CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

JANUARY, 2021

ADDITIONAL CORONAVIRUS RESPONSE AND RELIEF PACKAGE –

STIMULUS FOR BUSINESSES AND NONPROFIT ORGANIZATIONS

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The first major part of these relief packages was to provide changes to the existing PPP Loan program and the creation of a second draw PPP Loan (*PPP2*) for eligible borrowers.

The changes in the original PPP loan program include making loans available to first-time qualified borrowers (*certain entities were excluded from the first round), such as business league nonprofits (501(c)(6)*) who do not conduct major lobbying operations (*15% of total activities and $1 million of lobbying expenditures overall*). Additionally, forgivable loan uses now include certain technology expenditures, accounting fees, personal protective equipment, etc.

The new bill also simplifies the forgiveness application process of loans for $150,000 or less, making it somewhat automatic; not requiring the same level of support and complication previously required under the original PPP loan terms.

PAYCHECK PROTECTION PROGRAM (PPP) LOAN CHANGES & 2ND DRAW LOANS

Perhaps most important to original PPP loan recipients, the bill also reverses months of hard-lined interpretations of the **Internal Revenue Service (IRS)** rules concerning tax deductibility of expenses ultimately paid for by forgiven PPP loans. Such deductions were previously ruled disallowed by the IRS, effectively creating a tax burden on the amount of forgiven PPP loans. The new bill corrects this interpretation, in a sense making the entire benefits of forgiven PPP loans federal income tax-free.

For Second Draw loans, borrowers may be eligible if they meet the following criteria:

- *Have 300 or fewer employees.*
- *Have fully used or will fully spend their first PPP loan.*
- *Can show a 25% reduction in gross receipts in any 2020 quarter compared with the same quarter in 2019.*

The loan value is still calculated similar to original PPP loans (*2.5 months of 2019, 2020, or trailing 12 month salaries*) but it is capped at $2,000,000.

Please see our separate guide for more detailed information on the changes to the **PPP Loans**.

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Originally passed as part of the CARES Act in March 2020, the **Employee Retention Tax Credit (ERTC)** was one of two programs designed to help employers keep employees on payroll during the widespread shutdowns in the spring of 2020, along with the **Paycheck Protection Program (PPP)** loans. Originally, borrowers were unable to claim both a PPP Loan and the ERTC thus overall limiting the appeal to borrowers for the ERTC, as generally the PPP would result in more funds for businesses and organizations.

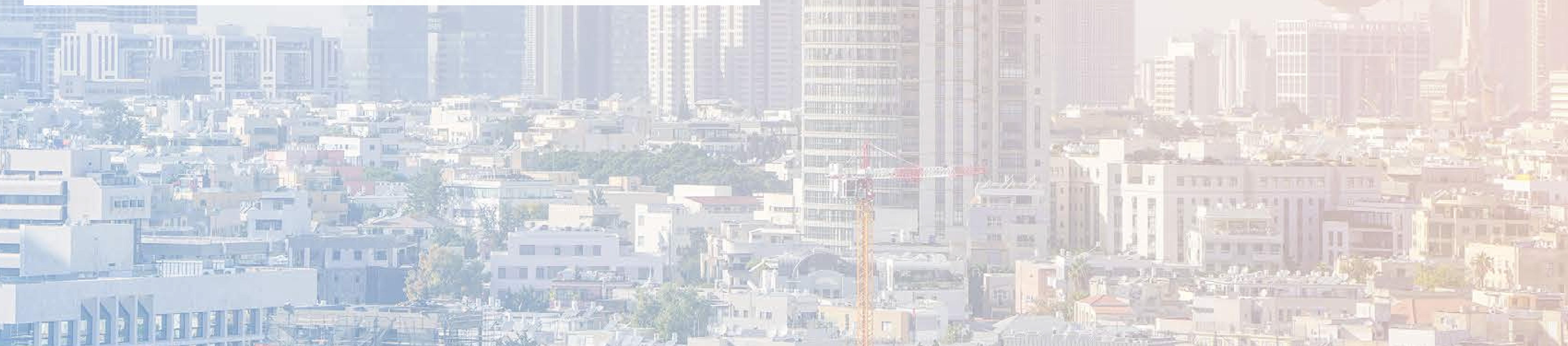
In this new bill was a significant change: the ability for a borrower that has taken a PPP loan to ALSO claim an ERTC. Additionally, the threshold to be an eligible ERTC employer was lowered in 2021 and the maximum amount of the credit significantly increased, from 50% of wages up to $10,000 per year to 70% of wages up to $7,000 per quarter.

Please see our separate guide for more detailed information on the **changes to the ERTC**.

EXPANSION OF THE SBA DEBT RELIEF PROGRAMS & EIDL GRANTS

The new relief bill calls for an additional 3 months of payments of principal and interest for current outstanding SBA Loans under 504, 7A, or Microloans. These payments are expected to start in February 2021 and are on top of the 6 months of payments provided under the CARES Act.

