

Paycheck Protection Program (PPP) Update: Congress Passes New Covid-19 Relief Package Providing Second Round of PPP Funding

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PPP Rebooted

On December 21, 2020, the US Senate and House of Representatives overwhelmingly passed a new \$900 billion Covid-19 Relief package providing much-needed additional economic relief to struggling small businesses. Included within the Consolidated Appropriations Act of 2021 (the CAA), as passed, is more than \$280 billion in additional funds for loans under the PPP. President Trump signed the CAA into law on the evening of December 27, 2020.

In addition to providing funding for those small businesses that did not receive a loan under the first round of PPP (PPP1) loans, the CAA provides small businesses with fewer than 300 employees who received a PPP1 loan with a second bite at the apple (PPP2) if the business (a) has used or will use the full amount of its PPP1 loan and (2) can show that in any quarter in 2020 its gross revenue fell by 25% or more compared with revenue from that same quarter in 2019.

The maximum amount for a PPP2 loan will be \$2 million, which is less than the original \$10 million cap. First-time PPP borrowers under PPP2 will likely remain subject to the PPP's original eligibility rules, but this has not been confirmed so please check back for additional updates as PPP2 continues to take shape.

The CAA also expands forgivable expenses to include expenditures for personal protective equipment and other gear to protect workers, as well as supplier costs, operations expenditures for things such as software, and property damage costs due to public disturbances during 2020.

Additional Nonprofit Entities and Certain Individuals Now Eligible

The original program (PPP1) provided relief to some nonprofit entities, such as 501(c)(3) organizations, but not all. 501(c)(6) organizations, which may engage in political activities, were excluded from coverage despite their nonprofit status. These are organizations such as chambers of commerce, trade associations, real estate boards, professional associations, some sports leagues, boards of trade, and business leagues, and are now eligible to receive a PPP2 loan under the CAA provided they meet the following qualifying criteria: they do not employ more than 300 employees; they do not have more than 15% of their total activities devoted to lobbying; and their receipts from lobbying activity do not exceed \$1,000,000 or amount to more than 15% of their total receipts during the most recent tax year.

Additionally, the CAA expands the definition of eligible entities to include:

- Sole proprietors,
- Independent contractors,
- Certain self-employed individuals,
- Veterans organizations,
- Tribal business concern,
- Small agricultural cooperatives,
- Housing cooperatives, and
- Certain nonprofit organizations.

Congress Remedies Deductibility of Eligible Expenses

The CAA also addresses arguably the largest complaint small businesses had with the PPP: the inability to deduct eligible expenses that were paid for with PPP funds. As we discussed in a previous post, the IRS doubled down on that position, largely at the insistence of Treasury Secretary Steven Mnuchin.

The IRS relied on Section 265 and corresponding Treasury Regulation 1.265-1, which forbids a business from deducting an expense if that expense was paid with funds from a tax-exempt source. Because Congress, in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), allows for tax forgiveness of PPP funds, the IRS argued that Section 265 was intended to prevent “double dipping.”

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Thus, small businesses who received PPP funds could not exclude the forgivable loan amounts from income and deduct the related expenses. While Senators Chuck Grassley and Ron Wyden were immediately critical of the IRS' position, the IRS remained firm in its stance: businesses could either have their PPP loans forgiven or they could deduct normal business expenses paid with the funds, but not both.

Thankfully, Congress has clarified the original intent of the CARES Act. Now, "no amount shall be included in gross income of the eligible recipient by reason of forgiveness of indebtedness . . . [and] no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied." This should effectively overturn Revenue Ruling 2020-27 so that small businesses can confidently deduct eligible expenses that were paid with PPP funds.

Bailey Glasser stands ready to assist you with any questions or concerns you may have regarding your current PPP loan or applying for a new or second PPP loan, as well as any questions or concerns you may have regarding the CAA generally. We will continue to monitor the PPP and will provide updates accordingly. Please contact Bailey Glasser directly [here](#).

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