New Stimulus Package: PPP 2.0 and Other Business Relief

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The recently introduced and much-anticipated stimulus Bill titled *The Consolidated Appropriations Act, 2021* (the Act) has been passed by the Senate and the House of Representatives and is now awaiting signature from the President. This is a huge Bill, with nearly 5,600 pages of text that combines a $900 billion bipartisan relief package with a $1.4 trillion omnibus spending Bill that funds the federal government through September 2021. Among the many provisions of the relief package are an extension of and enhancements to the Paycheck Protection Program (PPP), which many are referring to as *PPP 2.0*, and tax deductibility of expenses attributable to forgiven PPP loans.

PPP 2.0

PPP 2.0, detailed in Title III of the Act, entitled *Continuing the Paycheck Protection Programs and Other Small Business Support*, makes available an additional $284 billion in PPP loans and provides welcome relief to the hardest hit small businesses that continue to suffer due to the pandemic. PPP 2.0 amends, extends and appends the original PPP while keeping the rules and framework of the original program largely in place. The key amendments and extensions included in PPP 2.0 include the following.

Expanded Eligibility and Second Draw Loans

- The Act extends the availability of PPP loans to first-time borrowers that meet the eligibility criteria of the original Paycheck Protection Program, as amended by the PPP Flexibility Act.
- The Act also provides for Second Draw Loans for PPP borrowers with 300 or fewer employees that experienced a 25 percent or higher reduction in gross receipts during any calendar quarter in 2020 compared to the same quarter in 2019.
- It extends eligibility to most 501(c)6 nonprofit organizations (business leagues, chambers of commerce, real estate boards, boards of trade and similar organizations) and nonprofit destination marketing organizations with 300 or fewer employees that receive less than 15 percent of their gross receipts from lobbying activities and incur less than 15 percent of their expenses on lobbying activities.
- It extends eligibility to housing cooperatives with 300 or fewer employees.
- It further extends eligibility to certain news organizations with 500 or fewer employees at any physical location or is a nonprofit public broadcasting entity.
- It also affirms the eligibility of churches and other religious organizations for PPP loans.

Entities that receive *Shuttered Venue Operating Grants* under Title III, section 324 of the Act (see below) will not be eligible for PPP second draw loans. Entities organized in, or that have significant operations in, or 20 percent or more owners from, the People's Republic of China or the Special Administrative Regions of Hong Kong are also not eligible; nor are entities that have a resident of the People's Republic of China as a member of their board of directors.

Loan Amount

The Act extends the availability of PPP and second draw loans through March 31, 2021, subject to the availability of funds. The maximum loan amount is now capped at $2 million and the formula for determining the amount of the loan is the same as it was under the original PPP: 2.5 times the applicant's average monthly payroll costs for 2019 or the most recent 12-month period ending prior to the date of the loan application. For entities with NAICS codes beginning with 72 (the hospitality industry) the payroll multiple is 3.5 (rather than 2.5), and the maximum loan amount is $2 million for each physical location with not more than 300 employees. There are special rules for seasonal employers, which are defined as eligible recipients that do not operate for more than 7 months a year or that had gross receipts for any 6 months of the preceding calendar year that were not more than one-third of the gross receipts for the other 6 months.

Clarifying the Covered Period (Mostly)

The original PPP, as amended, created confusion regarding the definition of the covered period for borrowers that elected to use a period between 8 and 24 weeks. The Act provides clarity on this issue and provides flexibility by defining the covered period as beginning on the date of the origination of a covered loan and ending on a date selected by the borrower that is at least 8 weeks and no more than 24 weeks from the origination date. However, the use of the term *date of origination* is new and introduces ambiguity to the start date of the covered period, particularly in instances where loan documents and the deposit date of the PPP loan funds differ. Presumably, existing guidance – which defines the start of the covered period as the date the funds are deposited into the borrower's account – can still be relied upon.

