in gross receipts in any quarter for 2020 of 25% or more than in the same quarter in 2019 (last quarter is only applicable to applications submitted after 12/31/2020). Flexible rules are provided for those businesses that commence operations between 2019 and February 15, 2020. The loan can only be made to eligible entities that received loans under the original PPP and that on the date of disbursement of the new loan has used all of the funds provided under the original PPP.

The maximum loan amount, except for entities with a NAICS code starting in 72 (hospitality and restaurant industry) is the average monthly payroll cost during the 1-year period before the date on which the loan is made or calendar year 2019 (at the election of the recipient) by 2.5. The loan amount cannot exceed \$2 million. Flexible rules are provided to seasonal employers and to entities that were created between 2019 and February 15, 2020.

In the case of entities with a NAICS code starting in 72 (hospitality and restaurant industry), the average payroll is multiplied by 3.5, subject to the maximum loan amount of \$2 million. The loan for these entities may also be determined per physical location, but it must meet the 25% reduction in gross income. There is also a waiver of the affiliated group rules for these entities.

For loans of \$150,000 or less, the eligible entity may submit only a certification that it meets the applicable revenue loss requirement. However, before submitting the loan forgiveness application the entity must produce adequate documentation to this effect. These loans will also be subject to the same flexible rules under the PPP, as incorporated in this Act.

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Loan forgiveness is basically subject to the same parameters as under the PPP (as modified under this Act), including forgiveness amount, reductions to forgiveness amount due to reduction on employees or salaries and 60% limitation. The eligible entity may elect an 8-week or a 24-week covered period.

Section 312 – Increased Ability for Paycheck protection Program Borrowers to Request an Increase in Loan Amount due to Updated Regulations

Notwithstanding the interim final rule on loan increases, an eligible recipient of a loan that has not been forgiven may request an increase of the loan under the PPP as a result of any interim final rule that allows for covered loan increases even if the initial amount has been disbursed of the lender has submitted the loan to the SBA for forgiveness.

Section 332 – Emergency EIDL Grants

Program is extended until December 31, 2021, with some modifications.

Section 334 – Flexibility in Deferral of Payments of 7(a) Loans

Additional deferment period may be extended beyond one year if the borrower provides documentation justifying such additional deferment.

Section 336 – Election of 12-week Period by Seasonal Employers

Seasonal employers may use any 12-week period to determine its average monthly payroll between 2/15/2019 and 2/15/2020 to determine loan amount.

Section 343 – Covered Period for New Paragraph (36) Loans

Extends the PPP until March 31, 2021.

Title V – Banking

Subtitle A – Emergency Rental Assistance

Section 501 – Emergency Rental Assistance

\$400 million are reserved for Puerto Rico, Virgin Islands, Guam, Northern Mariana Islands and American Samoa (based on population). The funds shall be administered by the local government and transferred not later than 30 days after the enactment of the Act. The funds shall be used to provide assistance to eligible households for the payment of rent, utilities (including in arrears) and other expenses related to housing incurred due to COVID. Assistance may be provided for a period not exceeding 12 months (with additional extension of 3 months if necessary). No eligible household may be granted assistance in excess of 3 months prospective rent.

Division EE – Taxpayer Certainty and Disaster Tax Relief Act of 2020

Title I – Extension of Certain Expiring Provisions

Subtitle B – Certain provisions Extended Through 2025

Section 119 – Employer credit for paid family and medical leave

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The credit is extended until December 31, 2025.

Title II – Other Provisions

Section 206 – Clarifications and technical improvements to CARES Act employee retention credit

Allows recipients of the PPP to claim the credit. However, wages subject to the loan forgiveness cannot be considered for the credit. This amendment is effective as if included in the provisions of the CARES Act. The credit may be claimed for the wages paid between 1/1/2020 and 9/30/2020 in the periods after the enactment of this Act.

Section 207 – Extension and Modification of Employee Retention and Rehiring Tax Credit

The credit is extended until July 1, 2021. The applicable percentage of the credit is increased to 70% and the maximum amount is increased to \$10,000 per calendar quarter (previously the \$10,000 limit was applicable for all quarters).

With regards to the decrease in reduction in gross receipts necessary to qualify as eligible employer, the employer will qualify if gross receipts are less than 80% of the gross receipts in the calendar quarter in comparison with the same calendar quarter in 2019.

Governmental not-for-profit entities, colleges and hospitals may qualify for the credit.

The employee threshold for the computation of the credit increases to 500 employees (previously 100 employees).

Advance payment of the credit is allowed for small employers (less than 500 employees).

The amendments to this section shall apply to calendar quarters beginning after December 31, 2020.

Title III – Disaster Tax Relief

Section 303 – Employer retention credit for employers affected by qualified disasters

New tax credit that applies after a disaster declaration has been effected by the President of the US. Presumptively this credit will apply to PR, under Section 306 below, since the President of the US declared a disaster for the Coronavirus in PR. The credit is calculated based on the wages paid to employees when the business became inoperable until it resumed operations or 150 days after. The maximum amount of the credit is \$6,000.

Section 306 – Treatment of certain possessions

The Secretary of Treasury shall pay to each possession that does not have a mirror code tax system (such as PR) the aggregate benefits that would have been provided to resident of such possessions

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should a mirror code tax system had been in effect in such possession, once the possession establishes a plan for distribution.