

Expanded PPP, Direct Checks, and Boosted Unemployment Highlight New Federal Stimulus Bill

On Monday, December 21, 2020, the US Senate overwhelmingly passed a \$900 billion fiscal stimulus package that earlier had received similar bipartisan approval in the US House of Representatives. The bill, combined with another \$1.4 trillion of funding to keep the federal government open through September 30, 2021, now heads to President Trump, who is expected to sign it into law soon.

The bill caps a tumultuous year on Capitol Hill which saw Congress initially come together to approve several rounds of bipartisan fiscal support for an economy ravaged by COVID-19. In recent months, however, Congress failed to reach an agreement on additional support, frustrating small businesses whose prior funds obtained through the Paycheck Protection Program (“PPP”) and other measures had been exhausted. The new bill should provide some overdue relief for small businesses and their employees.

Among the highlights in the bill:

- ◆ An additional \$284 billion will be allocated to PPP loans, and several new features have been added:
- ✧ New applicants may apply for up to \$2 million in PPP loans provided they have fewer than 500 employees. The loans are also available to sole proprietors, independent contractors, self-employed individuals, and most not-for-profit organizations. Loan proceeds may be spent on “covered expenses” like payroll, rent, and utilities, and now can also be used on expenses related to facility modifications, purchases of personal protective equipment, any expenditures that are deemed essential at the time of purchase to the current operations of the business, and operating costs like software and cloud computing. To obtain full loan forgiveness, applicants will have to spend at least 60% of the loan proceeds on payroll expenses over a covered period of 8 or 24 weeks. This is unchanged from the original PPP program.
- ✧ Businesses with under 300 employees will be permitted to obtain a second round of PPP funding up to \$2 million, provided the business can show they used the full amount of their first PPP loan and suffered at least a 25% gross

revenue decline in any 2020 quarter compared with the same quarter in 2019.

- ✧ Forgivable PPP loans will now be available to 501(c)(6) business leagues and similar organizations, provided they have fewer than 300 employees and do not receive more than 15% of their receipts from lobbying activities and that lobbying activities do not comprise more than 15% of the organization's total activities.
- ✧ The bill creates a simplified loan forgiveness process for loans of \$150,000 or less, allowing the borrower to sign a one-page certification and submit it to the lender. The Small Business Administration has been instructed to create a new, simpler forgiveness application form in January.
- ✧ The bill clarifies that forgiven PPP loans are not taxable; absent this special rule, the loan proceeds would be treated as taxable cancellation of indebtedness income. Further, expenses paid with PPP loan proceeds are nevertheless deductible by the business. This provision overrides recent IRS guidance on the issue, which essentially suggested the opposite—that forgiven PPP loans would

not be deductible even when spent on otherwise deductible expenses.

- ◆ Americans earning less than \$75,000 per year (\$150,000 for married couples filing jointly) will receive direct deposits or checks of \$600 per person, with an additional \$600 per child in a household. Americans earning up to \$99,000 (\$198,000 for married couples filing jointly) will also receive some relief, but less than the full amount.
- ◆ An additional \$300 per week of federal unemployment insurance will be included in unemployment benefits through mid-March, 2021.
- ◆ The federal eviction moratorium, in place since the spring, is extended through January 31, 2021. In addition, \$25 billion is set aside for a rental assistance fund, which state and local officials can disburse to taxpayers allowing them to fund past-due or future rent obligations.

Among other items, the bill also provides significant funding for vaccine distribution, the Supplemental Nutrition Assistance Program ("SNAP"), public education, child care assistance, and broadband access. Certain businesses and industries such as airlines, live event venues, movie theaters, and museums are set to receive billions of dollars in additional aid.

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of the new law on you or your business, please contact Joe LaFerrera, Aaron Kriss, or Sean Gilligan at (617) 350-6800, or email them at joe.laferrera@gesmer.com, aaron.kriss@gesmer.com, or sean.gilligan@gesmer.com.



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