What You Need to Know About the Consolidated Appropriations Act of 2021

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Over the course of a year, three major pieces of federal legislation have passed that impact retirement plans and IRAs, financially-distressed individuals, small businesses, and planning for retirement in general.

The SECURE Act, passed in December 2019, was the most comprehensive set of changes to retirement plans in more than a decade. Designed to make saving for retirement easier and incentivizing small businesses to offer retirement plans, its bipartisan support brought many positive changes to pass. The SECURE Act also brought the stretch IRA to an untimely demise, by requiring most non-spousal beneficiaries to receive their inheritances within a 10-year period. On a positive note, required minimum distributions (RMDs) were increased from age 70 ½ to age 72 for most IRA and qualified plan owners.

The CARES Act, passed in March 2020, also affected retirement planning, only this time in response to a worldwide pandemic. The Act created a one-year opportunity to access IRAs and qualified plans for individuals experiencing financial hardship or those testing positive for COVID-19 through the coronavirus-related distribution, and eased the restrictions on plan loans for certain pandemic-impacted individuals. The Act also applied a temporary waiver for 2020 RMDs on IRAs, including Inherited IRAs, inherited Roth IRAs, and defined contribution plans. Finally, the CARES Act created many provisions to help ease the financial strain caused by the pandemic felt by many small businesses, including the Paycheck Protection Program (PPP).

With many of the provisions in both the SECURE and CARES Act expiring at the end of 2020, the Consolidated Appropriations Act of 2021 (H.R. 133) was passed on December 27, 2020.[1] Some 5,593 pages in length, the Act is a $2.3 trillion spending bill, comprised of $900 billion in additional stimulus relief and a $1.4 trillion omnibus spending bill for the 2021 fiscal year. Within its pages are 12 separate annual appropriations bills, including the COVID-Related Tax Relief Act of 2020 (COVIDTRA). The Act contains several tax extenders, expands and extends unemployment benefits, provides a second round of stimulus relief payments, and additional relief to businesses through a second round of PPP loans.

Unlike the SECURE and CARES Acts, the Consolidated Appropriations Act lacks the same major focus on changes to retirement plans, but does contain many provisions that may indirectly affect planning with your clients. An earlier proposal under the Securing a Strong Retirement Act of 2020, that would delay RMDs to age 75 from age 72, did not make the final enrolled bill.[1] But there are some key provisions that you should be familiar with, both for individual clients and your business-owner clients, to help them navigate the year ahead.

Provisions Affecting Individuals

1. **Round two of stimulus payments.** COVIDTRA, Section 272, provides a second round of stimulus payments of $600 per eligible individual, $1,200 for couples, plus $600 per eligible dependent under the age of 17. Direct payments began to be deposited on January 4, 2021, with checks mailed shortly thereafter.

Eligibility begins to phase out for single taxpayers with 2019 adjusted gross income of more than $75,000 and married taxpayers with AGI over $150,000. The stimulus amount is reduced by 5% of the amount over the applicable thresholds. Single filers with AGI greater than $87,000 and married couples that filed jointly with AGI of greater than $174,000 would be ineligible. For individuals who have not received their relief checks, encourage them to visit the IRS' Get my Payment link at [https://www.irs.gov/coronavirus/get-my-payment.](https://www.irs.gov/coronavirus/get-my-payment)

2. **Pandemic Unemployment Assistance (PUA).** This extends unemployment compensation from 39 weeks to 50 weeks for gig workers, self-employed workers, independent contractors, and other workers with limited work history not normally eligible for unemployment benefits. The PUA program will expire on March 14, 2021 (Section 201 under Title II of the Continued Assistance for Unemployed Workers Act).

3. **Pandemic Emergency Unemployment Compensation (PEUC).** The Act adds another 11 weeks of aid, for a total of up to 24 weeks of federally-funded unemployment compensation if the unemployed person has exhausted their state's unemployment aid (Section 206, Title II).

4. **Federal Pandemic Unemployment Compensation (FPUC).** This covers 11 weeks of aid, with an additional $300 per week of federally subsidized payments in addition to state benefits ($600 in the first round that expired in July 2020) for periods between December 27, 2020 and March 14, 2021 (Section 203 under Title II).

5. **Extension of 100% of AGI limit on cash donations to a charity through 2021.**

6. **Extension of the above-the-line deduction for non-itemizers on cash donations.** Limited to a maximum of $300 for individuals and now permits up to $600 for joint filers. Also extends the suspension of the 50% threshold for individual donations and the increase of 10% to 25% of taxable income for corporations (Section 212 of Title 1 – Extension of Certain Expiring Provisions).

7. **Made permanent the threshold for the deduction of medical expenses above 7.5% of AGI.** Prior to the Act, the threshold was set to return to 10% for certain taxpayers (Title I – Extension of Certain Expiring Provisions, Sec. 101).

