

Client Alert: Congress Appropriations Bill Expands Paycheck Protection Program

By Michael J. Barone, Jr. on December 22, 2020



Following weeks of negotiation, Congress passed the 5,593 page Consolidated Appropriations Act, 2021 (the “[Act](#)”) in the late hours December 21, 2020, that, in part, allocates approximately \$900 billion towards emergency coronavirus relief and effectively extends and expands the Paycheck Protection Program (the “[PPP](#)”) and existing unemployment assistance programs. A copy of the Act can be found [here](#) and a summary of the COVID-19 relief provisions can be found [here](#).

Paycheck Protection Program – “Second Draw Loans”:

The Act aims to further assist American small businesses and their workers by providing an additional \$284.45 billion to the Small Business Administration for a second round of Paycheck Protection Program loans earmarked those small businesses hit the hardest by the COVID-19 pandemic. A key component of the PPP contained within the Act is the right for certain businesses to apply for and receive a second PPP loan. The Act extends and modifies the PPP by implementing the following modifications:

- [Eligibility](#) – Eligibility for the PPP Second Draw loans will be limited to:
 - Small business:
 - Employing 300 or fewer employees;
 - Having used (or will use) the full amount of their first PPP loan; and
 - Demonstrating at least a 25% reduction in gross receipts for 2020 Q1, Q2, or Q3 compared to the same quarter 2019 (Q4 may be used for any applications submitted after January 1, 2021).
 - Eligible applicants also include some non-profit organizations, housing cooperatives, veterans’ organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives.
- [Loan Details](#) – Loans issued under the PPP Second Draw:
 - Loans limited to 2.5 times average monthly payroll, not to exceed \$2 million;
 - Entities in the Accommodation and Food Services industry (NAICS code 72) are entitled to receive loans up to 3.5 times average monthly payroll costs, not to exceed \$2 million; and
 - Seasonal employers may calculate maximum loan amount based upon any 12-week period between February 14, 2019 and February 15, 2020.
- [Forgiveness](#) – Loan forgiveness has been modified to reflect:

- Simplified forgiveness procedure for loans equal to or less than \$150,000;
 - Full forgiveness still requires Borrowers to maintain a cost allocation of at least 60% towards payroll costs in order to qualify for full loan forgiveness (and not more than 40% towards non-payroll costs);
 - Forgivable expenses are expanded to include:
 - software and human resources/accounting needs to permit continued operations;
 - supplier costs for goods necessary to the continuation of borrower's business purchased pursuant to a contract/order in place before taking a loan;
 - personal protective equipment, and facility modifications intended to allow the borrower to operate safely in accordance with guidelines between March 1, 2020 and the end of the nation emergency declaration; and
 - costs related to property damage due to public disturbances occurring during 2020 that are not otherwise covered by insurance.
 - Business expenses paid for with PPP loan proceeds are tax deductible.
 - Forgiveness of certain loans shall not be included in gross income for tax purposes.
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- Specific Allocations – Of the funds allocated under the Act, new allocations include:
 - \$15 billion for independent live venue operators impacted by stay-at-home orders;
 - \$20 billion for the Targeted EIDL Advance program;
 - \$15 billion specifically allocated for first small first-time borrowers with ten (10) or less employees or loans less than \$250,000; and
 - \$25 billion for second draw PPP loans for borrowers with ten (10) or less employees or loans less than \$250,000.

This article is not intended to be a complete overview of the Act, nor is it intended to provide anything more than brief summaries of those portions of the Act dealing with PPP.

RIW will continue to provide updates relative to PPP Second Draw loans and related legislation as additional guidance becomes available.

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