

The U.S. Senate and House of Representatives overwhelmingly passed, and the President of the United States signed into law, the COVID-19 relief bill that provides stimulus payments to individuals, extends weekly unemployment benefits and provides more than \$300 billion in aid for small businesses. Totaling over \$900 billion, it succeeds the Families First Coronavirus Response Act (FFCRA) and Coronavirus Aid, Relief and Economic Security Act (CARES) to provide continued support during the COVID-19 health crisis and associated economic fallout.

The new bill is over 5,500 pages long and is quite similar to previously passed legislation. For your convenience, this document is to provide you with a high-level summary of the key highlights for both individuals and businesses as well as details about Paycheck Protection Program (PPP) loans for small businesses.

## **INDIVIDUALS**

1. **Stimulus Checks:** The legislation provides for economic impact payments of \$600 for individuals with incomes up to \$75,000 per year and \$1,200 for married couples who make up to \$150,000 per year, as well as a \$600 payment for each child dependent. Eligibility and benefit levels would be based on 2019 income tax filings or 2018 tax data if 2019 information is unavailable.
2. **Unemployment Insurance:** \$120 billion has been allocated to provide workers receiving unemployment benefits a \$300 per week supplement from December 26, 2020 until March 14, 2021. This bill extends the Pandemic Unemployment Assistance (PUA) program with expanded coverage to self-employed, gig workers and others in nontraditional employment, as well as the Pandemic Emergency Unemployment Compensation (PEUC) program, which provides additional weeks of federally funded unemployment benefits to individuals who exhaust their regular state benefits.
3. **Temporary Moratorium on Eviction Filings:** The national eviction moratorium will extend through January 21, 2021 prohibiting landlords from initiating legal action to recover possession of a rental unit or to charge fees, penalties or other charges to the tenant related to nonpayment of rent.

## **BUSINESSES**

Perhaps most important is the long-awaited funding of the second round of PPP loans for small businesses and forgiveness rule changes that are extremely favorable to borrowers including the specification that qualified business expenses paid with PPP funds are tax-deductible. This is fantastic news for PPP loan borrowers as it supersedes IRS guidance which stated that expenses paid with PPP funds were not deductible.

The bill also extends other business tax provisions including a credit to retain workers during COVID-19 related closures, changes to the tax treatment of business losses and delays in payroll tax payments which you can read about on our website. For purposes of this email, we will focus on the business stabilization fund, corresponding PPP loans and newly added provisions.

1. **Stabilization Fund:** \$325 billion in aid has been made available for small businesses struggling after nine months of pandemic-related economic hardships. The bill provides more than \$284 billion to the U.S. Small Business Association (SBA) for a second round of PPP loan funding to assist small businesses, self-employed individuals and non-profit organizations during the COVID-19 pandemic (see more information below) and allocates another \$20 billion to provide EIDL grants to businesses in low-income communities. Additionally, live venues, independent movie theaters and cultural institutions that have closed will have access to \$15 billion in dedicated funding with \$12 billion set aside to help businesses in low-income and minority communities.
2. **Meals & Entertainment Deduction:** The bill temporarily allows a 100% business expense deduction for meals (rather than the current 50%) as long as the expense is for food or beverages provided by a restaurant and is paid or incurred after December 31, 2020 and before January 1, 2023.
3. **Extension of FFCRA Credits:** Under the FFCRA, which went into effect on April 1, 2020, certain small employers were required to pay up to 10 weeks of qualified family leave when an adult couldn't work because a dependent child was without school or care, and up to 2 weeks of sick leave for a variety of COVID-related issues. In turn, the employer would receive a fully refundable dollar for dollar payroll tax credit equal to the wages paid. This credit was set to expire on December 31, 2020 but has been extended through March 31, 2021.
4. **Extension of Employee Retention Credits (ERC):** The ERC is extended to July 1, 2021. Businesses may now take the ERC and the PPP as employers who receive a PPP loan may still qualify for ERC on wages that are not paid for with forgiven PPP funds. For the first two quarters of 2021 (January 1 - June 30), the following changes apply:
  - The credit percentage is increased from 50% to 70% of qualified wages.
  - Qualified wages are increased from \$10,000 in total per employee to \$10,000 per quarter, per employee.
  - Qualified wage restrictions apply at 500 employees, rather than 100.
  - Drop in gross receipts requirement decreases from 50% to 20% over a prior quarter.

