

# Paycheck Protection Program – Housing Cooperatives

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The Consolidated Appropriations Act, 2021 (Act), which was signed into law in late December, includes a new round of funding for the Paycheck Protection Program (PPP). It also contains a provision specifically including “housing cooperatives” as eligible applicants for PPP funding if they meet certain criteria. Condominiums, however, are not eligible.

The original PPP loans created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of April 2020 did not explicitly provide eligibility for housing cooperatives. While some housing cooperatives did apply for such loans, we understand the relevant U.S. Small Business Administration (SBA) regulations, at that time, generally had been interpreted to exclude housing cooperatives as eligible entities.

## New Guidance

The SBA issued guidance on January 7, 2021 to amend the previously published PPP loans eligibility guidelines to include housing cooperatives which may now qualify for the First Draw of PPP loans. Under the First Draw loan guidelines, housing cooperatives must employ 300 or fewer employees and there is no requirement to demonstrate 25 percent reduction in gross receipts (as opposed to Second Draw PPP loans). The new PPP has \$284.5 billion available, including \$35 billion for First Draw loans. Housing cooperatives are advised to contact lenders as soon as possible since loans are given on a first-come, first-served basis.

All PPP loan applicants are *still* required to certify in PPP application Form 2483 that “Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” A more detailed discussion about this certification can be found [here](#).

## Safe Harbor

The SBA announced a limited safe harbor regarding borrower need on May 13, 2020 that provided that any borrower, together with its affiliates, that received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

It is unclear, however, whether this safe harbor applies to the new round of First Draw PPP loans. Accordingly, housing cooperative Boards and their management must assess, evaluate and document that the cooperative housing entity has an economic need at the time that it is applying for a PPP loan. This assessment and determination is one that should be thought about carefully and discussed by and among the housing cooperative’s Board and its management, along with its legal counsel and lender, before deciding to apply for such a loan.

## Loan Caps

The maximum for the First Draw loan amount is capped at \$10 million (vs. \$2 million for Second Draw loan). The formula for determining the amount of the loan is the same as it was under the original PPP, which is 2.5 times the applicant’s average monthly payroll costs for 2019, 2020 or the most recent 12-month period ending prior to the date of the loan application.

## Expansion of Eligible Expenses and Tax Deductibility

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 operation expenditures, covered property damage cost, covered supplier costs and covered worker protection expenditures. After months of uncertainty and confusion, expenses funded by PPP loans that are subsequently forgiven are deductible for federal tax purposes.

## Other Potential Benefit: Expanded Employee Retention Credit

The [Employee Retention Credit](#) (ERC), a refundable credit against employment taxes paid by employers whose business was shut down by government order or who experience a significant decline in gross receipts, was part of the initial CARES Act legislation.

The ERC, due to expire at the end of 2020, has been extended through the first two quarters of 2021. In addition, the Act retroactively amends the CARES Act to remove the exclusion from the ERC for PPP borrowers. It is also now easier to qualify for and is more generous. For 2021, if the gross receipts is reduced by 20% (down from 50% in 2020) year-over-year, the maximum credit is \$14,000 (up from \$5,000 in 2020) per employee.

## Contact Us

If you have any questions on the topics discussed here as they pertain to the housing cooperatives and condominiums industry, please do not hesitate to reach out to the partner in charge of your account or to K. Joseph Lee, CPA, Partner at 646.699.2843 or at [jlee@pkfod.com](mailto:jlee@pkfod.com). We are here to help.

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