

# **An Analysis and Overview of The Second Round of PPP Funding**

## **January 2021 Article**

BY: MICHAEL S. HAMPLEMAN

ROMAN A. BASI

MICHAEL S. HAMPLEMAN FOCUSES HIS PRACTICE ON SMALL BUSINESS TAXATION AND CORPORATE STRUCTURING. HE IS AN ASSOCIATE ATTORNEY AT THE CENTER FOR FINANCIAL, LEGAL, & TAX PLANNING, INC.

ROMAN A. BASI IS AN EXPERT ON CLOSELY HELD ENTERPRISES. HE IS AN ATTORNEY/CPA AND THE PRESIDENT OF THE CENTER FOR FINANCIAL, LEGAL & TAX PLANNING, INC.

**Basi, Basi & Associates at The Center for Financial, Legal & Tax Planning, Inc.**

- Mergers & Acquisitions
- Retirement and Estate Planning
- Business Valuation
- Tax Aspects of Business Decisions
- Accounting Services
- Business Succession Planning
- Strategic Planning and Negotiation for Buying or Selling a Business

On December 27, 2020, late Sunday night, President Trump signed into law the \$900 billion COVID-19 relief bill that was passed approximately a week before by Congress. The legislation, the Consolidated Appropriations Act of 2021, calls for direct payments to individuals and funding to other various communities and sectors that have been hit hardest directly by COVID-19.

This article will specifically examine the second round of Paycheck Protection Program (also known as PPP2) funding administered by the Small Business Association using local banks of potential applicants. First, it will discuss who is eligible to apply for PPP2 funds. Next, it will discuss the loan terms of PPP2 funds in addition to changes that have been made with regards to obtaining funding. Finally, it will address the tax deductibility issue created by the bill.

PPP2 loans will be available to first-time qualified borrowers in addition to businesses that previously received a PPP loan. Specifically, previous PPP recipients may apply for another loan of up to \$2 million, provided they meet the following guidelines:

- Business has 300 or fewer employees.
- Business must have used or will use the full amount of their first PPP loan.
- Business can show a 25% gross revenue decline in any 2020 quarter compared with the same quarter in 2019.

PPP2 also provides potential funding to Sec. 501(c)(6) business leagues, such as chambers of commerce, visitors' bureaus, etc., and destination marketing organizations, provided they have 300 or fewer employees and do not receive more than 15% of receipts from lobbying. The bill allows borrowers that returned all or part of a previous PPP loan to reapply for the maximum amount available to them.

PPP2 will also permit first-time funding to the following entities:

- Businesses with 500 or fewer employees that are eligible for other SBA 7(a) loans.
- Sole proprietors, independent contractors, and eligible self-employed individuals.
- Not-for-profits, including churches.
- Accommodation and food services operations with fewer than 300 employees per physical location.

As with the first round of PPP funding, the costs eligible for loan forgiveness with PPP2 include payroll, rent, covered mortgage interests, and utilities. PPP2 also makes the above costs eligible for forgiveness so long as the same terms that applied for PPP1 are followed: the borrower must spend no less than 60% of the funds on payroll over the covered period of eight weeks or twenty-four weeks. The PPP borrower will likely receive 2.5 times their average monthly payroll cost in the year prior to the loan or the calendar year, similarly to PPP1.

The new COVID-10 relief bill also simplifies the application process for loans under \$150,000 or less. Specifically, a borrower shall receive forgiveness if a borrower signs

and submits to the lender a certification that is not more than one page in length, includes 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. The SBA must create the simplified application form within 24 days of the bill's enactment and may not require additional materials unless necessary to substantiate revenue loss requirements or satisfy relevant statutory or regulatory requirements. Borrowers are required to retain relevant records related to employment for four years and other records for three years, as the SBA may review and audit these loans to check for fraud.

The bill also specifies that business expenses paid with forgiven PPP loans are tax-deductible. This supersedes IRS guidance that such expenses could not be deducted and brings the policy in line with what the AICPA and hundreds of other business associations have argued was Congress's intent when it created the original PPP as part of the CARES Act.

The COVID-19 relief bill clarifies that "no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided" by Section 1106 of the CARES Act (which has been redesignated as Section 7A of the Small Business Act). This provision applies to loans under both the original PPP and subsequent PPP loans.

While the CARES Act excluded PPP loan forgiveness from gross income, it did not specifically address whether the expenses used to achieve that loan forgiveness would continue to be deductible, even though they would otherwise be deductible. In April, the IRS issued Notice 2020-32, which stated that no deduction would be allowed under the Internal Revenue Code for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a PPP loan because the income associated with the forgiveness is excluded from gross income for purposes of the Code under CARES Act Section 1106(i).

In November, the IRS then expanded on this position by issuing Rev. Rul. 2020-27, which held that a taxpayer computing taxable income on the basis of a calendar year could not deduct eligible expenses in its 2020 tax year if, at the end of the tax year, the taxpayer had a reasonable expectation of reimbursement in the form of loan forgiveness on the basis of eligible expenses paid or incurred during the covered period. Treasury Secretary Steven Mnuchin also argued against businesses being able to deduct business expenses paid with forgiven, tax-free PPP funds, calling it an unwarranted double benefit for businesses.

If you own a small business and have any questions regarding applying for a second round of PPP loans, forgiveness on the loan, or any questions regarding the treatment of PPP loans during a sale or transfer of your company, please reach out to the professionals at The Center for Financial, Legal and Tax Planning, Inc.