New Stimulus Bill Offers Relief For Workers, Unemployed Individuals, and Small Businesses Hit Hardest by COVID-19, Including Second Round of PPP Lending

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Congress passed into law, and the President signed last night, H.R. 133, which is an appropriations bill that provides nearly $900 billion in COVID-19 relief (the "Act").

The Act follows the CARES Act, a stimulus bill passed in March 2020, and continues several of the programs initially established in that legislation. Specifically, the Act provides, among other forms of assistance, $600 stimulus checks to individuals, a continuation of expanded unemployment benefits, and a new round of Paycheck Protection Program ("PPP") funding from the Small Business Association ("SBA").

A New Round of PPP Funding

The Act includes $325 billion to fund additional PPP assistance to some of the hardest-hit small businesses, nonprofits, and venues that have been struggling to recover from the COVID-19 pandemic. The new round of funding is open to small-businesses in need, whether the business is a first-time borrower or whether it already participated in the first round of funding as part of the CARES Act or the PPP Enhancement Act. Similar to the first round of lending, borrowers will be subject to review by the SBA.

The new round of lending includes specific funding set aside to support live venues, theaters, museums, zoos, first-time PPP borrowers with ten (10) or fewer employees, second-time PPP borrowers with ten (10) or fewer employees, first-time PPP borrowers who are now eligible, and funds made by small community banks/lenders. In addition, $25 million has been earmarked for Minority Business Development Centers under the Minority Business Development Agency ("MBDA") to assist minority businesses with applying for PPP loans.

Who is allowed to participate in the new round of funding?

First-time borrowers: Businesses with 500 or fewer employees, which are eligible for other SBA 7(a) loans. Eligible borrowers are businesses entities, sole proprietors, independent contractors, and eligible self-employed individuals.

Second-round participants: For businesses that have already received a PPP loan, second rounds of the loans are earmarked for the hardest hit borrowers. Second round participants are limited to small businesses, with 300 or fewer employees.

Eligible small businesses must show significant losses in 2020 compared to 2019. To establish such loss, an eligible business, must demonstrate that it suffered at least a twenty-five percent (25%) decline in gross receipts for any given quarter in 2020 compared to the same quarter in 2019. Note however, that a business cannot simply choose three consecutive months in the calendar year, as the SBA has determined that the time period is based on calendar quarters.

For businesses that were not in business for the entirety of 2019, the SBA will provide a different comparison period for borrowers.

A $2 million cap has been set for second round participants.

Are there changes to the eligibility requirement in the new round?

The Act includes new eligibility requirements for business or institutions that were unable to participate in the first round of PPP, such as nonprofits, local newspapers, venues, and TV and radio broadcasters.

501(c)(6) and destination marketing organizations, which have 300 or fewer employees, which do not receive more than 15% of their revenue from lobbying are now eligible for the PPP program. Examples of a 501(c)(6) organization include Chambers of Commerce or Economic Development organizations.

Additionally, funds are available for "shuttered venue operators" such as – live venue operators or promoters, theatrical producers, live performing arts organization operators, relevant museum operators, motion picture theatre operators, or talent representatives that meets certain criteria.

How will the loan amount be determined?

Similar to the first round of funding, PPP loans amount are equal to two and a half times the average total monthly payroll costs for the eligible business.

To further support the restaurant and hotel industries, which have been among the hardest hit by the pandemic, food service businesses and establishments providing customers with lodging and/or preparing meals, snacks, and beverages for immediate consumption, are eligible for PPP loans equal to *three and a half times* their average monthly payroll costs.

How can PPP funds be used?

As with the first round, PPP loans can be used for payroll costs, covered mortgage interest, rent, and utility payments. A recipient must use at least sixty percent (60%) of the loan for payroll costs and forty percent (40%) for covered non-payroll costs. Failure to comply with this "60-40" rule will result in a reduction in forgiveness.

Is this round of PPP funding still forgivable?

As with the original round of funding, businesses that use their funds for approved purposes will be entitled to forgiveness of their PPP loans. Borrowers must use the loan funds during a certain "covered period" of time after their loans are funded. Borrowers can select either an eight (8) week or twenty-four (24) week covered period.

Previously, businesses that received PPP loans of $50,000.00 or less were eligible to use the simplified forgiveness application process. The Act expands such eligibility, allowing borrowers who received PPP loans of $150,000 or less to utilize in the simplified forgiveness application process. No matter which round you participated, all eligible borrowers can use the simplified applications. Borrowers can simply attest to, and sign, a one-page certification document and submit it to the lender.