The **Economic Injury Disaster Loan (EIDL)** emergency grant program has also been extended to December 31, 2021 and an additional funding allocation of $20,000,000,000 has been set aside. This program allowed for potential EIDL borrowers to receive a grant of up to $10,000 within (*now*) 21 days of applying for an EIDL loan, regardless of if they accept the loan.



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TAX TREATMENT OF SBA DEBT RELIEF AND EIDL GRANTS

The tax treatment of the above SBA Debt Relief and EIDL Grants has been clarified and is otherwise treated similar to PPP Loan forgiveness. The debt relief and grants are nontaxable income to the recipient and any expenses paid are fully deductible.

EXTENSION OF UNEMPLOYMENT RELIEF FOR NONPROFIT ORGANIZATIONS

For nonprofit organizations that are "reimbursement" employers for unemployment, meaning they are not required to fund unemployment insurance but will be directly billed for any benefits claimed, the CARES Act provided a 50% coverage of these charges by the Federal government through December 31, 2020. This date has now been extended to March 14, 2021.

EXTENSION OF PAID FAMILY LEAVE & SICK LEAVE CREDITS

In March 2020, the federal government passed the **Families First Coronavirus Response Act (FFCRA)**, which required employers to provide paid leave to employees under certain conditions related to the COVID-19 pandemic. The FFCRA contains two provisions that address compensation of employee absences: the **Emergency Family and Medical Leave Expansion Act (EFMLEA)** and the **Emergency Paid Sick Leave Act (EPSLA)**, which were supposed to sunset on December 31, 2020. An important aspect of the FFCRA included a provision that allowed employers to take payroll tax credits for paid leave provided to employees under the FFCRA while employees continued to be compensated when they missed work for specific COVID-19 related reasons.

While the new legislation does not require employers to provide paid EFMLEA or EPSLA time off past December 31, 2020, employers that voluntarily continue to provide EPSLA leave under the FFCRA can still take payroll tax credits for the paid leave they provide until March 31, 2021. Employers should be careful, however, as the EPSLA benefits have not been extended beyond the 80 hours set forth in the original FFCRA. As a result, any employee who has already used his/her maximum amount of time under the EPSLA are not entitled to additional leave under this new legislation, nor will employers be able to claim the payroll tax credit for the additional leave.

Under the **Family Medical and Leave Act (FMLA)**, employees are entitled to a certain amount of protected leave per year. The EFMELA was an extension of the FMLA; therefore, employees may be entitled to more job protected leave starting in 2021; however, like the EPSLA, the maximum weeks are still unchanged, and the clock does not restart for the EFMELA.

100% MEALS DEDUCTION

For the years 2021 and 2022, taxpayers are now entitled to a 100% deduction for meal purchased at a or from a *"restaurant,"* up from 50%. There is some uncertainty as to what is a restaurant and taxpayers should use their best judgement until further guidance comes from the IRS. Taxpayers are still required to have a business purpose for the meal and meet all other requirements for deduction; only the amount of the deduction has changed.

EXTENSION FOR EMPLOYER PROVIDED STUDENT LOAN RELIEF PAYMENT

A section 127 Tuition Reimbursement program previously allowed taxpayers to provide up to $5,250 of payment to an employee tax-free for tuition. Passed with the CARES Act was an expansion of this program to allow employers to provide student loan payments tax-free now also under this program. The payments must be made pursuant to a Section 127 plan, which must meet certain requirements including nondiscrimination testing & cannot offer other benefits. This was originally set to expire on December 31, 2020 and now expires on December 31, 2025.

ADDITIONAL ECONOMIC IMPACT PAYMENTS

The CARES Act created a fully refundable tax credit for 2020 for taxpayers and was paid in advance in the Spring of 2020. This credit has been expanded to include another $600 per taxpayer (*and qualifying children*), beginning to phase out at $75,000 and fully phased out at $99,000 for a single taxpayer (*$150,000 to $198,000 for married*).

These payments have largely been distributed via the payment method on individuals 2019 returns and were advanced based on these filed returns. Any underpayment will be reconciled with the 2020 return filing and any overpayment is not required to be repaid.

TAX EXTENDERS PASSED

Tax extenders refer to a series of tax provisions that are continually temporarily extended, usually right around year-end, but are not actually permanent. These include:

- *Work Opportunity Tax Credit*
- *New Markets Tax Credit*
- *Exclusion from Gross Income of Mortgage Forgiveness*
- *Home energy credits*
- *Health Insurance Tax Credits*

EDUCATION, HEALTHCARE, ARTS & CULTURE AND NONPROFIT PROVISIONS

EDUCATION

The new bills include with approximately $54 billion of funding available for schools; including $10 billion for childcare and $13 billion for nutrition.

