

Overview of the Stimulus Bill and Aid to Small Businesses

Late on December 20, 2020, Congress came to an agreement on a long-awaited second \$900B stimulus package. Although having previously expressed concerns regarding the content of the legislation, President Trump signed the package into law on December 27, 2020. Out of that total package, approximately \$325B is set aside as part of the Economic Aid to Hard-Hit Businesses, Nonprofits and Venues Act (the Act) and other aid to assist struggling businesses and bolster the existing Paycheck Protection Program (PPP).

Below is an outline of the major changes to the PPP with the passing of the Act.

Extension of the PPP. The Act extends the PPP from December 31, 2020 to September 30, 2021.

Second Draw of PPP Funds. The Act authorizes a second round of PPP funds for entities that had already borrowed, and expended, their first PPP loan. The second draw of loans will end on March 31, 2021. Below is a high-level outline of the second wave of funding:

- **Who Is Eligible?** Borrowers who received a first PPP are eligible for a second draw; however, eligibility standards differ. Businesses must employ no more than 300 employees (a decrease from the previous 500 limit); must be able to demonstrate that revenue has fallen in 2020 by 25% as compared to the same quarter in 2019; and, significantly, *must have used, or will use, the full amount of the original PPP loan*. Certain entities that were originally eligible under the first PPP are no longer eligible for the second draw, including all publicly traded companies. However, certain entities are now eligible for the loan, including certain bankruptcy debtors, 501(c)(6) entities and news organizations, to name a few.
- **How Much?** The amount of the second PPP is based on the same metrics as the original PPP (2.5 times the average total monthly payment for payroll costs incurred or paid during the 1-year period before the date of which the loan is made), but it is now capped at \$2 million. An important change, however, is that businesses designated with a NAICS code starting at 72 (accommodation and food services) are eligible for loans in the amount of 3.5 times the average total monthly payment for payroll costs, capped at \$2 million.
- **What Else Is Different?** Different from the first round of PPP loans, the borrower may elect the length of their covered period between 8 and 24 weeks. Also, included under payroll costs is group life, disability, vision, and dental insurance.
- **When and How Can I Apply?** The second draw of PPP monies is a separate and new application for eligible borrowers, and it is unclear when lenders will be issuing the additional funds. The Act states that the Small Business Administration (SBA) must issue rules and guidance as to the process of the new funding within 10 days of the Act.

Entities Applying First Time for PPP. While the text of the Act is ambiguous, some news outlets report that members of Congress have stated that the *original* PPP rules will apply to eligible entities who are first-time borrowers. These original rules would include the employee cap of 500 (not 300). We expect the SBA to issue further guidance to this point. However, there are notable exceptions – for example, first time 501(c)(6) borrowers are capped at the new 300 employee limit, as stated in the text of the Act.

Additional Allowable Uses of PPP Funds. The Act authorized the following additional permissible nonpayroll costs:

- **Covered operations expenditures:** payments for any 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 costs:** costs 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:** expenditures made by an entity to a supplier of goods for the supply of goods that 1) are essential to the operations of the entity at the time at which the expenditure is made, and 2) is made pursuant to a contract or purchase order that is in effect at any time before the covered period of the PPP loan, or with respect to perishable goods, in effect before or at any time during the covered period with respect to the PPP loan.
- **Covered worker protection expenditures:** costs related to personal protective equipment (PPE), which may include a wide range of operating or capital expenditures, including, but not limited to, drive through window facilities, physical barriers, indoor, outdoor or combined commercial real property; or health screening capabilities.

It appears that the new eligible expenses have retroactive effect, meaning that the first round of PPP loans may now justify and claim forgiveness on these additional nonpayroll expenses. However, the Act excludes these additional expenses from borrowers who have already received loan forgiveness as of the date of the Act. Additionally, the Act specifically excludes residential real property or intangible property costs from these added eligible PPP expenses.

Changes to Loan Forgiveness Application Procedures for Loans \$150,000 or Under. PPP loans that are \$150,000 and under are eligible for automatic forgiveness if the borrower fills out a one-page form attesting that the borrower complied with the requirements of the program. The SBA has 24 days from the date of the Act to issue this form. Notably, supporting documentation is not required to be submitted. These borrowers must however retain employment records showing compliance with the program for 4 years following the submission of the simplified form, and also retain all other records for 3 years. The SBA is permitted to audit these loans to determine fraud, loan ineligibility, or other “material noncompliance” (such as if the money was spent on ineligible expenses).

PPP Available in Bankruptcy Cases. The Act authorizes debtors and trustees in bankruptcy cases to apply for the PPP loan with the supervision and approval of the bankruptcy judge. More guidance is expected to be released to this point.

EIDL Advance Deduction Eliminated. The Act repealed the provision that borrowers who received an EIDL advance must deduct it from the eligible PPP forgiveness amount.

Borrowers May Claim Tax Deductions for Eligible PPP Expenses. A contentious issue has been whether borrowers may claim tax deductions on eligible PPP funds. Detailed in our prior Information Memo [here](#), the IRS issued guidance stating that borrowers who “reasonably believe” their PPP loans will be forgiven may not deduct the costs. The stimulus bill reverses this position, stating that borrowers may claim deductions for expenses covered by the PPP loan proceeds.

Grants for Shuttered Venue Operations. The Act also establishes grants for struggling in-person industries, such as movie theaters, museums, and live venues. For eligible individuals or entities, grants may be awarded under varying levels of priorities based on the percentage of lack of revenue. The first priority round of grants will be awarded to eligible entities that have not more than 10% of gross revenue during the period of April 1, 2020- December 31, 2020 as compared to the period of April 1, 2019- December 31, 2019, and the grant amount will be the lesser of 1) 45% of total 2019 revenue (for entities in operation on January 1, 2019), or 2) 6 times the average monthly gross earned revenue for each month in 2019 (for entities that began operations after January 1, 2019). The grant is capped at \$10 million. The

second priority round of grants will be awarded to eligible entities that have not more than 30% of gross revenue during the period of April 1, 2020- December 31, 2020 as compared to April 1, 2019- December 31, 2019. Supplemental grants will also be made available to eligible entities if as of April 1, 2021, the revenues of the entity for the most recent calendar quarter are not more than 30% of the revenues for the corresponding calendar quarter during 2019. Such supplemental grant amount will be half of the amount an entity received in the first round of grants. The grant may be spent on the same purposes as the PPP as well as in additional ways, including (but not limited to) advertising, independent contractors IRS Form 1099 expenses, and capital expenditures related to live, in person productions.

This Information Memo is only a brief overview of the new legislation. We expect the SBA to issue additional guidance on most of these changes and will provide updates as appropriate.

The attorneys at Bond, Schoeneck and King can help you determine whether your business is eligible for a second draw of PPP funds, how the new legislation impacts forgiveness of your business' current PPP loan, as well as answer questions unique to your company. Please contact [Jeffrey B. Scheer](#) or the attorney of which you are regularly in contact for more information.



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