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Coronavirus Response and Relief Supplemental Appropriations Act – Key Highlights for West Shore Bank Customers

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.

A complete review of the nearly 5,600-page package will take more time, but our preliminary industry 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 including the tax treatment of PPP expenses.
- A new round of Economic Impact Payments (EIPs) for consumers, with aggressive distribution timelines and new exemptions from garnishments.
- 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.

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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).
- 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.

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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.

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.

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.

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

- 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.

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Banking/Accounting Provisions

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.