Alert
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Center for Plain English Accounting

AICPA's National A&A Resource Center

Passage of COVID-19 Relief Law

PPP Loans & Other Key Provisions

On December 27, 2020, the *Consolidated Appropriations Act, 2021* (CAA) was signed into law which included additional COVID-19 related relief. Key financial reporting provisions of the CAA that we believe are of the most interest to our CPEA members are presented below. The CAA is voluminous and covers a wide range of topics. We encourage our members to stay abreast of developments related to the CAA as further analysis and implementation of its provisions progress.

Tax Deductibility for Paycheck Protection Program (PPP) Expenses

The CAA specifies that business expenses paid with forgiven PPP loans are tax-deductible. This supersedes disputed IRS guidance (Notice 2020-32 and Rev. Rul. 2020-27) that such expenses could not be deducted. The CAA clarifies that gross income does not include any amount that would otherwise arise from the forgiveness of a PPP loan. The provision is effective as of the date of enactment of the *Coronavirus Aid, Relief, and Economic Security* (CARES) Act. The provision provides similar treatment for second draw PPP loans, effective for tax years ending after the date of enactment of the provision.

Importantly, Section 276 of Division N of the CAA noted that tax deductibility of PPP expenses was a "clarification of tax treatment" which will support the position that tax deductibility of PPP expenses was the original intent of the CARES Act. This may be of assistance in supporting the view that the CAA is a Type 1 subsequent event.

***Practice Note*:** While the CAA resolved the dispute about tax deductibility of the PPP expenses, a remaining area of diversity will likely be whether the CAA's "clarification" is a Type 1 (recognized) or Type 2 (unrecognized) subsequent event. For non-calendar year tax paying entities (such as C-Corporations) this could have a significant impact on the effective tax rates.

Restart of PPP Loans

The CAA provides $284 billion to the U.S. Small Business Association (SBA) for first and second PPP loans. This new round of PPP funding is subject to new eligibility restrictions; however, the framework of the earlier PPP funding mostly remains in place. The covered period for PPP loans runs through March 31, 2021, subject to availability of funds. The following is a high-level view of the PPP provisions.

Eligibility

New PPP loans will be available to first-time qualified borrowers and, for the first time, to businesses that previously received a PPP loan. Specifically, previous PPP recipients may apply for another loan of up to $2 million, provided they:

- Have 300 or fewer employees
- Have used or will use the full amount of their first PPP loan
- Can show a 25% gross revenue decline in any 2020 quarter compared with the same quarter in 2019

The CAA aims to support very small businesses and, therefore, dedicates funding to first- and second-time PPP borrowers with 10 or fewer employees, first-time PPP borrowers that have recently been made eligible, and for loans made by community lenders. Sec. 501(c)(6) organizations (business leagues, chambers of commerce, visitors' bureaus, etc.) and "destination marketing organizations" (as defined in the CAA) are now eligible for PPP funding, provided they have 300 or fewer employees and do not receive more than 15% of receipts from lobbying. Eligibility also is extended to housing cooperatives with not more than 300 employees.

Borrowers from the following groups are still eligible for the program even if they didn't take out a loan in the first round:

- 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 (those with North American Industry Classification System (NAICS) codes starting with 72) with fewer than 300 employees per physical location

The CAA allows borrowers that returned all or part of a previous PPP loan to reapply for the maximum amount available to them.

CPEA Observation: An initial analysis of the CAA seems to indicate that borrowers of this new round of PPP funding will have to make the same certification that the loan is necessary to support the ongoing operations of the applicant. This certification also was required of earlier PPP borrowers. As noted earlier, the new round of PPP funding will have a qualification test based on revenue declines for previous PPP loan recipients.

PPP Loan Terms

As with earlier PPP funding, the costs eligible for loan forgiveness in the new PPP funding include payroll, rent, covered mortgage interest, and utilities. The new PPP funding also makes the following potentially forgivable:

- Covered worker protection and facility modification expenditures, including personal protective equipment, to comply with COVID-19 federal health and safety guidelines
- Expenditures to suppliers that are essential at the time of purchase to the recipient's current operations
- Covered operating costs such as software and cloud computing services and accounting needs
- Covered property damage cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation

To be eligible for full loan forgiveness, PPP borrowers will have to spend no less than 60% of the funds on payroll over a covered period of either 8 or 24 weeks — the same parameters earlier PPP funding had when it stopped accepting applications in August 2020.

