CAPLAW *enews brief*

COVID Relief and Consolidated Appropriations Act in Effect

By Jonathan Cohen, Esq., Caroline Kelley, Esq., and Edward Faust, Esq.
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Late on December 27, 2020, President Trump signed the Consolidated Appropriations Act, 2021, (the "Act") into law. The 5,593 page Act addresses a host of issues in one legislative package, including federal government appropriations for FY2021, and relief related to the COVID-19 pandemic. The Act attempts to respond to COVID-19-related challenges by offering various forms of assistance to individuals, families, and businesses. CAPLAW continues to analyze the Act and has addressed in this article key pieces of the legislation that are relevant to CAAs and members of the communities they serve.

Appropriations for CAA Programs

The Act allocates $745 million to fund the CSBG program for FY2021. In addition, several programs and services commonly offered by CAAs received FY2021 funding including:

- Head Start: $10.75 billion
- Low-income Home Energy Assistance Program (LIHEAP): $3.75 billion
- Weatherization Assistance Program (WAP): $330 million

WAP also received appropriations of $350 million for each fiscal year from FY2022-FY2025 along with a host of other changes that effectively reauthorized the Act. These changes include:

- An increase in the administrative cost limit from 10 percent to 15 percent of the grant
- The option to re-weatherize a dwelling after 15 years
- The addition of "renewable energy technologies and other advanced technologies" as a type of energy conserving device or technology to the definition of weatherization materials
- The ability of the Department of Energy (DOE) to consider improvements in health and safety of occupants of dwellings as well as other non-energy benefits when determining program standards and cost effectiveness

Direct Stimulus Payments

All individuals with an adjusted gross income under $75,000 will receive a direct stimulus payment of $600. As with the stimulus payments provided under the CARES Act, these funds are refundable tax credits advanced to taxpayers. CAPLAW does not expect these credits to be included in the definition of "income" for purposes of determining eligibility for CAA programs and services, however, each federal funding source may define "income" differently based on applicable laws and regulations. CAAs should be aware of these definitions in order to properly plan for eligibility determinations.

Unemployment Insurance Benefit

The Act provides an additional $300 in federal pandemic unemployment compensation to those who qualify for unemployment insurance benefits until March 14, 2021. This compensation is in addition to what is provided as part of the standard jobless benefit administered through the states.

Rental Assistance

The Act provides $25 billion in emergency rental assistance for eligible households, which include households in which one or more individuals have qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship because of the pandemic; one or more individuals are at risk of homelessness; or household income is lower than 80% of the area median household income.

Eviction Moratorium

The eviction moratorium issued by the CDC in September 2020 (see CAPLAW news flash) has been extended to January 31, 2021.

Child Care and Development Block Grant (CCDBG)

The Act funds the CCDBG to states with $5.9 billion for child care assistance for low-income families for FY2021. It also provides $10 billion to states to prevent, prepare for, and respond to the pandemic. The Act lists several ways in which these funds may be used, including to provide relief from copayments and tuition for families and assistance to child care providers experiencing decreased enrollment or closures due to COVID-19.

Emergency Sick Leave and Expanded FMLA Leave under the FFCRA

The new Act does not extend mandated FFCRA paid leave past December 31, 2020. This means that covered employers are no longer obligated to provide Emergency Paid Sick Leave and Expanded FMLA, as defined in the FFCRA, after December 31, 2020. However, as of January 1, 2021, covered employers may voluntarily provide EPSL or EFMLA to their employees and recover the associated tax credit for accompanying paid leave wages and qualified health plan expenses until March 31, 2021.

As CAPLAW discusses in our Families First Paid Leave FAQ + Refresher, CAAs opting not to provide leave pursuant to EPSL or EFMLA may create and administer their own paid leave policies to continue incentivizing employees to self-isolate and prevent the spread of COVID-19. Such policies must comply with section 200.431(a), (b) of the Uniform Guidance, and are allowable where 1) the leave provided is reasonable, 2) the policies are written and approved by the CAA's board, 3) the costs are equitably allocated to all related activities, including federal awards, and 4) the accounting basis selected (cash or accrual) for costing leave is consistent with other forms of leave offered.

PPP Loans

The Act provides new flexibilities for existing PPP borrowers and appropriates an additional $284.45 billion for a second round of PPP loans. Existing PPP borrowers are now permitted to spend loan proceeds and receive federal forgiveness for new categories of expenditures, including the following:

- "Covered operations expenditures," meaning payment for business software or cloud computing services that facilitate business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses;

- "Covered property damage costs," meaning costs 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 costs," meaning expenditures made for essential goods under contracts or purchase orders that were in effect before the borrower's covered period or, in the case of perishable goods, before or at any time during the covered period; and
- "Covered worker protection expenditures," meaning operating or capital expenditures to facilitate the adaptation of the borrower's activities to comply with federal, state or local laws or guidance related to sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

These changes apply to all PPP loans, including those issued before the enactment of the Act. The Act also expands the PPP definition of "payroll costs" to include life, disability, vision, or dental insurance costs, making those expenses allowable under all PPP loans.

Existing borrowers will be allowed to select their own covered period from between 8 and 24 weeks for loan forgiveness purposes, and the forgiveness process will be simplified for loans under $150,000. First-round PPP borrowers that returned all or part of their PPP loan will be allowed to re-apply for the maximum amount of forgiveness applicable, and they may be able to have their loan amount recalculated. EIDL advances do not have to be subtracted from PPP forgiveness. The Act also eliminates guarantee and yearly fees for borrowers and lenders.

