

New Paycheck Protection Program Loans Available Soon

On Sunday, December 27, 2020, the president signed into law another major COVID-19 relief bill within the omnibus federal spending legislation called the Consolidated Appropriations Act, 2021. We have summarized the stimulus portion of the bill here: [December 2020 Federal Stimulus Package](#)

One key provision is the renewal of the Paycheck Protection Program (PPP). Congress has allocated \$284 billion in additional funding for forgivable loans to qualifying small businesses.

First-Time Borrowers

The reinvigorated PPP program is technically an amendment to the original framework. While new rules apply to businesses that wish to take out a second loan, first-time borrowers are generally subject to the eligibility requirements as the original PPP system. The general requirements in the bill are first-time borrowers with 500 or fewer employees that are eligible for other SBA 7(a) loans. The bill allows borrowers that returned all or part of a previous PPP loan to reapply for the maximum amount available to them.

Second Draw for Eligible Previous Borrowers

The new act allows businesses that had previously received PPP support to apply for a second loan. Second-time loans are limited to non-publicly traded businesses with fewer than 300 employees and that have faced a 25% drop in gross receipts in any 2020 quarter as compared to the corresponding quarter from 2019. Second loans are capped at \$2 million, but actual amounts will, like the original loan, be based on 2.5 times the average monthly payroll of the borrower. Of note, borrowers that have NAICS Code 72 (food service employers such as restaurants, coffee shops, etc. and accommodation employers such as hotels) may be eligible for higher loan-to-payroll ratios than other industries - 3.5 times average monthly payroll.

New Eligible Borrowers

IRS Section 501(c)(6) non-profit organizations and destination marketing organizations are now eligible to receive PPP loans. These generally are business leagues, chambers of commerce, real estate boards, boards of trade and non-profit professional football leagues. Additional eligibility requirements include: (a) they do not receive more than 15 percent of their receipts from lobbying activities, (b) lobbying activities do not comprise more than 15 percent of the organization's total activities, (c) the cost of lobbying activities did not exceed \$1 million during the tax year ending February 15, 2020, and (d) the organization does not employ more than 300 employees. There are additional details for eligibility that will be confirmed with the SBA regulations soon to be issued. Also, borrowers in bankruptcy will be eligible to apply for PPP loans.

Use of PPP Funds

While 60% of PPP funds must still be used for payroll purposes, the new bill also allows businesses to use some PPP loan amounts for new qualifying expenses. Specifically, PPP loans

can now be used to pay for covered operations expenditures, property damage costs, supplier costs, and worker protection expenditures. These categories include:

- **Covered Operations Expenditures.** This category includes business software or cloud computing services that facilitate business operations; delivery of services or products; process payments; track payroll expenses; aid in human resources, sales, or billing functions; or accounting or tracking supplies, inventory, records, or expenses.
- **Covered Property Damage Costs.** PPP loans can now be used to cover costs related to property damage, vandalism, or looting related to public disturbances occurring in 2020, provided that such costs are not covered by insurance or otherwise compensated.
- **Covered Supplier Costs.** Businesses can now use loans for expenses for goods that are essential to operations or are incurred pursuant to a contract prior to the period covered by the loan.
- **Covered Worker Protection Expenditures.** Loans can also now be used for businesses' efforts to comply with DHHS, CDC, OSHA, or similar requirements, including state and local mandates, regarding worker protection from the coronavirus. Specifically included are costs relating to maintenance, creation, and/or expansion of drive-through windows; air ventilation or filtration systems; physically barriers (e.g., sneeze guards); expansion of indoor/outdoor spaces; and on- or off-site screening capabilities. Loans may also be used to purchase certain personal protective equipment ("PPE").

EIDL Grants Do Not Reduce Forgiveness

Previously, borrowers that received an emergency EIDL grant (grants between \$1,000 and \$10,000) had that amount subtracted from their total PPP loan forgiveness. This had the effect of repaying the EIDL emergency grant. The latest bill states that the EIDL emergency grant will not reduce PPP loan forgiveness. The SBA has stated that borrowers that already received forgiveness and had grants deducted from prior PPP loan forgiveness may be able to amend their forgiveness applications. We will await further guidance on the procedure.

Simple Forgiveness Applications

A new feature for smaller loans includes a simplified loan forgiveness application for borrowers of \$150,000 or less. The Small Business Administration has been instructed to develop a short, one-page certification for these loans that only require minimal information, such as the number of employees the loan allowed the employer to retain, the estimated amount of the loan allocated to payroll, and the overall amount of the loan.

Taxation of Loan and Deductibility of Expenses

The new bill also clarified some tax implications of PPP loans. The original CARES Act excluded the forgiven amount of any PPP loan from gross income. The current bill reverses the IRS position on deductibility of expenses used to achieve loan forgiveness. Now, borrowers can both exclude the forgiven portion of the loan from gross income as well as deduct the expenses used to achieve that loan forgiveness. Businesses taking a PPP loan will now also remain eligible

for the Employee Retention Tax Credit ("ERTC"), rather than having to choose to opt in to either PPP or ERTC eligibility, as previously.

Note of Caution: As of the date of this Update, the SBA has not yet issued any guidance and regulations related to this second round of PPP. We will provide additional Updates as additional information is known. In the meantime, a potential borrower should not take action until additional information is disseminated by the SBA.

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