CPEA Observation: The CAA clarifies that the term covered period of a PPP loan means the period beginning on the date the loan is originated and ending on a date selected by the loan recipient that occurs during the period beginning on the date that is 8 weeks after the origination date and ending on the date that is 24 weeks after the origination date.

PPP borrowers may receive a loan amount of up to 2.5 times their average monthly payroll costs in the year prior to the loan or the calendar year, the same as with earlier PPP funding, but the maximum loan amount is limited to $2 million maximum. PPP borrowers with NAICS codes starting with 72 (hotels and restaurants) can get up to 3.5 times their average monthly payroll costs, again subject to a $2 million maximum.

PPP Loan Forgiveness

The CAA creates a simplified forgiveness application process for loans of $150,000 or less. Specifically, a borrower will 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 CAA'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.

Additionally, the CAA repeals the requirement that PPP borrowers deduct the amount of any EIDL advance from their PPP forgiveness amount.

SBA Audit Plan

The CAA requires that the SBA submit an audit plan that details the policies and procedures for conducting forgiveness reviews and audits of covered loans and the metrics that will be used to determine which covered loans will be audited. That plan must be submitted withing 45 days after the passage of the CAA.

Hold-Harmless Safe Harbor for PPP Lenders

The CAA indicates that a lender may rely on any certification or documentation submitted by an eligible recipient of an initial or second draw PPP loan that is submitted pursuant to all applicable requirements and attests that the recipient has accurately provided the certification or documentation to the lender. Lenders who rely on such certifications or documentations will not be subject to an enforcement action and those lenders will not be subject to any penalties relating to loan origination or forgiveness of the initial or second draw PPP loan. That safe harbor is predicated on the requirement that the lender acts in good faith and all other relevant statutory and regulatory requirements applicable to the lender are satisfied with respect to the initial or second draw PPP loan.

Practice Note: Some financial institutions, particularly larger financial institutions, have not started to accept forgiveness applications from some or all of their PPP loan recipients. The hold-harmless safe harbor for PPP lenders may clear up legal uncertainties for these financial institutions which may accelerate the forgiveness process.

Other Funding Provisions

The CAA allocates $20 billion to provide Economic Injury Disaster Loan (EIDL) grants to businesses in low-income communities. In addition, shuttered live venues, independent movie theaters, and cultural institutions will have access to $15 billion in dedicated funding while $12 billion will be set aside to help business in low-income and minority communities.

Extension of Temporary Relief from Troubled Debt Restructurings and Insurer Clarification

Section 4013 of the CARES Act (passed on March 27, 2020) provided an option for financial institutions to suspend the requirements under U.S. generally accepted accounting principles (U.S. GAAP) for loan modifications related to the COVID-19 pandemic that would, otherwise, be categorized as a troubled debt restructuring and suspend any determination of a loan modified as a result of the effects of the COVID-19 pandemic as being a troubled debt restructuring, including impairment for accounting purposes. This option for financial institutions was available beginning March 1, 2020 and extended 60 days following the end of the COVID-19 national emergency but no later than December 31, 2020.

The CAA amends section 4013 of the CARES Act to:

- Include insurance companies in addition to financial institutions being eligible for the optional relief
- Extend the availability of the relief option from December 31, 2020 to January 1, 2022.

Extension of Temporary Relief from CECL Reporting

Section 4014 of the CARES Act gave insured depository institutions and bank holding companies (or affiliates) the option to delay the implementation of the current expected credit loss (CECL) standard (Accounting Standards Update 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Statements*) until the conclusion of the national emergency or December 31, 2020, whichever comes first.

The CAA amends section 4014 of the CARES Act to extend the availability of that relief option from December 31, 2020 to January 1, 2022.