



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

January 27, 2021

PPP Update: New Round with Some New Rules

Authored by [Michael F. Maglio](#), [Endicott Peabody](#), [Taylor A. Shea](#), and [Barrett P. Wilson-Murphy](#)

On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act was signed into law as part of the Consolidated Appropriations Act, 2021 (the Act). The Act reopens the Paycheck Protection Program (PPP) for businesses seeking a PPP loan for the first time (a First Draw PPP Loan) and permits eligible businesses that received a First Draw PPP Loan to apply for another PPP loan (a Second Draw PPP Loan). In addition, the Act implements some important modifications to the PPP, including additional expenses for which PPP loan proceeds may be used, modifications to the covered period, and clarification regarding how PPP loans will be treated for federal income tax purposes. Under the Act, the PPP will remain open until March 31, 2021, or until the new funding has been exhausted. Set forth below is a high-level overview of some key takeaways under the Act.

KEY TAKEAWAYS

- **Eligibility – First Draw PPP Loans:** The Act did not change the general eligibility criteria for First Draw PPP Loans; applicants must still satisfy the requirements set forth in the CARES Act. However, it has been clarified that publicly-traded companies and businesses that are “permanently closed” are prohibited from applying for First Draw PPP Loans. For a discussion regarding eligibility requirements for First Draw PPP Loans, please see our article addressing that topic [here](#).
- **Eligibility – Second Draw PPP Loans:** Businesses are eligible to receive a Second Draw PPP Loan if: (a) they can demonstrate that there was a 25 percent reduction from gross receipts in any quarter during 2020 when compared to the same quarter in 2019; (b) they do not employ more than 300 employees; and (c) they have used or will use the full amount of their First Draw PPP Loan on or before the expected distribution date of the Second Draw PPP Loan.
- **Terms and Conditions – Second Draw PPP Loans:** Second Draw PPP Loans are generally subject to the same terms, conditions and requirements as First Draw PPP Loans (e.g., no collateral required; 1 percent interest rate on any loan proceeds that are not forgiven; and a five-year maturity date for any portion of the loan not forgiven). As with First Draw PPP Loans, the loan amount for Second Draw PPP Loans will be calculated by multiplying the borrower’s average monthly payroll costs by 2.5; [1] however, Second Draw PPP Loans are subject to a \$2 million cap (as opposed to First Draw PPP Loans, which have a \$10 million cap).
- **Covered Period:** The Act redefined the “covered period,” which is the period during which PPP loan proceeds must be spent on eligible expenses in order to be eligible for forgiveness. Prior to the Act, the “covered period” for forgiveness was the 24-week period starting on the date the borrower received the PPP loan proceeds, unless the PPP loan was made before June 5, 2020, in which case the borrower could elect to utilize either a 24-week covered period or the original 8-week covered period. Under the Act, borrowers may elect a covered period that ends on any date that is between 8 and 24 weeks after the day the borrower received the PPP loan proceeds.

- **Additional Eligible Expenses:** Prior to the Act, PPP loan proceeds that were used for payroll, rent, mortgage interest, utilities and interest on certain other debt obligations were eligible for forgiveness. The Act expands eligible (and, therefore, forgivable) expenses to include (a) personal protective equipment expenses; (b) certain operating expenses related to business software or cloud computing services; (c) property damage costs related to vandalism or looting due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation; and (d) certain supplier costs. Although these four additional categories of eligible expenses are also eligible for forgiveness, borrowers are still required to use at least 60 percent of PPP loan proceeds for covered payroll costs.
- **Deductibility of Forgiven PPP Loans:** The Act clarifies that borrowers may exclude PPP loan proceeds from taxable income and deduct expenses paid with such proceeds, which is a change to the prior guidance issued by the IRS.

Robinson & Cole LLP has been tracking government relief programs being offered to help alleviate the economic impact of COVID-19 on businesses in the United States. The SBA, in consultation with the Treasury, has provided and continues to provide guidance in the form of [Interim Final Rules](#) and [Frequently Asked Questions](#) (FAQs) to address borrower and lender questions concerning the implementation of the Paycheck Protection Program (PPP), established by section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). For more information on the PPP, see our [Primer](#), [FAQ on the PPP](#), our [article on SBA affiliation rules](#), our [article on the Paycheck Protection Program and Health Care Enhancement Act](#), our [article on the "necessity certification,"](#) our [article on the PPP loan forgiveness application](#), our [article on The Paycheck Protection Program Flexibility Act](#), our [article on PPP Update: Loan Forgiveness FAQs](#), our [article on Treatment of Owners And Forgiveness of Certain Nonpayroll Costs](#), our [article on PPP Update: SBA Procedural Notice - Paycheck Protection Program Loans and Changes of Ownership](#), and our [article on PPP Update: Loan Necessity Questionnaires](#).

This alert is being issued as of January 27, 2021. Please note that future legislation, guidance and regulations could modify certain provisions of the topics discussed above.

ENDNOTES

[1] Borrowers in the accommodations and food services industry (i.e., businesses with a NAICS code beginning with 72) may receive a Second Draw PPP Loan equal to their average monthly payroll costs multiplied by 3.5, subject to the \$2 million cap for any single borrower.

Read more legal updates, blog posts, and speaking engagements related to this area on [Robinson+Cole's Coronavirus Response Team](#) page and feel free to contact any member of our team with questions.

[Bruce B. Barth \(Chair\)](#) | [Kenneth C. Baldwin](#) | [Michael H. Bernstein](#) | [J. Tyler Butts](#) | [Dennis C. Cavanaugh](#)

[Britt-Marie K. Cole-Johnson](#) | [Candace M. Cunningham](#) | [Andrew A. DePeau](#) | [Kathleen E. Dion](#)

[Conor O. Duffy](#) | [William J. Egan](#) | [Steven L. Elbaum](#) | [Gilbert L. Lee](#) | [Virginia E. McGarrity](#)

[Endicott Peabody](#) | [Kathleen M. Porter](#) | [Taylor A. Shea](#) | [Lauren M. Sigg](#)

[Brian R. Smith](#) | [Alisha N. Sullivan](#) | [Anna Jinhua Wang](#) | [Abby M. Warren](#) | [Jeffrey J. White](#)

For insights on legal issues affecting various industries, please visit our [Thought Leadership](#) page and subscribe to any of our newsletters or blogs.



Boston | Hartford | New York | Providence | Miami | Stamford | Los Angeles | Wilmington | Philadelphia | Albany | rc.com



© 2021 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain ATTORNEY ADVERTISING under the laws of various states. Prior results do not guarantee a similar outcome.

Robinson & Cole LLP | 280 Trumbull Street, Hartford, CT 06103 | www.rc.com