Borrowers who received funds of $150,000 or less will receive full forgiveness if the borrower signs and submits to its lender the certification, which includes a description of the number of employees the borrower was able to retain because of the PPP funds, the estimated total amount of the PPP funds spent on payroll costs, and the total loan amount received. The Act additionally orders the SBA to create a new simplified application form within twenty-four (24) days of passage. The form cannot require additional materials unless it is necessary to substantiate revenue loss requirements or to satisfy relevant statutory or regulatory requirements.

Regardless of the size of a borrower's loan, all borrowers are required to retain all relevant employment records for up to four (4) years and other records for three (3) years. The SBA has the authority to review and audit PPP loans and check for fraud.

What does the Act do in regards to deducting expenses?

One of the outstanding unanswered questions surrounding the first round of PPP funding was whether businesses could deduct expenses if those expenses were paid with PPP funds and the funds were forgiven. The Internal Revenue Service ("IRS") initially stated that such expenses could not be deducted if the PPP loan was forgiven because this could amount to "double-dipping." The Act has addressed this issue and clarified that businesses who pay expenditures with PPP funds are permitted to deduct those expenses.

Families First Coronavirus Response Act (FFCRA)

How does the new bill affect the FFCRA?

The FFCRA, which provides funding for up to fourteen (14) days paid sick leave for American workers affected by the pandemic, free coronavirus testing, and increased funding for food stamps, was set to expire on December 31, 2020. Under the new bill, the FFCRA has been extended and does not expire until March 31, 2021. The Department of Labor's Wage and Hour Division administers and enforces the paid leave requirements.

The new bill does not extend the FFCRA's mandate that employers provide the fourteen (14) day leave beyond the end of 2020. Rather, the new bill provides covered employers to receive a **tax credit** for the pandemic leave that the employer voluntarily provided to employees from January 1, 2021, through March 31, 2021, if such leave would be covered by the FFCRA.

What does this mean to Employers?

Available to employers with fewer than 500 employees.

If an employer is not currently covered by the FFCRA (generally employers with 500 employees or more), the employer is not entitled to the tax credit for the paid leave that the employer voluntarily provided to its employees.

In the previous bill, employers were "required" to provide the leave benefits to employees that it employed for at least 30 days. Employers are no longer required to provide paid sick leave or partially paid emergency family and medical leave under the FFCRA beyond December 31, 2020. Therefore, participation by employers is voluntary and paid sick leave is no longer an employee right (subject to other FMLA and state/local leave requirements).

Now, employers may "voluntarily" provide paid sick leave or partially paid emergency family and medical leave under the FFCRA after December 31, 2020.

If an employer voluntarily provides the fourteen (14) day leave to its employees after December 31, 2020, then the employer may be eligible for a **tax credit** for the employee's paid sick leave taken between January 1, 2021, through March 31, 2021.

**Please note, employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and/or files a complaint or institutes a proceeding under or related to the FFCRA.

What are the Qualifying Reasons for Paid Leave?

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or work remotely) due to a need for leave because the employee:

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine related to COVID-19;

3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. Is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. Is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

How does the Tax Credit work?

Covered employers qualify for a "dollar-for-dollar" reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the FFCRA for a qualifying reason (listed above), up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.

Direct Stimulus Payments

The Act also provides for direct stimulus payments to individuals of up to $600 per individual and qualified child. There is not cap on household size.

Individuals are eligible for the full $600 if they make less than $75,000 for individual filers, $112,000 for heads of household, and $150,000 for married couples filing jointly. As with the previous stimulus checks, payments phase out for individuals making over that amount, phasing out entirely for individuals who earn more $87,000 and for married filing jointly couples earning more than $174,000.

Continued Unemployment Benefits Expansion

The Act continues to extend additional unemployment benefits for an additional period of time for individuals out of work due to COVID-19. While the original expansion of unemployment benefits in the CARES Act provides an additional $600 per week, the Act will continue to provide a lesser weekly amount, $300, through at least March 14, 2021.

Other Stimulus Components in the Act

In addition to the above, the Act includes several other stimulus funding, including:

- $20 billion in funds for targeted grants through the Economic Injury Disaster Loans ("EIDL") programs;
- Changes to the internal revenue code to allow full deduction of corporate meal expenses; and
- Changes to laws related to Flexible Spending Accounts ("FSAs") so that balances can be rolled over from 2020 into 2021 and from 2021 into 2022.

Should you have any questions about the new stimulus bill, please contact Nathan Duggins at nduggins@tuggleduggins.com or (336) 271-5246, Michael Wenig at mwenig@tuggleduggins.com or (336) 271-5216, Ross Hamilton at rhamilton@tuggleduggins.com or (336) 271-5279, Daniel Stratton at dstratton@tuggleduggins.com or (336) 271-5232.

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