
December 28, 2020

# Spending Bill Contains Coronavirus Relief

On December 21, 2020, Congress passed additional measures to provide relief from the widespread economic effects of the coronavirus pandemic. On December 27, 2020, the president signed the bill into law. While both houses of Congress have been working on various provisions since the CARES Act was enacted last March, no agreements were reached until now. The coronavirus provisions are contained in a larger spending bill that funds the federal government through next September. The bill, entitled the Consolidated Appropriations Act, 2021 (CAA), contains relief for various industries, small businesses, and individuals. Although there is no broad employee benefit relief, the items discussed below may interest those that work with employers and with employer-sponsored plans.

## Paycheck Protection Program Relief

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provided significant relief to businesses adversely affected by the pandemic. The Paycheck Protection Program (PPP) allowed qualifying entities to borrow money through approved lenders, which are subject to the Small Business Administration's (SBA's) rules and oversight. Demand for the PPP funds was so great that last spring Congress approved a further infusion of federal aid to keep the program running. Employers who borrow PPP assets may have the loan forgiven if they follow the program rules, which generally include using the funds for payroll and certain other expenses, including funding a business's retirement plan.

The CAA infuses nearly $300 billion of additional funding into the PPP to support small businesses. These are some of the significant provisions.

- A second round of forgivable loans is available.
  - Businesses with 300 or fewer employees that have experienced at least a 25 percent revenue loss in any quarter of 2020—versus the same quarter in 2019—are eligible.
  - In addition to most payroll costs, expenses can now also include supplier costs and the cost of providing coronavirus protection (e.g., adding drive-through service or upgrading air filtration).
  - Business expenses paid with PPP loans are tax deductible.
  - There is a new simplified loan forgiveness process for PPP loans of $150,000 or less.
- Funding is included for independent live-venue operators, including certain movie theaters and museums that were affected by COVID-19 restrictions.

## Medical Expense Deduction Floor Reduced

The annual amount of unreimbursed medical expenses that individuals must incur in order to get a deduction has been permanently reduced from 10 percent of adjusted gross income to 7.5 percent. This provision applies to taxable years beginning on or after January 1, 2021.

## Disaster Relief: Distributions and Loans

The CAA provides relief for those who have experienced an economic loss because of a "qualified disaster" *and* whose principal residence is located in a presidentially declared disaster area. This provision does not apply to any disaster declarations that are made only because of COVID-19. But this relief closely mirrors the coronavirus-related distribution (CRD) rules found in the CARES Act.

- Individuals can distribute up to $100,000 for disasters that begin on or after December 28, 2019, and that end on or before December 27, 2020 (the date the CAA was signed into law). The disaster distribution must be taken within 180 days of December 27, 2020. If an individual is affected by multiple disasters, this dollar limit applies separately to each disaster.
- As with CRDs, these disaster distributions
  - are not subject to a 10 percent early distribution penalty tax,
  - are taxed equally over 3 years (unless the taxpayer chooses taxation in the distribution year), and
  - may be repaid within 3 years of the distribution date.
- Individuals can take distributions from IRAs and employer-sponsored retirement plans. Distributions from 401(k), 403(b), governmental 457(b), and money purchase plans are not treated as "eligible rollover distributions" for certain purposes: specifically, they are not subject to 20 percent withholding or to Internal Revenue Code (IRC) Sec. 402(f) notification.
- Individuals who meet the following requirements may repay hardship distributions or first-time homebuyer distributions taken to purchase or construct a principal residence.
  - The individual received the distribution 180 days before the disaster (defined by FEMA) to 30 days after the disaster ended.
  - The principal residence is in the disaster area.
  - The individual did not use the distribution because of the disaster.
- Loans may be taken for up to $100,000 or the participant's vested account balance, whichever is less. This increased limit is available to eligible participants to who take a loan within 180 days following December 27, 2020.
- Loan repayments may generally be delayed for a year (or if later, 180 days after December 27, 2020). But subsequent payments must reflect any interest accrued during the delay. This extended deadline applies to loan repayments that are due within the period beginning on the first day of the disaster and ending 180 days following December 27, 2020.

Although new disaster distributions or loans may be hard to process because the CAA was enacted so late in the year, these provisions may provide relief for qualified individuals who have already taken distribution or loans in 2020. As with CRDs, these disaster-related provisions are also optional for employer-sponsored retirement plans.