Additional funds were also appropriated to provide a second round of PPP loans for eligible business and nonprofits that have no more than 300 employees and can demonstrate a 25% reduction in gross revenue between comparable quarters in 2019 and 2020. The maximum loan size for the second round will be 2.5 times average monthly payroll costs, up to $2 million. Borrowers will receive full loan forgiveness if they spend at least 60% of the loan on payroll costs (as defined in this Act) over a covered time period of their choosing between 8 and 24 weeks. A portion of the funds have been set aside to support first-time PPP borrowers with 10 or fewer employees, second time PPP employers with 10 or fewer employees, and first-time borrowers that are newly eligible under the Act.

Economic Injury Disaster Loans & Advances

The Act allocates $20 billion to be made available to qualifying small businesses via the Small Business Administration as EIDL grants or advances of $1000 per employee, up to $10,000. These new EIDL grants are not taxable and will no longer be deducted from PPP for loan forgiveness purposes as they were under prior law. Businesses that receive an EIDL grant will also not be denied tax deductions for qualified expenses paid for with EIDL grant funds.

Businesses qualify for these EIDL grants when they i) are located in a low-income community, ii) have suffered an economic loss greater than 30%, and iii) employ not more than 300 employees, in addition to qualifying as an eligible entity as defined by the CARES Act. A business is an eligible entity under the CARES Act where it i) has been in operation since at least January 31, 2020, ii) has been directly affected by COVID-19, and iii) employs fewer than 500 employees, or else the business is a private non-profit, a small agricultural cooperative, or an individual operating as a sole proprietorship or independent contractor.

A "low-income community" is defined under Section 45D(e) of the Internal Revenue Code as a census tract, i.e., geographic area, where the poverty rate is at least 20%, or else the median family income for the tract does not exceed 80% of the statewide median family income. In the case of a tract located within a metropolitan area, the median family income cannot exceed 80% of the greater of statewide median family income or the metropolitan area median family income.

"Economic Loss" is defined as "the amount by which the gross receipts of the covered entity declined during an 8-week period between March 2, 2020, and December 17, 2021, relative to a comparable 8-week period immediately preceding March 2, 2020, or during 2019."

Employee Retention Credit

The Act extends the Employee Retention Credit, a fully refundable payroll tax credit for qualifying employers, until July 1, 2021. It also makes several changes to the credit that could increase both the number of employers eligible for it, as well as the amount of the credit. A tax-exempt nonprofit CAA or a state association (including 501(c)(3)s and 501(c)(4)s) is eligible for the Employee Retention Credit for a given calendar quarter if it either: (1) fully or partially suspends its operations due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19; or (2) experiences a significant decline in gross receipts. For a nonprofit, "gross receipts" means the total amount of income the nonprofit receives from all sources during its annual accounting period, without subtracting any costs or expenses. Under the Act, a significant decline in gross receipts begins with the first quarter in which an employer's gross receipts for a calendar quarter are less than 80% (increased from the 50% threshold under the CARES Act) of its gross receipts for the same calendar quarter in 2019.

The Act increases the amount of the credit from 50%to 70% of the qualified wages (including qualified health plan expenses) that an eligible employer pays in a calendar quarter. In addition, the per employee limit increases from $10,000 for all calendar quarters, to $10,000 for any calendar quarter.

For purposes of determining qualified wages for the credit, whereas the determination under the CARES Act was different for employers with 100 or fewer employees, the Act draws the distinction at 500 employees. Specifically, if the employer averaged **more than 500 full-time employees in 2019**, qualified wages are the wages paid to an employee for time that the employee is not working due to either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a significant decline in gross receipts. For these employers, an employee's qualified wages for purposes of calculating the credit may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship. If the employer averaged **500 or fewer full-time employees in 2019**, qualified wages are the wages paid to any employee, whether or not they are working, during any period of economic hardship described in (1) and (2) above.

Coronavirus Relief Fund

The Act extends the deadline for the $150 billion Coronavirus Relief Fund for state, local, and tribal governments that was created under the CARES Act to December 31, 2021.

Payroll Tax Deferral Payment

In August 2020, President Trump issued an Executive Order that allowed employers to defer withholding the employee share of Social Security tax for employees earning less than $4,000 every two weeks for the final quarter of the year. Employers who deferred those withholdings had until April 30, 2021, to withhold and pay those deferrals pursuant to federal tax deposit requirements. The Act extends the date for those employers to withhold and deposit any deferred payroll taxes to December 31, 2021. CAPLAW has previously noted the uncertainty surrounding this executive action. As such, it is unclear how many CAAs will be impacted by this provision of the Act.

Emergency Broadband Benefit Program

The Act includes $7 billion in funding for increased broadband internet access, $3.2 billion of which is dedicated to a new Emergency Broadband Benefit program that will provide up to $50 per month to low-income households for broadband access. Households are eligible for receiving this benefit if they i) are eligible for the FCC's "Lifeline" affordable broadband program, ii) are eligible for other existing broadband discount programs, iii) have children who are eligible for free or reduced cost school lunches, iv) have a household member who is a Pell grant recipient, or v) have an unemployed household member.

The remainder of the $7 billion in broadband access funding includes $1 billion for tribal broadband programs, $1.9 billion for "rip and replace" efforts to remove Huawei and ZTE equipment from US networks, $300 million for rural broadband access development, $285 million to fund a pilot program for increasing broadband access for communities around historically black colleges and universities, $250 million for the FCC's telehealth program, and $98 million for improvements in broadband mapping.

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