Coronavirus Response and Relief Supplemental Appropriations Act, 2021 Guide for Small to Mid-Sized Organizations

On December 27, 2020, the $900 billion COVID relief package, referred to as the Coronavirus Response and Relief Act, was passed which includes aid for small business through a second round of Paycheck Protection Program (PPP) forgivable loans called the Economic Aid Act, and updates some of the provisions of the Families First Coronavirus Response Act (FFCRA). This guide focuses on the revised and renewed PPP and the extension available to employers related to Paid Sick Leave and Emergency Family and Medical Leave (EFMLA) under FFCRA.

(1) Revised and Renewed PPP - $284 billion in aid for small businesses

- The U.S Small Business Administration (SBA) and Treasury issued guidance on Jan 6th, 2021, for the amended PPP:
  - 82-page interim final rule "Business Loan Program Temporary Changes; Paycheck Protection Program as Amended"
  - 42-page interim final rule "Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans"
  - Three-page "Guidance on Accessing Capital for Minority, Underserved, Veteran and Women-Owned Business Concerns"

- 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 contains several differences from PPP1. PPP2 loans will be available to first-time qualified borrowers as well as organizations that previously received a PPP loan.

- **Second-Time Borrower Eligibility →** PPP1 recipients will be eligible for another loan of up to a maximum of $2 million given they (First-time borrowers have a different set of eligibility requirements):

  - 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 loan amount about by multiplying the borrower's average monthly payroll in (1) the trailing 12-month period as of the date the loan is made, or (2) 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. (Note: 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, still capped at $2 million.)

- **Flexibility added to "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 loans were to be used only for payroll, rent, covered mortgage interests and utilities to qualify for 100% forgiveness. Updates to the act now allows PPP proceeds to be allocated for the following expenses:

  - Operation Expenditures → software/cloud computing service used to facilitate 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 good 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 issues 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.

- **Minority, Underserved, Veteran, and Women-Owned Businesses →** The Economic Aid Act provided set-asides for new and smaller borrowers, for borrowers in low- and moderate-income communities, and for community and smaller lenders. The set-asides include:
  - $15 billion across first- and second-draw PPP loans for lending by community financial institutions;
  - $15 billion across first- and second-draw PP loans for lendin by insured depository institutions, credit unions, and Farm Credit System institutions with consolidated assets of less than $10 billion;
  - $35 billion for new first-draw PPP borrowers; and
  - $15 billion and $25 billion for first-draw and second-draw PPP loans, respectively, for borrowers with a maximum of 10 employees or for loans of less than $250,000 to borrowers in low- or moderate-income neighborhoods. The SBA has determined that at least 25% of each of those set-asides will go to each one of the groups: loans to borrowers with a maximum of 10 employees and loans of less than $250,000 to borrowers in low- or moderate-income neighborhoods.
  - **In addition, the SBA said it would:**
  - Direct Lender Match borrower inquiries to small lenders that can aid traditionally underserved communities;
  - Match small businesses through Lender Match with Certified Development Companies (CDCs), Farm Credit System lenders, microloan intermediaries, and traditional smaller asset size lenders;
  - Continue setting aside dedicated hours to process and assist the smallest PPP lenders with their PPP loans;
  - Continue to strongly encourage community development financial institutions and minority-, women-, veteran-, and military-owned lenders to apply to become PPP lenders. SBA said it would give full and prompt consideration to these applications to become PPP lenders consistent with program guidelines, including in cases where the lender does not meet all of the requirements listed on the updated SBA Form 3507;
  - Continue to work with the Board of Governors of the Federal Reserve System on the PPP Liquidity Facility to enable PPP lenders, including nonbank lenders, to pledge PPP loans to the Federal Reserve as collateral for Federal Reserve borrowings to enhance lender liquidity and enable PPP lenders to expand their lending capacity;
  - Promote awareness of these policies and procedures via traditional media methods, SBA social media accounts, and guidance to lenders before the formal opening of the SBA's loan systems;
  - Continue to work with federal partners. including the Department of Agriculture, the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Farm Credit Administration, and the National Credit Union Administration, to share the guidance with PPP lenders, borrowers, and the broader public.

Source – Journal of Accountancy, AICPA – New PPP guidance issued by SBA, Treasury

Source – JD Supra, LLC - The Consolidated Appropriations Act, 2021: Round 2 of the Paycheck Protection Program

(2) EFMLA Extension under FFCRA

It is important to note that this extension is **voluntary** and that mandatory paid sick and EFMLA leave expired on December 31, 2020.

- Effective January 1 through March 31, 2021, employers can provide paid sick leave and EFMLA to employees for reasons under the Act and still qualify for the payroll tax credit associated with this leave.
- After March 31, 2021, employers can choose to provide paid sick leave and EFMLA at their own expense but cannot claim a payroll tax credit.
- The Act does not provide for an additional paid sick leave allotment; rather, only the timeframe for taking paid sick leave has been extended. If an employee has already used some of the paid sick leave or exhausted the maximum amount of 80 hours, no additional time may be used in excess of the original 80 hours unless the employer wishes to do so at their expense.
- In all cases, employers must apply their paid leave policy in a consistent and non-discriminatory manner for all eligible employees.
- Depending on how your organization administers Family and Medical leaves (FMLA), the extension for EFMLA leave may be different. Because FMLA leave recycles every 12 months and paid EFMLA leave under the FFCRA follows the procedures set forth in the FMLA, employees may be entitled to a new allotment of FMLA leave (for COVID-19 childcare-related reasons) starting January 1, 2021, depending on how the employer calculates its FMLA leave year (calendar versus rolling).

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