

December 23, 2020

Congress Passes \$900 Billion Relief Act and Revises the PPP

Corporate

Human Resources & Employment

Litigation

Tax Planning & Structuring

Construction

After months of intense negotiations, Congress passed a new relief bill this week. Assuming President Trump signs the bill, or Congress overrides a veto, it delivers change just in time for the new year.

Tucked into the bill's 5,000-plus pages is a new round of PPP funding for those small businesses most "hard hit" by the COVID-19 crisis. The Relief Act's "Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act" (PPP2) provides more avenues of relief for fewer businesses. Best of all, these changes apply retroactively to some PPP recipients.

Following are some FAQs discussing the new (and old) programs:

Can Businesses Receive a Second PPP Loan?

Some businesses may qualify for an additional PPP loan, up to an additional \$2 million. However, businesses can only apply for a second PPP loan if they have 300 or fewer employees (versus 500 for first-time borrowers).

Additionally, the PPP2 requires that businesses applying for a second PPP loan suffer a significant drop in gross receipts (hence, the "hard-hit" label). Specifically, to qualify, businesses must show gross receipts from a quarter in 2020 that "demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the same quarter of 2019."

How is the PPP2 the same as the PPP?

The Employee Size Limit of Eligible Applicants is the Same: The PPP2 employee size cap (for first-time borrowers) remains at 500.

The Affiliation Rules are the Same: The PPP2 adopts the same affiliation rules (and exemptions) as the PPP.

The Maximum Loan Amount is the Same: The maximum PPP loan (even for second-time borrowers) remains the lesser of \$2 million and two-and-a-half times the average total monthly payment for payroll costs during the one-year period before the date on which the loan was made. Of course, with the expanded list of payroll costs, certain businesses will calculate a higher maximum loan amount than under the original terms of the PPP.

The 60% Threshold is the Same: Employers must spend 60% or more of their loan on payroll costs. Once again, these costs now encompass more expenditures.

The Covered Period is the Same: The covered period remains the choice of the applicant: 8 or 24 weeks.

The February 15, 2020, Cut Off Remains: To be eligible, a business/organization must have been in operation on February 15, 2020 (see below for an exception for venue operators).

How is PPP2 Different from the original PPP?

Expands What Types of Expenditures Qualify for PPP Funding: The PPP2 extends the CARES Act's list of acceptable uses for PPP funding. They include:

- Operations expenditures, meaning “payment 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.”
- Property damage costs, meaning “a cost 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.”
- Supplier costs, meaning “an expenditure made by an entity to a supplier of goods for the supply of goods that are essential to the operations of the entity at the time at which the expenditure is made and is made pursuant to a contract, order, or purchase order in effect at any time before the covered period with respect to the applicable covered loan, or with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan.”
- Worker protection expenditures, meaning “an operating or a capital expenditure to facilitate the adaptation of the business activities of an entity” to comply with state, local, and federal requirements or guidance issued from March 1, 2020, and until the President declares the emergency over. Examples of such expenditures include:
 - A drive-thru window facility
 - An indoor, outdoor or combined air or air pressure ventilation or filtration system
 - A physical barrier, such as a sneeze guard
 - An expansion of additional indoor, outdoor or combined business space
 - An onsite or offsite health screening capability

Good news for business: The PPP2’s list of acceptable uses applies retroactively to all PPP loans “as if included in the CARES Act.” However, PPP loans that have already received forgiveness are not able to take advantage of these changes. Therefore, while PPP recipients may not qualify for the PPP2, those who have not received forgiveness as of December 21, 2020, may take advantage of its changes, applying more PPP funding to a wider range of expenditures.

Promises an Even Simpler Version of the Forgiveness Application for Some Borrowers: Loans that total \$150,000 or less will be able to apply for forgiveness by an application “not more than 1 page in length” and requiring minimal information such as the estimated amount of the loan spent on payroll, a description of the number of employees and an attestation.

Tax Deductibility: The PPP2 makes it clear that expenses paid with the proceeds of a forgiven PPP loan are deductible to the extent they would have been deductible had they been paid with funds other than the PPP loan.

Provides Targeted Funding for Shuttered Venues: The PPP2 hopes to turn the lights back on at many of America’s live performance venues, movie theaters and museums. The PPP2 designates \$15 billion of the total PPP2 funding to these businesses, providing up to \$10 million (and an opportunity for a supplemental grant of up to 50% of the original grant) to cover up to 45% of a borrower’s 2019 revenue.

To be eligible, businesses must have been in business by February 29, 2020, and will have to show a reduction of 25% in revenue. In addition to the same employee cap of 500, businesses with companies in more than one country or more than 10 states are not eligible. Perhaps anticipating the onslaught of applications, the bill prioritizes recipients based on percentage of lost revenue.

When Can My Company Apply?

Per the Act, the SBA will issue regulations within 10 days, and an audit plan within 45 days. In order to avoid the confusion that surrounded the original PPP, we expect that the SBA will not rush to take applications until more guidance is issued. Stay tuned.