Expansion of Eligible Expenses

While payroll costs must still make up at least 60 percent of forgivable expenses, the Act expands the definition of eligible/forgivable non-payroll costs to include:

- **Covered operations expenditures** – which "means a payment for business software or cloud computing service that facilitates business operations, product or service 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 cost** – which "means a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation;"

- **Covered supplier costs** – which means an expenditure for goods that "are essential to the operations, … made pursuant to a contract, order, or purchase order in effect at any time before the covered period, … or with respect to perishable goods, in effect before or any time during the covered period …;" and

- **Covered worker protection expenditures** – which means an operating or capital expenditure to facilitate the adaptation of business activities of an entity to comply with health and safety standards issued on or after March 1, 2020. This includes personal protective equipment and health screening in addition to a wide range of physical facility adaptations. Expenditures on residential real property and intangible property are specifically *not eligible* worker protection expenditures.

In addition, with regard to payroll costs, benefit costs have been expanded to include employer-paid group life, disability, vision and dental insurance in addition to employer-paid health and retirement benefits.

Significantly, **these changes are effective as if they were included in the original CARES Act**. Accordingly, any borrower that has not yet applied for loan forgiveness may use this expanded definition of eligible costs.

Streamlined Loan Forgiveness

The Act provides for a simplified, near automatic forgiveness application for PPP loans up to $150,000. This will be a one-page form, to be issued within 24-days of enactment of the Act, which requires the borrower to provide:

- A description of the number of employees who were retained because of the loan;
- The estimated amount spent on payroll costs;
- The total loan value; and
- Certifications regarding compliance with the program requirements.

Documentation requirements for loans over $150,000 remain unchanged.

The Act requires the Small Business Administration (SBA) to submit a forgiveness audit plan to the applicable Senate and House small business committees that details the policies and procedures for conducting forgiveness reviews and audits of PPP loans. While the audit and review process will likely continue to focus on larger loans, it seems clear that Congress wants to make sure that all PPP loans are subject to audit in a manner similar to the way the IRS audits tax returns.

Other PPP Provisions

- The reduction of the loan forgiveness amount by the amount of any Economic Injury Disaster Loan (EIDL) advance of up to $10,000 is repealed.

- The Act emphasizes that lenders will be held harmless if they rely on certifications or documentation submitted by borrowers in good faith.

- Eligible recipients under the original PPP that returned, did not receive or did not accept the full amount of the loan they were entitled to may request an increase in the amount of the loan to the maximum amount applicable as long as the borrower had not received forgiveness of the original loan prior to the date of enactment of the Act.

- There are special rules for calculating the maximum loan amounts for farmers and ranchers that take into account gross income.

Tax Deductibility and Other Tax Provisions

After many months of uncertainty and confusion, it’s final: Expenses applied to PPP loan forgiveness are deductible for federal tax purposes. Hallelujah!

The Act also significantly expands and modifies the Employee Retention Credit in addition to containing other tax provisions affecting both businesses and individuals. For more information on the tax provisions of the Consolidated Appropriations Act, see our Tax Notes article about this Act.

Other Provisions Affecting Businesses

The Consolidated Appropriations Act, 2021 contains a number of other provisions benefiting small businesses, including:

- **Grants for Shuttered Venue Operators** – are available for specified live venue operators or promoters, theatrical producers, live performing art organization operators, museum operators, motion picture theatre operators or talent representatives. These grants, which may be as much as $10 million, will be in awarded in tranches. The initial 14-day tranche will be for eligible recipients that incurred a revenue loss of 90 percent or more. The second 14-day tranche will be for eligible recipients that incurred a revenue loss of 70 percent or more. After the initial 28-days and up to 60 days after the date on which the shuttered venue grants are first made, grants may be made to any eligible recipient.

- **Extended debt relief –** is available for borrowers under the longstanding SBA Section 7(a) loan program. The original debt relief program was covered under Section 1112 of the Cares Act provided for 6 months of payment relief for these loans. The Act extends this relief for an additional 3 months beginning February 1, 2021, and for 5 months beyond that for borrowers with NAICS codes beginning with 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532 or 812.

- **Enhancements to other SBA loan programs** – including loans made under Section 7(a)(2)(A) of the Small Business Act, the Community Advantage Pilot Program, Express Loans, 504 Loans, Local Development Business Loans and Microloans.

In Brief

The new stimulus package does not address the needs of all businesses struggling due to the pandemic, but it certainly has a lot to offer.

Contact Us

For assistance in understanding these and any other rules related to the PPP loan, please reach out to your PKF O'Connor Davies team members, or email us at LoanForgiveness@pkfod.com. We are here to help.

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