The $54 billion of funding will be allocated to states and then districts according to the Title 1 formula based upon the number of low-income children in the district. These funds are not expected to be linked to a school's reopening for in-person instruction and it is anticipated that the funding will have the same flexibility as under the first wave of CARES Act funding including: preparing schools for re-opening, PPE, providing technology and training, summer school, etc.

$2.5 billion of the school allotment is earmarked for private schools, particularly those serving low-income students, to help cover COVID related costs.

EDUCATION

In addition, schools should also benefit from two other areas of the bill:

Testing/Vaccinations: $22 billion has been set aside for COVID-19 testing and vaccines, some of which is expected to find its way down to school systems.

Internet Assistance: $7 billion has been set aside to provide broadband, including $3.2 billion set aside for home-based broadband, which would help low-income students by giving those households $50 per month to help defray internet costs.

The bill does not include additional E-Rate funding for schools.

Child Care: $10 billion has been set aside for childcare services. This is to help pay for additional supplies and operating costs due to COVID-19 and to help subsidize the cost of childcare for some families; including essential workers and low-income families. $250 million has been set aside to help Head Start programs that serve infants, toddlers, and preschoolers from low-income families.

We expect more details and applications of the coming weeks. As it becomes available, we will keep you informed.

ARTS

While many of these organizations have suffered (*and continue to suffer*) badly from regional closures, they are not significantly represented in the new relief bill. The bill does authorize $15 billion for the **Small Business Administration (SBA)** to make grants to eligible live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, or talent representatives who demonstrate a 25% reduction in revenues. More details will be forthcoming about this grant program in coming months, hopefully soon, as many of these organizations are on the brink of permanent closure. These *"shuttered venue"* grants are similar to PPP Loans but specifically set aside and targeted to these venues; any venue that receives one of these grants will be ineligible for future PPP funding. The initial grants are targeted to be 45% of gross revenue for operations that began before 2019, and 6x monthly payroll for operators that began after January 1st, 2019, for a maximum of $6,000,000. Supplemental grants may be available after April 1, 2021, assuming the operator meets the eligibility.

EDUCATION, HEALTHCARE, ARTS & CULTURE AND NONPROFIT PROVISIONS

HEALTHCARE

As this was also a government funding bill, the 2021 levels of funding for government organizations, with certain amounts allocated for specific initiatives. This includes:

- **National Institutes of Health (NIH) –** *The bill provides a total of $42.9 billion for NIH, an increase of $1.25 billion above the 2020 enacted level.*
- **Centers for Disease Control and Prevention (CDC) –** *The bill includes a total of $7.9 billion for CDC, an increase of $125 million above the 2020 enacted level. This includes $856 million in transfers from the Prevention and Public Health Fund.*
- **Substance Abuse and Mental Health Services Administration (SAMHSA) –** *The bill funds SAMHSA at $6 billion, an increase of $133 million above the 2020 enacted level.*
- **Health Resources and Services Administration (HRSA) –** *The bill includes $7.5 billion for HRSA, which is $151 million above the 2020 enacted level.*
- **Agency for Healthcare Research and Quality (AHRQ) –** *The bill provides $338 million for AHRQ, the same as the 2020 enacted level.*
- **Centers for Medicare and Medicaid Services (CMS) –** *The bill provides $4 billion for CMS administrative expenses, the same as the 2020 enacted level.*
- **Administration for Children and Families (ACF) –** *The bill provides $24.7 billion in discretionary funding for ACF, an increase of $251 million above the 2020 enacted level.*
- **Administration for Community Living (ACL) –** *The bill funds ACL at $2.3 billion, which is $35 million above the 2020 enacted level.*
- **Office of the Secretary—General Departmental Management –** *The bill provides $551 million, an increase of $6 million above the 2020 enacted level.*
- **Public Health and Social Services Emergency Fund (PHSSEF) –** *The bill provides $2.8 billion for PHSSEF, an increase of $110 million above the 2020 enacted level.*

HEALTHCARE

Unlike the CARES Act, this package did not create a targeted Provider Relief Fund to provide specific targeted payments to healthcare providers. The bill does clarify that any parent organizations that received targeted HHS Stimulus payments to subsidiary providers and formalize the lost revenue calculation as provided by the HHS FAQ. Further, while not official, we have heard there is a potential Phase 4 of the Provider Relief Fund on the horizon soon.

Of note to providers as well is the *"No Surprises Act,"* which included patient cost-sharing protections and transparency. In short, this act is designed to curb the practice of "balance-billing" by providers for certain services. This change is designed to limit patient billing to in-network rates for out-of-network emergency services and for ancillary services provided by out-of-network providers at in-network facilities. It also requires that out-of-network payments now count toward in-network deductibles and out of pocket maximums. The act also creates a dispute mechanism between providers and payors and can prevent balance billing without at least 72 hours' notice and estimate of charges prior to care.

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