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# PPP Changes in Wake of the Coronavirus Response and Relief Supplemental Appropriations Act

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The Internet is ablaze with news of the recently passed Coronavirus Response and Relief Supplemental Appropriations Act (Supplemental Act), which is part of the Consolidated Appropriations Act of 2021. Read on for how the Paycheck Protection Program (PPP) changes in light of the Supplemental Act, as well as details about additional funding that is now available.

The Supplemental Act allows borrowers to use their PPP funds for additional forgivable expenses. Such expenses include:

- Payment for any software, cloud computing, and other human resources and accounting needs.
- Costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance.
- Essential expenditures to a supplier pursuant to a contract, purchase order, or order for goods in effect prior to taking out the loan.
- Personal protective equipment and adaptive investments to help a loan recipient comply with federal health and safety guidelines or governmental guidance related to COVID-19 between March 1, 2020 and the end of the national emergency declaration.

This provision allows loans made under the PPP before, on, or after the enactment of the Supplemental Act to be eligible to utilize the expanded forgivable expenses, **except for borrowers who have already had their loans forgiven.**

The Supplemental Act clarifies that employer-provided group insurance benefits are included in payroll costs, including group life, disability, vision, or dental insurance. This provision also applies to loans made before, on, or after the date of enactment.

The Supplemental Act clarifies that qualified business expenses paid with PPP loan proceeds that are ultimately forgiven are deductible for tax purposes. This contravenes and overrules the initial position taken by the IRS in Notice 2020-32 in May of 2020, which was subsequently amplified in Rev. Rul. 2020-27 issued in November of 2020. The provisions in the Act largely incorporate earlier proposed legislation, S.3612 – Small Business Expense Protection Act of 2020, drafted in response to the IRS's issuance of Notice 2020-32. In addition to providing for deductibility, the Act provides that tax basis and other tax attributes will not be reduced as a result of the PPP loan proceeds being excluded from gross income. Special rules are provided for partnerships and S corporations.

The Supplemental Act allows the borrower to elect a covered period ending at the point of the borrower's choosing between eight and 24 weeks after origination.

The Supplemental Act creates a simplified application process for loans under $150,000. If applicable, a borrower will receive forgiveness after signing and submitting to its lender a certification that is up to one page in length and includes:

- A description of the number of employees the borrower was able to retain because of the covered loan;
- The estimated total amount of the loan spent on payroll costs; and
- The total loan amount.

The borrower must also attest that the borrower accurately provided the required certification when it applied, and that it complied with PPP loan requirements.

Recall that in prior articles we recommended extensive record retention with regard to the PPP. New record retention requirements are included in the Supplemental Act, and borrowers are required to retain relevant records related to employment for four years and other records for three years.

One of the biggest features of the Supplemental Act is the introduction of a second round of PPP funding, called a "PPP second draw" This is a loan for smaller and harder-hit businesses, and will have a maximum amount of $2 million. Eligible entities must:

- Employ not more than 300 employees;
- Have used or will use the full amount of their first PPP; and
- Demonstrate at least a 25% reduction in gross receipts in the first, second, or third quarter of 2020 relative to the same 2019 quarter. There are provisions for businesses that were not active at these times, which provide adjusted timelines.

Eligible entities must be businesses, certain non-profits, housing cooperatives, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives. Ineligible entities include those listed in 13 C.F.R. 120.110 and subsequent regulations or guidance, except for those deemed eligible by additional law or guidance.

Similar to the original PPP, borrowers will be eligible for loan forgiveness for their payroll costs, as well as covered mortgage, rent, and utility payments, the above-described covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred during the covered period. The “60/40” rule concerning spending for payroll and non-payroll costs will continue to apply, whereby the borrower must spend at least 60% of the funds on payroll.

This is not an exhaustive summary of the Supplemental Act. Should you have any questions about the PPP forgiveness application, or whether you are eligible to receive a PPP second draw, please reach out to a member of our team.