

PANDEMIC RELIEF BULLETIN #CR-06 (Updated December 31, 2020)

Details of \$900 billion relief package as it relates to the Paycheck Protection Program (PPP) and Small Businesses

The Consolidated Appropriations Act, 2021 was signed into law on December 27. It includes the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA Act) that contains approximately \$900 billion in additional funding for COVID-19 pandemic relief efforts. A major focus of the legislation is to provide assistance to struggling businesses. Here is a summary of what is included for continuing the Paycheck Protection Program.

The bill provides roughly \$300 billion for a second round of PPP for small businesses. Eligibility will be limited to small businesses with 300 or fewer employees that have sustained a 25% revenue loss in any quarter of 2020. Small 501(c)(6) organizations that are not lobbying organizations and have 150 employees or fewer, including local chambers of commerce, economic development organizations, and tourism offices, would become eligible for the PPP.

In the original round of PPP, applicants were required to certify that the loan was necessary to support the ongoing operations of the business. While the SBA has not released an application for round 2, it is anticipated that the same certification will be required. It may be easy to meet the “eligible recipient” tests, but careful consideration should still be given to this necessity test.

Loan size will be computed in the same manner as under the original PPP, based on 2 ½ months of average payroll, except those in the hospitality industry will be able to borrow 3 ½ months of average payroll. The maximum loan amount in this round will be capped at \$2 million. The same costs for payroll, covered mortgage interest, rent and utility payments will qualify for forgiveness. In addition, costs for covered worker protection expenditures and facility modification costs, covered supplier costs, covered property damage costs and covered operating costs are also eligible for forgiveness.

For borrowers that have not yet applied for forgiveness, these four new expense types can be considered for forgiveness:

- Covered operations expenditures - payments for any business software or cloud computing services 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 were not covered by insurance or other compensation.

If you have questions regarding these updates, please contact us.

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- 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 is made, or is made pursuant to a contract, order or purchase order with respect to the loan, or with respect to perishable goods, in effect before or at any time during the period.
- Covered worker protection expenditure - operating or capital expenditures to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration.

In addition, there are new options for covered periods that the funds must be used on qualified expenses. Under previous rules, the borrower selected either an 8 week or 24 week period to spend the funds. Borrowers may now choose any period lasting between 8 and 24 weeks.

Expenses paid with PPP loans which are forgiven will be deductible. There have been a series of communications from the IRS during 2020 stating that these expenses would not be able to be deducted. There has been much debate between Congress and Treasury on this issue and at this point it appears that Congress has prevailed and those expenses will be deductible.

There are some changes to the application for forgiveness process. Recipients of loans of \$150,000 or less will only need to sign and submit a one-page form. While the form submission process may be simplified, those borrowers must still attest to complying with PPP requirements, so it would be prudent to review the long-form application and have all the substantiation available in the event of an investigation in the future.

Those with loans between \$150,000 and \$2 million also have a simplified loan forgiveness process. There is no requirement to submit documentation of full-time employees, payroll and pay rates, including tax filings. Records related to employment must be retained for four years and other records for three years. In addition, the review by the lender will be limited to whether the lender received a complete applications, with all fields completed, initialed, or signed, as applicable.

It is unclear how soon after the legislation is enacted that the SBA will be able to begin accepting applications. If you believe that you may be eligible for a PPP Round 2 loan we recommend that you begin gathering documentation now in order to expedite the application process when it opens.

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