Federal Paycheck Protection Program Re-Opened

FY2021 Consolidated Appropriations & COVID Relief Act includes U.S. Small Business Administration Relief to Support Child Care

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In Brief. The federal FY2021 Consolidated Appropriations & COVID Relief Act (P.L. 116-260), which was signed into law on December 27, 2020, provides more flexibility and a second Paycheck Protection Program (PPP) loan opportunities for many small businesses.

Child Care Context. Particularly for child care programs, the expansion of eligible expenses under the Paycheck Protection Program (PPP) as well as the opportunity for child care programs with 300 or fewer employees that can demonstrate a 25% reduction in gross receipts in the 1st, 2nd, or 3rd quarter of 2020 to apply for a second loan, could help facilitate the use of PPP "forgivable" loans to more effectively support the business model for child care in a way that proved challenging under the rules enacted in March and June of 2020.

Key Take-Aways.

- Allows a broader array of expenses to be eligible for loan forgiveness to help support relief for COVID related costs
- Offers a second opportunity for an additional loan to help struggling child care providers
- Authorizes the deductibility of business expenses paid for with PPP loans to offer further relief to child care businesses

Paycheck Protection Program Highlights

Paycheck Protection Program (PPP) Re-Opened. Under the *"Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act"* contained in the FY2021 Consolidated Appropriations & COVID Relief Act, the U.S. Small Business Administration PPP loans are re-opened through March 31, 2021.

Under the new law, there are two basic types of PPP loans that are available – a first loan (for businesses that did not previously receive a PPP loan) and PPP Second Draw Loans for qualified small businesses.

The Second Draw Loans are for small businesses with fewer than 300 employees that also had a 25% reduction in gross receipts in the 1st, 2nd, or 3rd quarter of 2020 relative to the same quarter in 2019. Businesses applying after January 1, 2021 can use gross receipts from the 4th quarter of 2020. Businesses are limited to one Second Draw Loan.

Payroll/Fixed Cost Flexibility. Under the PPP Flexibility Act enacted in June, businesses were allowed forgiveness for PPP loans as long as they spent 60% of the loan for payroll related costs and 40% for fixed costs (mortgage interest, rent, and utilities). The new law expands the type of costs that are allowed under the nonpayroll category.

- **Covered Operations Expenditures.** The new law allows costs related to business software or cloud computing services that support business operations, billing, accounting, or record-keeping. For example, for child care programs, this means the cost of child care management system software that supports business operations or other business support.
- **Covered Supplier Costs.** The new law allows expenses pursuant to a contract, order, or purchase order with respect to perishable goods and other items. For

example, for child care programs, this means the purchase of food served to children.

- **Covered Worker Protections.** The new law allows expenses that support business activities to comply with COVID requirements established by the U.S. Department of Health and Human Services, Centers for Disease Control, Occupational Safety and Health Administration, or any equivalent requirements or guidance by a state or local government during the pandemic. For example, for child care programs, this means expenses for PPE, cleaning supplies, sneeze guards, portable water stations, and other expenses related to social distancing and public health requirements related to COVID.
- **Expanded Payroll Costs.** Specific types of employer provided group insurance payments such as group life, disability, vision, and dental insurance are now eligible payroll costs.

Borrowers who have not yet received forgiveness are allowed to use these expanded definitions. New and 2nd draw loans remain subject to the 2.5 times average monthly payroll (hotels and restaurants can receive loans up to 3.5 times average monthly payroll costs). Fees for applicants continue to be waived.

To ensure that PPP loans are awarded to small business, the new law prohibits publicly traded companies from receiving PPP loans.

Covered Period for Forgiveness

Under the new law, borrowers can choose the covered period for the loan – between 8 and 24 weeks after loan origination.

Simplified Application & Loan Forgiveness

For loans under $150,000, a borrower can receive forgiveness through a one page certification that includes a description of the number of employees that the borrower was able to retain due to the loan, the estimated total amount of the loan spent on payroll costs, and the total loan amount.

The SBA is instructed to create this form within 24 days of enactment and may not require additional materials. Borrowers are required to retain records and could be subject to an audit. Banks can still request more information, but they are not required to do so.

Tax Changes for PPP Forgiven Loans

Under the CARES Act, PPP forgivable loans were not subject to taxes. The IRS issued guidance in the fall that said because the PPP loans aren't taxable, businesses can not take deductions for business expenses paid for with PPP loan funds. The new law allows business expenses paid for with PPP forgivable loans to be deducted.

The new law clarifies that emergency Economic Injury Disaster loans (and EIDL advances) are not included in gross income. And, that otherwise allowable business deductions are allowed for expenses paid for with EIDL funding.

Lender Set-Asides

- $15 billion for PPP and 2nd Draw Loans through Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs)
- $15 billion for PPP and 2nd Draw Loans through small community banks and credit unions

Borrower Set-Asides

- $35 billion for first-time borrowers, $15 billion for employers with 10 or fewer employees or loans less than $250,000 in low income areas
- $25 billion for 2nd Draw Loans for employers with 10 or fewer employees or loans less than $250,000 in low income areas

U.S. Small Business Administration Regulations. The SBA is instructed to establish regulations within 10 days after enactment.