Paycheck Protection Program Round 2 – Preview of Changes

A COVID-19 Update from Questco – January 6th, 2021

The $900 billion Consolidated Appropriations Act, 2021 ("CAA21") recently signed into law is designed to provide additional financing to small and midsize businesses to allow them to continue to survive the current economic conditions. The CAA21 includes significant and beneficial modifications to the existing Paycheck Protection Program (PPP) in addition to allowing for a second draw on the PPP.

While there remain many questions regarding the details around the PPP loan program changes, and we anticipate that the SBA will issue additional guidance shortly, the information below provides some insight into the key provisions of the CAA21 with respect to the PPP based on our initial interpretation.

Changes to Existing PPP Loan Program

For those borrowers who have not already applied for forgiveness of their PPP loan, the following provisions apply to all loans made under the PPP ***before, on, or after*** the enactment of the CAA21. For those borrowers who have already had their loans forgiven, most of these provisions will be irrelevant.

- Expansion of Expenses that Result in Full Forgiveness***:*** The CAA21 adds the following additional costs which are eligible for forgiveness. As before, 60% of the total forgiveness amount must be incurred on payroll costs.

    1. Covered operations expenditures – this includes business software or cloud computing service that facilitates business operations, product delivery, the processing, payment or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory needs, records and expenses.
    2. Covered property damage costs – this includes costs not covered by insurance or other compensation related to property damage or vandalism or looting due to public disturbances that occurred in 2020.
    3. Covered supplier costs – this includes amounts paid for the supply of goods that are (a) essential to the business and (b) made pursuant to a contract, order or purchase in effect before the covered period. The scope of covered supplier costs appears to be quite broad, and generally includes tangible property such as office supplies, computers, materials resold to customers, etc.
    4. Covered worker protection expenditures – this includes operating or capital expenditures to facilitate the adaptation of the business activities to comply with guidance issued by the Department of Health and Human Services, CDC, OSHA or any equivalent guidance issued by State and local governments. This may include items such as the creation or expansion of drive through windows, ventilation or filtration systems, physical barriers such as sneeze guards, expansion of indoor or outdoor space, health screening, personal protective equipment.

    - The Act clarifies that group insurance payments includes not only health but group life, disability, vision and dental insurance.

- The borrower is allowed the ***flexibility to choose the length of the covered period***. The covered period will start the day of the loan origination and can end between 8 weeks to 24 weeks.
- There will be a simplified loan forgiveness application for loans under $150,000. The application is limited to one page in length. While there will be limited information required to substantiate the amount of forgiveness submitted with the application, the borrower must have documentation readily available and should preserve their workpapers in the event the SBA requests documentation supporting the certifications made during the forgiveness process.
- The Act clarifies that a business that was not in operation on February 15, 2020 is not eligible for a PPP loan.
- With the retroactive allowance of the Retention Credit for businesses that received a PPP loan also provided for under the CAA21, wages that are used for the Retention Credit are not eligible to be forgiven.
- Borrowers that would have been eligible for additional funds under the PPP due to any SBA interim final rules that were issued, may request an increase in the loan, so long as the existing PPP loan has not already been forgiven.
- The Act provides access to PPP funds for qualifying farmers and ranchers that operate without employees, destination marketing organizations, housing cooperatives, news organizations, and Section 501(c)(6) organizations.
- EIDL advances no longer reduce the amount of PPP forgiveness. The EIDL advance will not be taxable and the expenses paid with the EIDL advance will be deductible.

A Second Draw from the Well – PPP II

The CAA21 creates a second loan from the PPP, called a “PPP second draw” loan for smaller and harder hit businesses with a maximum amount available of $2.0 million. Most terms of the second draw are the same as the first, except for the following:

- Eligibility – Business concerns must have no more than 300 employees (down from the 500 under PPP I) **and** a reduction of gross receipts of at least 25% during a quarter in 2020 as compared to 2019.
- Amount – The maximum amount of the loan is again dependent upon the payroll of the business concern. The maximum amount is capped at $2.0 million based on 2.5 times the borrower’s average monthly payroll of either 2019 or the 1-year period prior to the loan. Seasonal employers can use any 12-week period between February 15, 2019 and February 2020 to determine average monthly payroll. Entities that did not exist during the one year prior to February 15, 2020, will use monthly payroll as of the date of the loan application. Entities that are covered by NAICS code 72 (Accommodations and Food Services) will be able to use a multiplier of 3.5 times monthly payroll and will be eligible for a maximum loan of $3.5 million.
- Simplification – a business concern that applies for a loan of not more than $150,000 will be able to submit a certification that they meet the revenue loss requirement at the time of application. However, when the entity applies for forgiveness, they will then submit adequate support to demonstrate that they met the revenue loss requirement.

Deduction for Expenses that Result in Forgiveness

Expenses covered by PPP loans have now been designated as deductible for income tax purposes. This is significant in the fact that Congress has now expressly recognized the PPP as a grant in the form of a forgivable loan.

In Conclusion

As previously noted, there are still many unanswered questions and clarifications needed in order to fully understand the PPP loan provisions enacted by the CAA21. We will continue to monitor developments and share them with you as additional guidance becomes available. In the interim, we will also provide the same level of support for those of you who have existing PPP loans and are working with your lenders to request forgiveness. We have delayed any modifications to our loan forgiveness reports pending further clarification of the above changes, however, we will respond as promptly as we can to any specific process changes required of you by your lender.

Please reach out to your Client Success Manager if Questco can assist you with PPP loan requests or any other COVID-19 compliance needs. As always, our team is here to serve you.

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