



December 2020

## New Stimulus Package Amends the Families First Coronavirus Response Act and the Paycheck Protection Program

By Alexander W. Bogdan

Congress passed a wide-ranging COVID-19 stimulus package on December 22, 2020, that provides over \$900 billion in aid to individuals and businesses. If signed into law, the stimulus package will address two areas of importance to small businesses: the Families First Coronavirus Response Act (FFCRA) and the Paycheck Protection Program (PPP).

### Families First Coronavirus Response Act Partially Extended

Congress declined to extend the mandatory leave requirements of the FFCRA in the stimulus package but did allow companies to continue to receive payroll tax credits if they voluntarily provide paid leave to their employees for reasons that are covered by the law. The FFCRA requires employers to provide up to 12 weeks of paid leave to employees who are unable to work for a variety of reasons related to COVID-19. We discuss the provisions of the FFCRA in a [prior alert](#). The FFCRA is scheduled to expire on December 31, 2020. If employers voluntarily decide to provide leave to employees that would have been available under the FFCRA through March 31, 2021, employers may still receive a payroll tax credit for any such paid leave provided to employees.

### PPP Loan Changes

The stimulus package also makes significant changes to PPP loans available to small businesses. The bill (1) expands the ways in which businesses may use PPP loan funds; (2) provides for a second wave of PPP loans in certain circumstances; and (3) allows

borrowers to request an increase to their initial PPP loan amounts.

### Expanded Use of PPP Funds

The stimulus package will provide new ways in which borrowers can use PPP funds. Under the initial program, PPP loans could only be used for the following purposes: (1) payroll costs; (2) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave as well as insurance premiums; (3) employee salaries, commissions or similar compensation; (4) payments of interest on any mortgage obligations (which did not include any prepayment or payment of principal on a mortgage obligation); (5) rent (including rent under a lease agreement); (6) utilities; and (7) interest on any other debt obligations that were incurred before the covered period.

In addition to the above-noted uses for PPP funds, the new stimulus package also allows PPP loan recipients to use the funds for the following reasons:

- **Covered operations expenditures:** a payment for any business software or cloud computing service that facilitates business operations, product service or delivery, the processing, payment or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses;

- **Covered property damage costs:** a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 if such costs were not covered by insurance or other compensation;
- **Covered supplier costs:** an expenditure made by an entity to a supplier of goods for the supply of goods that (1) are essential to the operations of the entity at the time the expenditure is made; and (2) is made pursuant to a contract, order, or purchase order (i) in effect at any time before the covered period with respect to the applicable covered loan; or (ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan.
- **Covered worker protection expenditures:** an operating or capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning on March 1, 2020 and ending on the date when the national emergency declared because of COVID-19 expires (related to the maintenance of standards for sanitation, social distancing or any other worker or customer safety requirement related to COVID-19). Covered worker protection expenditures may include (1) a drive-through window facility; (2) an indoor, outdoor, or combined air or air pressure ventilation or filtration system; (3) a physical barrier such as a sneeze guard; (4) an expansion of additional indoor, outdoor or combined business space; (5) an onsite or offsite health screening capability; or (6) other assets relating to compliance with the government requirements or guidance established for COVID-19 as determined by the Small Business Administration (SBA). Also

included are expenditures for PPE masks, gloves and respirators.

These new categories apply to PPP loans made before, on or after the enactment of the stimulus bill, unless the borrower has already had their PPP loan forgiven.

#### PPP Second Draw Loans

Borrowers may now also be eligible to receive a second PPP loan, called a Second Draw Loan. To be eligible to receive a Second Draw Loan, a business must:

- Employ not more than 300 employees;
- Have used or will use the full amount of their first PPP loan; and
- Demonstrate at least a 25 percent reduction in gross receipts in the first, second or third quarter of 2020 relative to the same 2019 quarter. Applications submitted on or after January 1, 2021, are eligible to utilize the gross receipts from the fourth quarter of 2020.

Borrowers may obtain a Second Draw Loan of up to a maximum of the lesser of \$2 million or 2.5 times the borrower's average monthly payroll costs. Businesses classified as Accommodation and Food Services under code 72 of the North American Industry Classification System (which includes restaurants, bars, and hotels) may receive a loan up to the lesser of 3.5 times their average monthly payroll costs or \$2 million. Businesses with multiple locations that were eligible to receive a PPP loan under the initial PPP requirements must have 300 or fewer employees per physical location to receive a Second Draw Loan.

#### Requesting a PPP Loan Increase

The stimulus package requires that the SBA issue guidance to lenders within 17 days of enactment of the law that would allow borrowers who returned all or part of their PPP loan to reapply for the maximum amount applicable so long as they have not yet received forgiveness. Borrowers also would be

allowed to work with their lenders to modify the value of their loan if their initial loan calculations would have increased due to changes in the PPP's final rules.

For more information about this alert, please contact Alexander W. Bogdan at 212.878.7941 or [abogdan@foxrothschild.com](mailto:abogdan@foxrothschild.com) or any member of Fox Rothschild's national Labor and Employment Department.

Attorney Advertisement

© 2020 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact [marketing@foxrothschild.com](mailto:marketing@foxrothschild.com) for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.

[www.foxrothschild.com](http://www.foxrothschild.com)