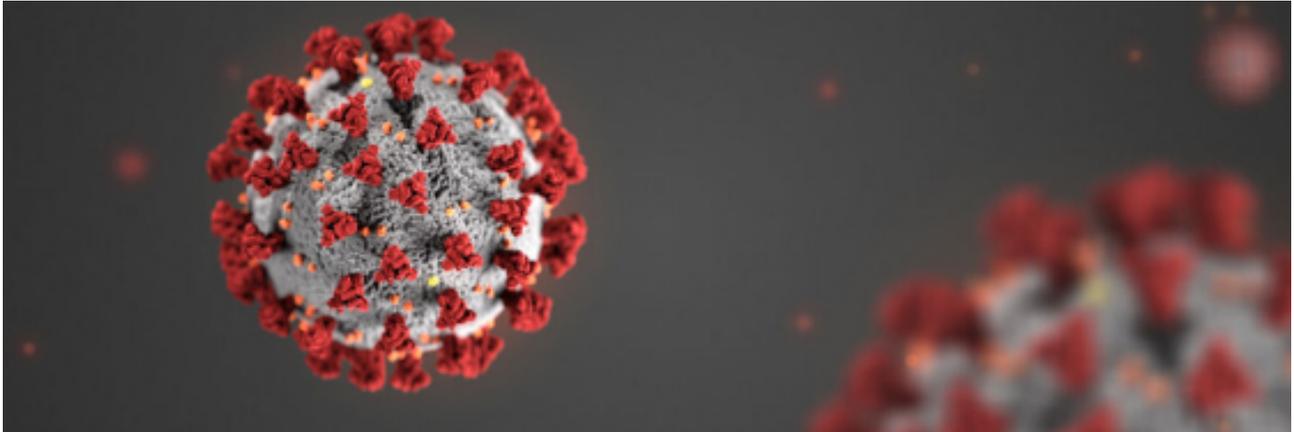


The Consolidated Appropriations Act, 2021: Round 2 of the Paycheck Protection Program

Mark Heimendinger & Ferran Arimon

Dec 30, 2020



By: Mark Heimendinger & Ferran Arimon

After days of uncertainty, the Consolidated Appropriations Act, 2021 (the "Act") was passed by Congress on December 21, 2020, and signed into law by President Donald Trump on December 27, 2020. This is the second-largest federal stimulus package approved by Congress this year following the \$2 trillion CARES Act passed in March 2020.

This new \$900 billion COVID relief package includes \$284 billion in aid for small businesses through a second round of Paycheck Protection Program (PPP) forgivable loans. The new round of PPP loans ("PPP2") includes the following relief in addition to new PPP loans for first-time borrowers:

- A second PPP loan for small businesses facing significant revenue declines in any 2020 quarter compared to the same quarter in 2019;
- Further clarification regarding the deductibility of business expenses paid with forgiven PPP proceeds (a material change from existing IRS guidance); and
- Section 501(c)(6) not-for-profit organizations will be eligible to receive PPP loans for the first time (see more information regarding Section 501(c)(6) eligibility [here](#))

PPP2 - Key Differences

PPP2 contains several important differences from the first round of PPP. PPP2 loans will be available to first-time qualified borrowers as well as businesses that previously received a PPP loan.

Second-Time Borrower Eligibility: Previous PPP recipients will be eligible for another loan of up to \$2 million provided they (NOTE: The eligibility requirements stated

below do not apply to first-time borrowers.):

- Have 300 or fewer employees;
- Have used or will use the full amount of their first PPP loan; and
- Can show a 25% gross revenue decline in Q1, Q2 or Q3 (applicants applying after January 1, 2021 may use Q4) compared with the same quarter in 2019. It is unclear how this would apply to new businesses without a 2019 operating history.

Maximum Loan: PPP2 borrowers may calculate their maximum loan amount by multiplying the borrower's average monthly payroll in (i) the trailing 12-month period as of the date the loan is made, or (ii) calendar year 2019, by 2.5x. The maximum loan for second-time borrowers is \$2 million while the cap for first-time borrowers remains at \$10 million. Like the first round of PPP loans, seasonal employers will calculate their maximum loan amounts differently.

Maximum Loan for Hospitality Industry Borrowers: Second-time borrowers with NAICS Code 72 (restaurants and hotels) will be permitted to use a 3.5x multiplier of their average monthly payroll costs to calculate their maximum loan amount, capped at \$2 million.

Flexibility added to "Covered Period": While the CARES Act originally provided for an 8-week covered period (time in which borrower must use loan proceeds to qualify for forgiveness) beginning on the day loan proceeds were disbursed, subsequent amendments allowed borrowers to alternatively elect for a 24-week covered period. PPP2 borrowers will now be permitted to choose the length of their covered period provided it is not less than 8 weeks and no more than 24 weeks.

Expansion of Covered Expenses: Previously, PPP proceeds were to be used for payroll, rent, covered mortgage interests and utilities in order to qualify for 100% forgiveness. Pursuant to the act, PPP proceeds may also be allocated to the following expenses:

- **Operation Expenditures:** software and cloud computing service payments used to facilitate, without limitation, business operations, service or product delivery, payroll, processing, billing, accounting, inventory and HR functions.
- **Supplier Costs:** payments to suppliers of goods that are essential to operations at the time made pursuant to an order or contract in effect prior to the covered period (or in effect at any time during the covered period if goods are perishable).
- **Property Damage:** costs related to any public disturbances that occurred in 2020, to the extent not covered by insurance or other compensation.
- **Worker Protection Costs:** costs related to compliance with regulations issued by CDC, HHS, OSHA or any state or local government authority after the period beginning on March 1, 2020 and ending on the date when the national emergency declared by the president related to COVID-19 safety measures expires.

Reversal of Tax Treatment: While PPP loan proceeds will not be included as taxable

income, expenses paid with such proceeds that are forgiven will now be tax-deductible. This reverses previous guidelines issued by the IRS and Treasury which disallowed deductions for such expenses.

EIDL Impact on Forgiveness: The Act provides that the proceeds of any EIDL Advances provided to PPP borrowers will no longer need to be reduced from the amount eligible for forgiveness.

Simplified Forgiveness Applications: The Act created a simplified forgiveness application process for loans of \$150,000 or less. Such borrowers will be eligible for forgiveness if they sign and submit to the lender a one-page certification including: a description of the number of employees the borrower was able to retain because of the loan; the estimated total amount of the loan spent on payroll costs; and the total loan amount.

Please note that guidance and regulations related to this second round of PPP have not yet been issued. The SBA is required to provide these regulations within 10 days of the enactment of the Act. We will continue to provide relevant updates as such guidance and regulations become available.

For up-to-date news please visit our Coronavirus (COVID-19) Resource Center.