## Money Purchase Plans May Offer Coronavirus-Related Distributions

The CARES Act authorized qualified individuals to take CRDs from IRAs and certain defined contribution retirement plans by December 30, 2020. Specifically, the CARES Act created a permissible distribution trigger for eligible retirement plans, including 401(k) plans, 403(a) and (b) plans, governmental 457 plans, profit-sharing plans, and IRAs. But this relief did *not* include money purchase pension plan assets, which are subject to in-service distribution restrictions. So the CAA amended the CARES Act to include money purchase pension plans in the types of plans that are treated as meeting the plan distribution requirements of IRC Sec. 401(a). This provision allows employers with money purchase pension plans to permit eligible participants to take CRDs as if such plans were originally included in the CARES Act.

## Partial Plan Termination Relief

The coronavirus pandemic has caused countless employers to lay off or furlough portions of their workforce. Many of these employers took this action to preserve their businesses, hoping that they could rehire those workers once the economy started to recover. But under current rules, a partial plan termination generally occurs when there is a workforce reduction of more than 20 percent. This results in 100 percent vesting for the affected workers. To avoid treating all such temporary workforce reductions as partial plan terminations, the CAA changes the rules to give employers additional time to rehire workers. If the active participant count as of March 31, 2021, is at least 80 percent of the active participant count at the time the coronavirus national emergency was declared (March 13, 2020), a plan will not be treated as having a partial plan termination.

## Qualified Future Transfer Elections

The CAA provides relief for certain defined benefit plan excesses transferred to health benefit accounts. This relief allows employers to make an election to end an existing transfer period if the election is made by December 31, 2021. Qualified future transfers allow excess pension assets to be transferred to health benefit accounts to pay for health or life insurance costs if certain requirements are met—including a minimum funding requirement.

## Healthcare Provisions

**Flexible spending and dependent care accounts.** The CAA gives employers greater flexibility in permitting employees to carry over unused amounts in both their health flexible spending arrangements (FSAs) and their dependent care FSAs. All leftover amounts from 2020 can be carried forward to 2021. Employees can also carry over 2021 amounts to 2022. This is in addition to the CAA extending the normal grace period from 2½ months to 12 months for plan years ending in 2020 and 2021. Employees who stop participating in either kind of plan during calendar year 2020 or 2021 can continue to receive reimbursements through the end of the plan year in which they stopped. And finally—in addition to other minor changes—for plan years ending in 2021, participants in health and dependent care FSAs may modify their contributions without a change in status. Employers who choose to implement these optional provisions must operationally comply with them until they amend their plans to reflect the change.

**Preventing surprise medical billing.** A group health plan or a health insurance issuer that offers group or individual health insurance coverage to cover emergency services is required to provide such services without the need for prior authorization or other limitations, even if the healthcare provider is not considered a participating (in-network) provider. Any limitation that a plan or coverage contains cannot be more restrictive than requirements that apply to emergency services received from participating providers and facilities.

**Other healthcare provisions.** The CAA contains several other healthcare-related changes that may benefit employers or employees.

> **Families First Coronavirus Response Act (paid sick and family leave credit) extended –** This credit was set to expire on December 31, 2020, but the CAA extends this credit until March 31, 2021. The CAA also makes other minor changes.
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> **Paid family and medical leave employer credit extended** – This employer credit was also due to expire on December 31, 2020. The CAA extends the credit to December 31, 2025.

## Education-Related Provisions

- The CARES Act permitted employers to provide tax-free student loan repayment benefits of up to $5,250 to employees through 2020. The CAA now extends this benefit through December 31, 2025.
- The CAA simplifies the Free Application for Federal Student Aid (FAFSA) program to make the application process easier and to make financial aid more predictable.
- The CAA increases the income that individuals can earn and still receive the Lifetime Learning Credit—while repealing the deduction for qualified tuition and related expenses.

## Looking Ahead

At nearly 5,600 pages, Ascensus will continue to analyze the bill for items pertinent to providers of retirement, healthcare, and education products and services. In addition, while the current Congressional session is winding down, many lawmakers have suggested that more coronavirus relief is needed. Ascensus will continue to monitor legislative activity pertaining to such relief. Visit ascensus.com for the latest information.