COVID-19 Alert: The Consolidated Appropriations Act of 2021

COVID-19 Relief Law Decoded: What Clients Need To Know Now

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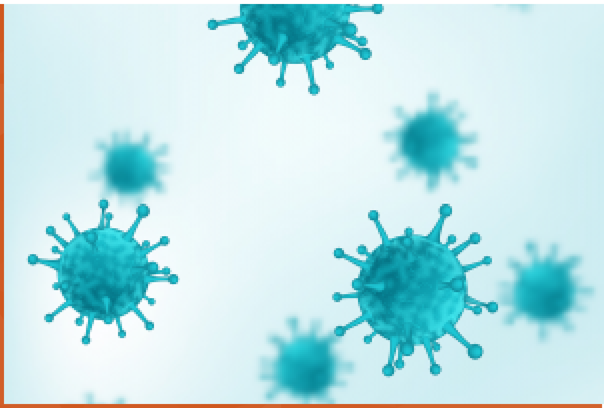

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On December 27, 2020, the Consolidated Appropriations Act of 2021 (the "CAA") passed into law. The CAA includes long-anticipated measures in response to the COVID-19 pandemic and resulting economic crisis. The CAA supplements and extends measures enacted earlier this year, including the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), the Families First Coronavirus Response Act (the "FFCRA") and the Paycheck Protection Program Flexibility Act of 2020 (the "PPPFA").

The following are links to plain-language summaries of the core elements of the CAA, and related agency guidance, that are applicable to employers:

Employee Benefits:

- Extension of CARES Act Unemployment Provisions
- Treatment of FFCRA COVID-19 Employee Leave Requirements

COVID-Related Tax Relief:

- Payroll Tax Deferral Extension
- Employee Retention Credit
- Paycheck Protection Act: Funded Expense Deductibility

Business Relief:

- Paycheck Protection Act Extension

COVID RELIEF LAW DECODED: UNEMPLOYMENT INSURANCE

The new Consolidated Appropriations Act for 2021 (the "CAA") extends unemployment benefits and provides enhanced unemployment benefits to eligible individuals. Many of its initiatives are extensions of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act passed in March 2020 – with some new programs as well.

Enhanced and Extended Unemployment Benefits for PUA and PEUC

The CAA provides for an additional $300 per week for individuals receiving unemployment benefits. This federal supplement takes effect for all unemployment claims after December 26, 2020 and will continue until March 14, 2021. As with the prior $600 per week supplement that expired July 31, 2020 under the CARES Act, an individual is eligible for the additional $300 per week as long as they qualify for at least $1 of benefits under traditional unemployment insurance (including extended unemployment), or under the federal Pandemic Unemployment Assistance ("PUA") program.

The PUA, which was created by the CARES Act, provides unemployment benefits to contractors, gig workers, and others who would not normally be eligible for benefits under traditional unemployment insurance. This program is now extended until March 14, 2021 under the CAA. The CAA also extends the number of weeks a recipient may be eligible for PUA benefits from 39 weeks to 50 weeks. This 50-week maximum includes any weeks the individual receives unemployment or extended benefits under any federal or state program.

Pandemic Emergency Unemployment Compensation ("PEUC") is also extended an additional 24 weeks – now ending on March 14, 2021 (up from 13 weeks). The PEUC was created under the CARES Act to provide extended unemployment benefits for individuals who had exhausted their state benefits and continue to meet the job-searching requirements. Additional transitional support will also be available for individuals through April 5, 2021 who, as of March 14, 2021, have not already exhausted their benefits.

As a new initiative, the CAA authorizes states to waive overpayments made to individuals in cases where the claimant was not at fault for the overpayment. In a rush to get payments out to individuals at the start of the CARES Act, many state agencies made mistakes in calculating benefits – or in some cases the Department of Labor issued clarifying guidance which changed how states had been calculating benefits up until that point, resulting in overpayments to some individuals. Claimants are generally responsible for repaying any overpayments, even if the overpayment was at the fault of the state agency. The CAA now gives states the authority to waive collection of such overpayments.

Full Federal Funding for Extended Benefits

The CAA additionally extends temporary full federal funding of the extended unemployment benefits in high-unemployment states. States are normally required to pay 50 percent of the cost of extended benefits; however, this provision (originally from the CARES Act) is now extended until March 14, 2021. The provision requires that individuals exhaust all other state and federal programs, and the state's extended benefits, before the PEUC funding kicks in, however. Not all states offer extended benefits, but with this federal funding, more states may opt in to offering such benefits – at least through mid-March.

New Supplement for Hybrid Workers

A new addition to the CAA is a $100 per week supplement to individuals who split their income between employer wages and self-employment income. Individuals who had earned income from multiple sources found that if they met the threshold for traditional unemployment in their state, the calculations did not take into account their income from self-employment – leaving them with an artificially low weekly benefit amount. Because these individuals were eligible for regular unemployment benefits, they were shut out from the PUA program. This new supplement will be provided to these hybrid workers to help ease that income gap and will be available until March 14, 2021.

Short-Term Compensation Programs

The CAA additionally extends the CARES Act's prior federal funding for state-run short-term compensation programs – or work share programs. Short-term compensation programs are an alternative to layoffs, wherein employers can plan a reduction in wages and hours, and employees can supplement that reduction with unemployment benefits. Such programs allow employers to keep a skilled workforce, while reducing costs for a period of time. Under The CAA, states are eligible for federal reimbursement for such short-term compensation paid through March 14, 2021.

