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Over the past weekend, the White House signed the Consolidated Appropriations Act, 2021, which included \$284 billion for funding a second-round of the Paycheck Protection Program that was part of the CARES Act passed back in April. While the CAA's provisions were based on those in the CARES Act, there are a few key differences to be aware of:

- The new statute explicitly provides for the deductibility of certain business expenses that have been paid for with forgiven PPP loans (note that this is a material change from earlier-issued IRS guidance).
- Nonprofits organized under I.R.C. 501(c)(6) are now eligible to receive loans.
- \$15 billion has been ear marked for live venues, independent movie theatres, and cultural institutions, part of the Save Our Stages effort championed by Sen. Klobuchar.

- \$20 billion earmarked for the Economic Injury Disaster Loan Program.
- Second Round PPP Loans are available not only to first-time qualified borrowers, but also that borrowers who previously received a PPP loan who (1) employ no more than 300 employees or meet an alternative size standard; (2) have used (or will use) the entire amount of their first PPP loan; and (3) had gross receipts during Q1, Q2, or Q3 2020 that were at least 25% less than gross receipts from the same quarter in 2019 (businesses who apply *after* January 1, 2021 may also use Q4 for this calculation).
- The necessity requirement, requiring borrowers to certify that the “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant” remains in place.
- Borrowers calculate their maximum loan amount by multiplying their average total monthly payroll for either (at the employer’s option) (1) the one-year period prior to date on which the loan was made or (2) calendar-year 2019 by 2.5x. The loan amount is capped at \$2 million. (Seasonal employees calculate maximum loan amounts differently).
- Employers in the hospitality industry (NAICS Code 72) are permitted to use a 3.5x multiplier for their average monthly payroll.
- Loan recipients can choose the length of their covered period (the time in which the funds must be used to qualify for forgiveness), provided that it is between 8-24 weeks.
- Permissible use of the PPP funds has been expanded (the changes apply both to new loans, except in the event that forgiveness has already been obtained, and new loans under this second round):
 - Payroll.
 - Rent.
 - Covered mortgage interest and utilities.
 - Covered operations expenditures, including payments for business software, cloud computing services, payroll expenses, HR/billing functions, etc.
 - Property damage and vandalism or looting due to public disturbances not covered by insurance or other compensation.
 - Supplier costs for goods that are essential to the operation of the business at the time which the expenditure is made and is made pursuant to a contract or order in effect at any time before the covered period (or during the covered period if in respect to perishable items).
 - Operating or capital expenditures that allow a business to comply with requirements or guidance issued by the CDC, HHS, OSHA, or a state/local government during the period March 1, 2020 until the expiration of the national

emergency related to sanitation, social distancing,
worker/customer safety requirement related to Covid-19.

- PPP loans will not be treated as taxable income, and expenses paid with PPP proceeds that are forgiven are tax deductible (both for Round 1 and Round 2).
- EIDL Advances no longer reduce PPP loan forgiveness
- The forgiveness application for loans of less than \$150,000 has been drastically simplified.
- Borrowers in bankruptcy may now apply for PPP loans.

Note that the SBA has not yet issued formal guidance, so this information is subject to change or clarification at a later date.

This communication is not intended to and does not constitute legal advice. For specific questions, please contact one of the attorneys at Madigan, Dahl & Harlan, P.A.

Madigan, Dahl & Harlan, P.A.
Two22/Campbell Mithun Tower
222 South 9th Street
Suite 3150
Minneapolis, MN 55402
Main: (612) 604-2000
email@mdh-law.com
www.mdh-law.com

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