The Latest COVID-19 Relief Legislation:
What's in it for Flooring Retailers, Contractors, and Installers.

After months of deliberation, Congress enacted and the President signed a $2.3 trillion omnibus spending package, which includes the long-awaited $900 billion coronavirus stimulus bill. The World Floor Covering Association ("WFCA") has been actively lobbying on behalf of its members and the Act includes many of the relief provisions proposed and supported by WFCA, including adjustments to and expansion of the Paycheck Protection Program ("PPP") and tax deductions and credits. The key provisions that will impact flooring retailers, contractors and installers are explained below.

The Paycheck Protection Program ("PPP")

As it impacts WFCA members, the Act includes six primary changes to the PPP: (1) Expands what are allowable expenses for PPP loans; (2) Eases the forgiveness requirements; (3) Allows tax deductions for operating expenses paid with PPP loan proceeds; (4) Reopens the PPP program that had expired in August; (5) Creates a second PPP loan program for those who earlier received a PPP loan; and (6) allows some borrowers who are involved in bankruptcy proceedings to get PPP loans.

1. <u>Allowable Expenses</u>: The Act expands what are allowable expenses for PPP loans. Specifically, the Act allows PPP loans to be used for the following:

- *Operations Expenditure* — Payment for any software, cloud computing, human resources, product or service delivery, payroll, and accounting needs.

- *Covered Worker Protection Expenditure* — Personal protective equipment and adaptive investments to help a loan recipient comply with federal health and safety guidelines or any equivalent State and local guidance related to COVID-19 during the period between March 1, 2020, and the end of the national emergency including HVAC, plexiglass barriers, expansion, and health screening equipment.

- *Covered Supplier Cost* — Expenditures to a supplier pursuant to a contract, purchase order, or order for goods in effect prior to taking out the loan that are essential to the recipient's operations at the time at which the expenditure was made. Supplier costs of perishable goods can be made before or during the life of the loan.

- *Clarification on Payroll Costs* — All employer-provided group insurance benefits (e.g., group life, disability, vision or dental) are includable in the definition of payroll costs.

- *Covered Property Damage* — cost related to property damage from vandalism, looting or public disturbances in 2020 not otherwise covered by insurance.

Loans made under PPP, whether before or after the enactment of the law, are eligible to utilize these expanded forgivable expenses, ***except*** those borrowers who have already had their loans forgiven.

2. PPP Loan Forgiveness: Many lenders have not accepted PPP loan forgiveness applications in anticipation of changes in the forgiveness process. The Act makes several of those adjustments to ease the forgiveness requirements.

First, the new law provides for a simplified one-page forgiveness application for loans under $150,000. The borrower will need to certify the number of employees the borrower was able to retain because of the covered loan, the total amount of the loan spent on payroll costs, the total loan amount, and compliance with PPP loan requirements. The Small Business Administration ("SBA") must create the simplified form before the end of January 2021. It is anticipated that the application will be similar to the application developed by the SBA for PPP loans under $50,000. For more information, see SBA Simpler PPP Forgiveness for Loans of $50,000 or Less.

Second, under the prior the amount of the PPP loan that can be forgiven will be reduced if the business failed to bring back the average number of full-time employee equivalents (FTEs) or reduces employee's salaries by more than 25%. The law also had a safe harbor rule, which provides that a borrower could qualify for the full amount for forgiveness if it restores its FTE and salaries to its February 15, 2020 levels by December 31, 2020. The new Act allows the borrowers to meet the safe harbors at any time during the loan's 6 to 24 week coverage period and extends the December 31, 2020 deadline, likely to March 31, 2021. It is expected that the Treasury Department will issue further guidance clarifying the extent and dates related to the safe harbors, including the broad safe harbor forgiving loss of FTE headcount if the borrower was unable to return to pre-COVID levels of business.

Third, The CARES Act also expanded the SBA's existing Emergency Economic Injury Disaster Loan ("EIDL") grant program. Under the expanded EIDL program, borrowers could access an immediate $10,000 grant to be paid within 3 days of applying for the loan. The grant funds did not have to be paid back to the SBA, but the $10,000 had to be deducted from the amount of the payroll loan forgiven if a business received a PPP loan. The new Act provides that Economic EIDL advances will no longer be deducted from a borrower's forgiveness amount. The SBA will issue rules to ensure that borrowers are made whole if they received forgiveness and the EIDL advance was deducted from that amount.

3. Reopens the PPP Program: The original PPP loan program expired on August 8, 2020. The Act reopens the loans to businesses that did not previously apply or returned all or a portion of its original PPP loan, but only if the borrower has not received forgiveness. The SBA will release guidance to lenders by mid-January that permits certain borrowers that returned all or part of their PPP loans to reapply. The SBA will release guidance to lenders within by mid-January 2021 that permits borrowers that returned all or part of their PPP loans to reapply.

4. Second PPP Loan ("PPP2"): Act permits some businesses that have already obtained a PPP loan to obtain a second PPP loan, called a "PPP second draw." To receive a PPP2 loan, eligible entities must:

- Employ not more than 300 employees;
- Have used or will use the full amount of their first PPP;
- Not be engaged in the business of lending, passive real estate investors, and speculative businesses.
- 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. Provides applicable timelines for businesses that were not in operation in Q1, Q2, Q3, and Q4 of 2019. Applications submitted on or after January 1, 2021 are eligible to utilize the gross receipts from the fourth quarter of 2020.