## PPP2 LOAN SPECIFICS

### ELIGIBILITY

1. **First-Time Borrowers:** If a small business missed the first round of PPP funding, they will be eligible for a loan under PPP2 if they have 300 or fewer employees, making them eligible for other SBA loans. This includes sole proprietors, independent contractors and eligible, self-employed individuals. Non-profit organizations, including churches, are also eligible as are accommodation and food service operations (those with NAICS codes starting with 72) with fewer than 300 employees per physical location.
2. **Second-Time Borrowers (“Second Draw Loans”):** Businesses who received a PPP loan during the first round of funding (PPP1) are eligible for another loan under PPP2 if they can prove to be “hardest hit” by the COVID-19 pandemic. These businesses must have 300 or fewer employees, be able to show a decrease in revenue of 25% or more in any quarter in 2020 compared to the same quarter in 2019 AND must have used or will use the full amount of their first PPP loan. The borrower can select the most appropriate quarter, and both PPP and EIDL funds from the SBA are not included in the calculation of revenue. Second-time borrowers can expect a tiered system, similar to the first round of funding, whereby certain loan amounts will only require self-certification of loan necessity (i.e. loans under \$150,000 could be self-certified) while others will have documentation requirements. All loans will be subject to review by the Small Business Administration.

### LOAN OVERVIEW

1. **Loan Amount:** The maximum loan amount for a PPP2 loan is \$2 million and is calculated by multiplying average total monthly payroll costs in the year prior to the loan or the calendar year by 2.5. In other words, the second round of PPP loans is meant to fund 2.5 months of payroll expenses. PPP borrowers with NAICS codes starting with 72 (hotels and restaurants) can get up to 3.5 times their average monthly payroll costs, again subject to a \$2 million maximum loan amount.
2. **Loan Forgiveness:** Qualified business expenses eligible for loan forgiveness are consistent with PPP1 and include payroll costs, covered mortgage interest, rent and utility payments with a 60/40 allocation between payroll and non-payroll expenses. They also include worker protection expenditures and facility modification costs to comply with COVID-19 federal health and safety guidelines, supplier costs essential to the borrower’s current operations and operating costs related to software or cloud computing services. Both first-time and second draw loans are eligible for forgiveness and must be spent within either 8 weeks or 24 weeks of loan origination. The

legislation is simplifying and accelerating loan forgiveness for loan amounts of \$150,000 or less by requiring borrowers to sign and submit a one-page form that attests to compliance with PPP requirements. The SBA must create the simplified forgiveness application form within 24 days of the bill's enactment and may not require additional materials unless necessary to substantiate revenue loss requirements or satisfy relevant statutory or regulatory requirements. Borrowers are required to retain relevant records related to employment for four years and other records for three years, as the SBA may review and audit these loans to check for fraud.

3. **Tax Deductibility for PPP Expenses:** The new bill specifies that qualified business expenses paid with forgiven PPP loans ~~are~~ tax-deductible. This supersedes IRS guidance that such expenses could not be deducted and brings the policy in line with what the American Institute of Certified Public Accountants (AICPA) and hundreds of other business associations have argued was Congress's intent when it created the original PPP as part of the \$2 trillion CARES Act. The COVID-19 relief bill clarifies that "no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided". This means that both PPP loans and EIDL grants are not considered taxable income. Additionally, EIDL grants no longer reduce PPP loan forgiveness by the grant amount. *Please note the deductibility guidance noted above relates to Federal income. We are awaiting guidance from Massachusetts (and most other states) regarding the deductibility of PPP loan forgiveness at the state level.*

In summary, the new stimulus bill provides welcome tax relief to both businesses and individuals. While the bill has been passed by Congress and signed into law by the President, the SBA and U.S. Department of the Treasury are now tasked with providing interpretive guidance and forms for the new forgiveness rules, as well as loan applications and guidelines for second draw PPP loan borrowers. They will need time to translate the bill and will release information as they do. As always, we will keep you updated along the way. In the meantime, we recommend businesses that believe they may be eligible for a PPP2 loan should begin to prepare in order to expedite the application when it is released by the SBA.