

Stimulus Package Ushers in New Loan Opportunities and Support for Small- to Medium-Sized Businesses / Extends FFCRA Tax Credit

BUSINESS TRANSACTIONS | BANKING, COMMERCIAL, AND CONSUMER FINANCE | CORONAVIRUS |
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Signed into law on December 27, the Consolidated Appropriations Act, 2021 provides a new round of support to small- and medium-sized businesses. Below is a summary of key provisions of the act, highlighting additional funding streams for businesses and the extension of FFCRA tax credits.

Paycheck Protection Program (PPP) Loans - New Loan Opportunities

The \$900 billion stimulus package includes \$284 billion for additional Paycheck Protection Program (PPP) loans, the intent of which is to preserve jobs at employers struggling due to COVID-19 business impacts and restrictions.

First-Time PPP Borrowers. If your business did not apply for a PPP loan from the first stimulus bill in March, the new stimulus package provides a new round of funding for additional loans. Qualifications remain the same for initial loans, which include:

- Businesses must have 500 employees or less.
- Sole proprietors, independent contractors, and eligible self-employed individuals may apply.
- Nonprofits, including churches, are eligible.
- Accommodation and food services operations (those with North American Industry Classification System (NAICS) codes starting with 72) with fewer than 300 employees per physical location may apply.

Nonprofits Eligible for PPP Loans. Section 501(c)(6) nonprofit organizations will now be eligible for PPP loans.

PPP Loans - Second Round of Loans Available

Second Round of Loans for Businesses That Previously Received PPP Loans. If your business has previously applied for and received a PPP loan, you may be eligible for what is known as a "second draw" PPP loan. Currently known details about these loans include:

- The loan limit is \$2 million.
- Qualification will be based on taking average monthly payroll in 2019 and using a multiplier of 2.5. This means that an additional 2.5 months of payroll can be covered under these "second draw" loans.
- Restaurants and food businesses will receive special payroll consideration: they can use a multiplier of 3.5 for their 2019 payroll, which means that an additional 3.5 months of payroll can be covered.
- Other qualifications include:
 - A business must have 300 employees or less, which was reduced from 500 employees or less under the first stimulus package.
 - A business must have already used, or have a plan to use, its original PPP loan funding.
 - PPP loan proceeds can be used over a period of 24 weeks.
 - PPP loan proceeds can be used for payroll, rent, and mortgage expenses. Additionally, the bill adds new qualifying expenses, including:

- Operating expenses;
 - Workplace protection costs for employee protection from COVID-19 exposure; and
 - Covered property damage.
- Businesses must also be able to certify the following:
 - A business must certify that it has experienced a revenue loss of 25% or greater. This is a strikingly different requirement than the "economic uncertainty" requirement that came with the first round of PPP loans.
 - This 25% reduction will be calculated by comparing Q1-Q3 of 2019 revenue for the business, and the business will have to demonstrate that it has experienced a loss of revenue of 25% or more in one quarter of 2020, compared against that same quarter in 2019.
- **Second Draw Forgiveness.** Second draw loans will be forgivable if 60% of the loan expenditure is used for payroll costs.
- **Simplified Forgiveness Application.** For borrowers that request PPP loans of \$150,000 or less, there will be a simplified forgiveness application.

PPP Loans - Benefits With Existing Loans

The stimulus package provides benefits for existing PPP loan borrowers. These benefits include:

- **Loans will not be taxable upon forgiveness.** Both original PPP loans and second draw PPP loans will not be taxable if forgiven. The stimulus package overrides the IRS' guidance and provides that business expenses paid with forgiven PPP loans are tax deductible.
- Specifically, the 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 by [the preceding paragraph stating that forgiven PPP loans do not count as income]."

Additional Business Assistance

The stimulus package further provides the following support for businesses:

- **Economic Injury Disaster Loan (EIDL) Grants.** The bill authorizes \$20 billion for EIDL grants to businesses in low-income communities.
- **Music Venues, Independent Movie Theaters, and Cultural Institutions - New Funding Opportunities Provided.** Performing venues, select theaters, and cultural institutions will have access to \$15 billion in funding. This funding will be administered through the Small Business Administration (SBA).

Tax Credits for Employers Who Provide Paid Sick Leave and Paid Family Medical Leave Under the Families First Coronavirus Response Act (FFCRA)

Mandated leave under the FFCRA was not extended, which originally required certain employers to pay sick or family leave wages to employees who are unable to work or telework due to certain circumstances related to COVID-19.

However, the stimulus package does extend, through March 31, 2021, tax credits to employers who voluntarily provide both paid sick leave and paid family and medical leave under the FFCRA. The tax credit may only be taken for leave through March 31, 2021.

As originally detailed in Carlton Fields' *The Tax of Life* article, "COVID-19: CARES Act and FFCRA Tax Provisions," the payroll tax credit for sick and family leave pay provides that any employer who, under the FFCRA, pays the following may be entitled to a tax credit:

- Sick leave to an employee who is unable to work (including telework) because of coronavirus quarantine or self-quarantine or has coronavirus symptoms and is seeking a medical diagnosis, for up to 10 days (up to 80 hours) at his or her regular rate of pay (or minimum wage, if higher) up to \$511 per day, but no more than \$5,110 in total;
- Sick leave to an employee who is unable to work due to caring for someone with coronavirus, or caring for a child because the child's school or place of care is closed, or the paid child care provider is unavailable due to the coronavirus, for up to two weeks (up to 80 hours) at two-thirds the employee's regular rate of pay (or minimum wage, if higher) up to \$200 per day, but no more than \$2,000 in total; or
- Family and medical leave to an employee who has been employed for at least 30 days and who is unable to work because of a need to care for a child whose school or place of care is closed or whose child care provider is unavailable due to the coronavirus, for up to 10 weeks at two-thirds the employee's regular pay, up to \$200 per day and \$10,000 in

total.

An employer who meets the above criteria is entitled to a credit in the full amount of the required sick leave and family leave, plus related health plan expenses and the employer's share of Medicare tax on the leave, for the period of April 1, 2020, through March 31, 2021. The refundable credit is applied against certain employment taxes on wages paid to all employees.

As further is sure to emerge on the stimulus package and access to funding streams and benefits, Carlton Fields' Coronavirus Resource Center will continue to serve as a resource for continued updates.

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