Borrowers may receive a loan amount of **up to 2.5X the average monthly payroll** costs in the one year prior to the loan or the calendar year 2019. No loan can be greater than $2 million. Businesses with multiple locations that are eligible entities under the initial PPP requirements may employ not more than 300 employees per physical location. An entity may only receive one PPP second draw loan. For Loans of $150,000 or less, borrowers can use a short form with minimal documentary evidence required.

Borrowers of a PPP2 loan would be eligible for loan forgiveness equal to the sum of their payroll costs, as well as covered mortgage, rent, and utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred during the covered period. The 60/40 cost allocation between payroll and nonpayroll costs to receive full forgiveness will continue to apply.

5. Tax Deduction: The bill clarifies that gross income for tax purposes does not include any amount that would otherwise arise from the forgiveness of a PPP loan. It also clarifies that expenses paid for with PPP loans will be considered tax deductible, officially reversing an IRS decision made earlier in the year. In addition, the tax basis and other attributes of the borrower's assets will not be reduced because of the loan forgiveness.

6. Eligibility of Borrowers in Bankruptcy – The SBA denied PPP loans to borrowers who are involved in bankruptcy proceedings. The new law allows such borrowers to obtain a PPP or a PPP2 loan if approved by the bankruptcy court. In the event of such approval, the loan will be given super-priority status, similar to other debtor-in-possession financing.

7. Other Clarifications: The Act clarifies a number of other issues, including how employee's salaries of $100,000 is to be calculated on an annualized basis as prorated during the period in which compensation is paid or incurred, adjusting the interest rate on PPP loans that are not forgiven and specifying the interest are non-compounding, and revising how seasonal workers are treated for calculating the loan amount.

Emergency Economic Injury Disaster Loan ("EIDL") Grant Program

Several changes were made the EIDL Program. First, borrowers can receive both an EIDL and a PPP loan as long as they are used for different purposes. Second, the Act extends covered period for Emergency EIDL grants through December 31, 2021, and allows more flexibility for the SBA to verify that Emergency EIDL grant applicant. Third, there are other changes in the EIDL Program to target funding for eligible entities located in low-income communities.

Paid Sick and Family Leave

The Families First Coronavirus Response Act ("FFCRA") enacted last March required businesses with less 500 employees to provide two weeks of paid sick leave to employees unable to work because of a quarantine order, falling ill with coronavirus, taking care of an individual ill with the virus, or their children's schools and daycare centers are closed. The Act also requires ten weeks of family leave if their child's school is closed or child care provider is unavailable due to coronavirus. For more information, see FFCRA Update 3/31/20. To fund these benefits for employees, the FFCRA provided a refundable tax credit to employers for the paid leave provided. The FFCRA requirement on leave expires on December 31, 2020.

The new Act does not extend the requirement for employers to provide FFCRA leave. However, to encourage employers to provide the paid leave, Congress extended the tax credit available to employers that continue to offer FFCRA-like paid leave through March 31, 2020. Please note that several cities and states enacted leave laws in response to the COVID-19 pandemic, which could continue after the FFCRA expires.

There are limits on claiming the tax credit. First, only leave that would have been required under the FFCRA will qualify for the reimbursable tax credit. Second, tax credits are likely only available for employees who have not previously exhausted FFCRA leave.

COVID-19 Liability Shield

The Act does not include liability protection from COVID-19-related lawsuits for businesses. The Center for Disease Control ("CDC") and the Occupation Safety and Health Administration ("OSHA") has issued guidelines that can help reduce the risk of exposing customers and employees to the coronavirus. In addition, a number of states have issued guidelines and requirements. Taking these steps will not absolutely eliminate the risk of exposing someone to the coronavirus, but will minimize that risk. Moreover, a flooring retailer and contractor need to also check with their state and local governments to see if they have imposed any additional requirements or guidelines. Taking these precautions will reduce any potential that they could be found to be liable if a customer or employee did contract the virus by showing that the flooring retailer and contractor took all reasonable steps to avoid spreading COVID-19. For more information on these guidelines and precautions, see OSHA Publishes New Guidelines for Reopening Businesses, Reopening Safely - A Practical Guide, Liability Waivers to Protect Against COVID-19 Claims, and OSHA Issued COVID-19 Guidance for In-Home Repair Services.

Other Provisions

There a number of other provisions that may impact WFCA members. The Act allows for deductions of corporate meals (the "Three-Martini Lunch Deduction") as a business expense for the next two years, extends the repayment period through December 31, 2021 for the collection and repayment of any deferred withholdings of employees' share of social security taxes, and supplements all state and federal unemployment benefits at $300 per week.

WFCA is working with legal counsel and Lobbyit to keep abreast of the developments, and will provide further updates to members on the specificities of the above changes. In the meantime, please feel free to send your concerns and/or questions directly to jeffw@jkingesq.com and mperkins@lobbyit.com.

WFCA will be hosting a Webinar on next Thursday, January 7, 2021 at 2:00 EST to explain many of these provisions and answer your questions. Please tune in by REGISTER TO JOIN.

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