
Paycheck Protection Loans: Round 2

On December 21, 2020, Congress passed a \$900 billion Covid-19 aid bill that included \$284 billion for the renewal and expansion of the Paycheck Protection Program (PPP) [enacted earlier this year](#). Highlights of the new PPP loan provisions include:

- **Second PPP Loan.** The new bill allows certain borrowers who have borrowed previously under the PPP to borrow again, with the new loans being referred to as second draw loans.
- **New loan size and employee limitations.** The second draw loan limit is \$2 million, down from \$10 million for the initial round of PPP loans, and to qualify for a second draw PPP loan, the borrower may not have more than 300 employees, down from the original 500 employee maximum in the first round.
- **New economic hardship requirement.** Under the original PPP, the borrower had only to certify that economic uncertainty made the PPP loan necessary. To obtain a second draw loan, a borrower will be required to show a loss in revenue of 25% or more when comparing at least one quarter of 2020 to that same quarter in 2019.
- **Increased borrowing limit for restaurants.** As with the original PPP, the amount available to be borrowed is capped at 2.5 times the borrower's average monthly payroll from the prior year; however, under the new bill, for establishments providing customers with lodging and/or preparing meals, snacks, and beverages for immediate consumption, the cap will be 3.5 times average monthly payroll, allowing those business to borrow more (but still subject to the \$2 million second draw cap).
- **Expanded use of proceeds.** Under the original PPP, to qualify for loan forgiveness, a borrower was required to use the loan proceeds for covered payroll, mortgage, rent and utility expenses. The new bill expands this list by making the following expenses forgivable: (i) payment for any software, cloud computing, and other human resources and accounting needs; (ii) costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance; (iii) expenditures to a supplier pursuant to a contract, purchase order, or order for goods in effect prior to taking out the loan that are essential to the borrower's operations at the time at which the expenditure was made; and (iv) personal protective equipment and adaptive investments to help a borrower comply with federal health and safety guidelines or any equivalent State and local guidance related to COVID-19 during the period between

March 1, 2020, and the end of the national emergency declaration. Borrowers will still be required to spend at least 60% of loan proceeds on payroll to receive full forgiveness.

- **Expanded borrower eligibility.** As was the case with the original PPP loans, businesses, certain nonprofit organizations, self-employed workers and independent contractors are eligible for PPP Loans. Under the new bill, loan eligibility is being extended to 501(c)(6) nonprofit organizations (excluding professional sports leagues and organizations engaged in lobbying) and to newspaper, TV and radio broadcasters meeting specified criteria.
- **Payroll and other qualifying expenses deductible.** The new legislation provides that forgiven existing PPP loans as well as the new second draw PPP loans will not be taxable to the borrower. The IRS had previously issued guidance saying that borrowers could not expense wages and other qualifying costs that they used their PPP funds on if their PPP loan was forgiven. Under the new bill, borrowers can have their PPP loan forgiven and will be able to deduct their payroll and other qualifying expenses on which they used their PPP loan proceeds.
- **Simplified loan forgiveness.** Under the original PPP, the SBA had a simplified one-page PPP forgiveness application for borrowers of \$50,000 or less. The new bill extends the simplified forgiveness process to borrowers whose PPP loans are less than \$150,000. The simplified application will include a certification from the borrower that the funds were used properly and are eligible for forgiveness.
- **Next steps.** Once it has been signed by the President and is enacted, the bill requires the SBA to establish regulations on small-business support within 10 days.
- **Summary.** The \$900 billion Covid-19 aid bill runs more than 3,000 pages. A helpful summary prepared by Congress may be found here: [H.R. 133 DIVISION-BY-DIVISION SUMMARY OF COVID-19 RELIEF PROVISIONS](#)

The new PPP loan provisions begin on page 11.

Although the \$900 billion Covid-19 aid bill was passed by large majorities in both the House and Senate, President Trump has criticized the bill's direct payment provisions as insufficient, hinting at a veto unless congress increases direct payments to Americans to \$2,000 from the current bill's \$600. The President's objections appear unrelated to the bill's PPP provisions, however. Clients are advised to continue to monitor developments related to the new Covid-

19 relief bill, including the expected SBA guidance, and to discuss with their Pryor Cashman contact how the legislation may impact their business.

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