

Paycheck Protection Program: Round Two Highlights

Please note that final guidance and regulations related to this second round of PPP have not yet been issued. (The Small Business Administration (SBA) must provide these regulations within 10 days of the enactment of the Act.) We expect to provide updates as such guidance and regulations are issued. Several of the key changes are summarized below.

Congress has approved a \$900 billion COVID-19 relief package as part of the Consolidated Appropriations Act, 2021. Included in that amount is \$284 billion for a second round of the Paycheck Protection Program (PPP) that's administered through the Small Business Administration's (SBA) network of lenders. However, this time the money is only going to small businesses (less than 300 employee per physical location) that have been specifically impacted by the pandemic.

To be eligible for another round of PPP you must:

- Have used or will use the full amount of your first PPP
- 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. Borrowers who were not in business during the first, second, or third quarter of 2019 (January 1 – September 30), but were in business during the fourth quarter of 2019 (October 1 – December 31), can compare the first, second, or third quarter of 2020 (January 1 – September 30) to the fourth quarter of 2019. Applications submitted on or after January 1, 2021 are eligible to utilize the gross receipts from the fourth quarter of 2020.

In addition to the above requirements, most businesses and certain non-profit organizations, housing cooperatives, news organizations, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives are eligible for the new PPP loans.

Ineligible entities include:

- Entities involved in political and lobbying activities including engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public document
- Entities affiliated with entities in the People's Republic of China
- Registrants under the Foreign Agents Registration Act
- Entities that receive a grant under the Shuttered Venue Operator Grant program (see below).
- Publicly held companies are also excluded from this round. That's also the case if your business or organization was not in operation on February 15, 2020.

Choose Your Own Covered Period: Originally the SBA provided that the covered period (the time in which a borrower must use the funds to qualify for forgiveness), would be an eight-week period beginning on the date the borrower received the loan proceeds. In subsequent amendments, the covered period was expanded to 24 weeks. Borrowers are now able to choose the length of their covered period so long as it is at least eight weeks and is not longer than 24 weeks. This subtle change will allow borrowers more control over how to handle potential reductions in workforce once the PPP funds are exhausted.

Use of PPP Funds: Congress expanded the types of expenses for which all PPP loans can be used, which applies to existing PPP loans (except in the event forgiveness has already been obtained) and new loans. In addition to payroll, rent, covered mortgage interest and utilities, the PPP now allows proceeds to be used for:

- **Covered Operations Expenditures:** payments for business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment or tracking of payroll expenses, HR and billing functions, or account or tracking of supplies, inventory, records and expenses
- **Covered Property Damage Costs:** costs related to property damaged and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation
- **Covered Supplier Costs:** expenditures to a supplier of goods that are essential to the operations of the entity at the time at which the expenditure was made and is made pursuant to a contract or order in effect at any time before the covered period or, with respect to perishable goods, in effect at any time during the covered period
- **Covered Worker Protection Expenditures:** operating or capital expenditures that allow a business to comply with requirements or guidance issued by the CDC, HHS, OSHA or any state or local government during the period beginning March 1, 2020 and ending on the date which the national emergency declared by the president expires related to the maintenance of standards for sanitation, social distancing or any other worker or customer safety requirement related to COVID-19. These expenses appear to include PPE, physical barriers that were put in place, expansion of indoor/outdoor space, ventilation or filtration systems and drive-through windows.

Tax Treatment: PPP loans will not be included as taxable income. Expenses paid with the proceeds of a PPP loan that is forgiven are now tax-deductible. This covers not only new loans but also existing and prior PPP loans, reversing previous guidance from the Treasury and IRS, which did not allow deductions on expenses paid for with PPP proceeds. In addition, any income tax basis increase that results from the borrower's PPP loan will remain even if the PPP loan is forgiven.

Forgivable expenses have traditionally included payroll, payroll-related expenses (including other employer-provided group insurance benefits such as group life, disability, vision, or dental insurance) and all rent and mortgage interest. All of those definitions still apply. But the definition of those expenses has been expanded to include the following:

- Operations expenditures such as payment for any software, cloud computing, and other human resources and accounting needs.
- Property damage costs such as costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance.
- Supplier costs such as 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.
- Worker protection expenditure such as personal protective equipment and adaptive investments to help you comply with federal health and safety guidelines or any equivalent State and local guidance related to COVID-19 between March 1, 2020 and the end of the national emergency declaration.

EIDL Advances Do Not Reduce Forgiveness: Prior to the passage of the new Act, borrowers that received an EIDL Advance (advances between \$1,000 and \$10,000) had that amount subtracted from their total forgiveness, which, in effect, had the effect of repaying the EIDL Advance. The Act now provides that EIDL Advances will not reduce PPP loan forgiveness. The SBA has indicated that borrowers that already received forgiveness and had their EIDL Advance deducted from such forgiveness may be able to amend their forgiveness applications. Further guidance is expected to be issued.