8. **Unused balances in health and dependent care flexible spending accounts (FSAs) may be carried over from 2020 to 2021 and unused balances in 2021 to 2022.** Generally, FSAs are "use it or lose it" (Section 214, Subtitle II – Other Provisions).

9. **Extended the provision under the CARES Act to permit mortgage insurance to be includable as qualified residence interest through 2021 for deduction purposes (Section 133 under Subtitle C Tax Extenders).**

Changes Affecting Retirement Plans

1. **New Qualified Disaster Distributions (QDD).** The CARES Act created the coronavirus-related distribution (CRD), which permitted an aggregate of $100,000 to be distributed from IRAs and defined contribution plans for certain individuals impacted by the pandemic, by no later than December 30, 2020. The provision was not extended to 2021, although Division EE of the Act— Taxpayer Certainty and Disaster Tax Relief Act—did retroactively include distributions from money purchase pension plans in the eligible retirement plans for a CRD.

The QDD, which was made permanent under Division EE of the Act, mirrors much of the same ingredients of the CRD. An aggregate of $100,000 per qualified disaster may be taken from retirement accounts, excluding defined-benefit plans, exempt from the 10% early withdrawal tax, and tax liability is spread over a three-year period. Unused QDDs may be rolled back within three years. To qualify, an individual must have lived in a qualified disaster area (declared by the President between January 1, 2020 and February 25, 2021) and experienced an economic loss because of the disaster (Section 302 under Title III of Division EE). Qualified disaster areas for this purpose do not include areas that are solely due to the COVID-19 pandemic.

2. **Extension of plan loans.** Up to the lesser of 100% or $100,000 to individuals meeting the criteria of living in a qualified disaster area and being economically impacted by the disaster.

Changes Affecting Small Businesses

1. **Extension and modification of the employer retention credit (ERC).** Title II, Section 206 of Division EE extends the credit for wages paid from January 1, 2021, to June 30, 2021, and increases the credit from 50% to 70% of qualified wages. The Act also increases the limit from $10,000 per employee to $10,000 per employee per quarter. The Act also increases eligible employers from those with no more than 100 employees to those with up to 500 employees, and clarifies that employers who took a PPP in 2020 may also claim the credit, provided forgiven PPP funds were not used to pay employees.
2. **Extension of refundable employer payroll tax credit.** Up to 50% and up to $10,000 in employee wages, for paid and family leave through December 31, 2025 (Section 286 under COVIDTRA).
3. **Temporary increase in the deduction of business meal and beverage expenses.** From 50% to 100% for tax years 2021 and 2022.
4. **Extension of certain deferred payroll taxes.** The period for deferring the 6.2% employee portion of OASDI social security taxes withheld in 2020 has been extended to December 31, 2021 (Section 274 of COVIDTRA).

Round Two of Paycheck Protection Program (PPP)

1. **The COVID-Related Tax Relief Act of 2020, under Subtitle B, permits recipients of forgivable PPP loans to deduct expenses from such loans, despite prior guidance to the contrary.** Notice 2021-2 declares prior guidance that disallowed deductions on forgivable PPP loan amounts obsolete.
2. **SBA reopened the PPP for "First Draw Loans" the week of January 11, 2021, to small businesses, including self-employed individuals who have not previously taken a PPP loan.** Eligible expenses are expanded to include payroll costs, including benefits, mortgage interest, rent, utilities, worker protection costs related to COVID-19, and uninsured property damage costs caused by looting and vandalism.

First Draw Loans are eligible for full forgiveness if, during the eight- to 24-week covered period following loan disbursement:

- Employee and compensation levels are maintained;
- The loan proceeds are used to pay eligible costs; and
- At least 60% of the loan is used to cover payroll costs.

Eligible employers include those with fewer than 500 employees (some exceptions apply in certain industries), including nonprofits, veteran organizations, self-employed, independent contractors, and sole proprietors. Those who either previously applied for a PPP under round one that did not receive loan forgiveness, or those that did not accept the full loan amount, may also apply under the First Draw PPP.

Loans must be applied for no later than March 31, 2021, through an existing SBA (7)(a) lender.

3. **Certain eligible borrowers may apply for a "Second Draw PPP Loan" with the same general terms as their first PPP loans.** The list of expanded eligible expenses and forgiveness terms from #2 above also extends to Second Draw Loans.

Targeted eligibility is specific to borrowers who:

- Previously received a PPP loan under round one and have used the full amount of that loan on eligible expenses;
- Have 300 or fewer employees; and
- Can prove at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.[1]

Loans must be applied for no later than March 31, 2021, through an existing SBA (7)(a) lender.

The maximum loan amount is generally 2.5 times average monthly payroll costs in 2019 or 2020, up to $2 million dollars.

The Enrolled Bill, in its entirely, may be found here: https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf

Whenever new legislation like this passes, your clients are likely looking for direction on what they should do. So, use this information to help them understand their options and inform them of the specific provisions that may apply to them.

Sources:

[1] https://home.treasury.gov/system/files/136/Top-line-Overview-of-First-Draw-PPP.pdf