COVID RELIEF LAW DECODED: APPLICATION TO FFCRA

The Families First Coronavirus Response Act ("FFCRA"), which passed into law on March 18, 2020, temporarily mandated covered employers to provide paid sick ("EPSL") and expanded paid family medical ("EFMLA") leave to employees for qualifying absences related to COVID-19. The FFCRA also made certain tax credits available to employers to offset costs related to EPSL and EFMLA. The FFCRA expired on December 31, 2020.

Although many anticipated that the FFCRA's deadline would be extended by Consolidated Appropriation Act of 2021 (the "CAA"), it was not. As such, as of 2021, employers are no longer required to provide EPSL or EFMLA to employees – even if such employees never used such leave during the effective period of the FFRCA.

The CAA does, however, include a mechanism for employers to voluntarily elect to continue FFCRA benefits for their employees. Specifically, the CAA extends the FFCRA tax credit through March 31, 2021 *if* an employer voluntarily makes existing EPSL or EFMLA balances, not previously exhausted, available to its employees in 2021. **It should be noted, however, that an employer may not receive the FFCRA tax credit for any additional EPSL or EFMLA leave time it may decide to grant to employees beyond existing leave balances.** In other words:

- Even if an employee did not exhaust his or her EPSL or EFMLA allotments in 2020, the employer is not required to provide such leave for any periods after December 31, 2020.

- An employer may, however, voluntarily permit employees to use any previously existing balances through March 31, 2021.

The Department of Labor ("DOL") has clarified these elements in an update to its FFRCA Question & Answer Guidance:

> **104. I was eligible for leave under the FFCRA in 2020 but I did not use any leave. Am I still entitled to take paid sick or expanded family and medical leave after December 31, 2020?** (added 12/31/2020)
>
> Your employer is not required to provide you with FFCRA leave after December 31, 2020, but your employer may voluntarily decide to provide you such leave. The obligation to provide FFCRA leave applies from the law's effective date of April 1, 2020, through December 31, 2020. Any change to extend the requirement to provide leave under the FFCRA would require an amendment to the statute by Congress. The Consolidated Appropriations Act, 2021, extended employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021. However, this Act did not extend an eligible employee's entitlement to FFCRA leave beyond December 31, 2020.
>
> **105. I used 6 weeks of FFCRA leave between April 1, 2020, and December 31, 2020, because my childcare provider was unavailable due to COVID-19. My employer allowed me to take time off, but did not pay me for my last two weeks of FFCRA leave. Is my employer required to pay me for my last two weeks if the FFCRA has expired?** (added 12/31/2020)
>
> Yes. [The DOL] will enforce the FFCRA for leave taken or requested during the effective period of April 1, 2020, through December 31, 2020, for complaints made within the statute of limitations. The statute of limitations for both the paid sick leave and expanded family and medical leave provisions of the FFCRA is two years from the date of the alleged violation (or three years in cases involving alleged willful violations). Therefore, if your

employer failed to pay you as required by the FFCRA for your leave that occurred before December 31, 2020, you may contact the WHD about filing a complaint as long as you do so within two years of the last action you believe to be in violation of the FFCRA. You may also have a private right of action for alleged violations.

As the COVID-19 pandemic continues, employers will continue to face employee management challenges. These challenges will certainly include navigating COVID-19 related employee leaves. In determining whether to extend FFCRA benefits through March 31, 2021, as permitted by the CAA, employers should consider:

- Whether encouraging employee leaves, through paid leave benefits, is practical or feasible given the employer's business;

- Whether the FFRCA tax credit is a material benefit, particularly in situations when the employer is already required to provide COVID-19 related leave under other state or local laws, such as the Massachusetts Paid Family Leave Act.

After coming to a decision, employers should revise leave policies as appropriate, and notify employees in advance of any leave policy changes.

COVID RELIEF LAW DECODED: PAYROLL TAX DEFERRAL EXTENSION

The Consolidated Appropriations Act for 2021 (the "CAA") provides several tax-focused initiatives, such as refundable tax credits, extensions and clarifications to the Coronavirus Aid, Relief, and Economic Security ("CARES") Act passed in March 2020, as well as new tax provisions targeted to assist individuals and businesses in weathering the ongoing COVID-19 pandemic and the associated economic fallout.

Payroll Tax Deferral Extension

On August 8, 2020, President Trump signed an executive memorandum (the "Payroll Tax Memo") that sought to defer the due date for the employee portion of federal payroll taxes – 6.2% for Social Security and 1.45% for Medicare – originally due September 1, 2020, until December 31, 2020. Under the Payroll Tax Memo, employers were allowed (but not required) to defer payment of the employee portion of the payroll taxes noted above with respect to workers who earn less than $4,000 (pre-tax) on a biweekly basis – or approximately $104,000 annually. Those employers who chose to defer collecting the employee portion of federal payroll taxes were required to increase withholding and pay the deferred amounts ratably from wages and compensation paid during the period beginning January 1, 2021 and ending on April 30, 2021.

On August 28, the IRS and the Secretary of the Treasury ("Treasury") issued guidance under Notice 2020-65 confirming that employers who pay wages or compensation to employees that meet the threshold noted above were able to defer the withholding and payment of payroll taxes on wages and compensation paid out during the deferral period beginning September 1, 2020, and ending on December 31, 2020 (the "Deferral Period"), until the period beginning January 1, 2021, and ending on April 30, 2021.

Further, Notice 2020-65 clarified that the obligation of an employer to deposit employee payroll taxes does not arise until the associated taxes are withheld. By deferring the obligation to withhold the employee portion of federal payroll taxes, the obligation to deposit those withholdings is automatically delayed. Employers who chose to defer the withholding of payroll taxes for employees who meet the threshold noted above for the Deferral Period must withhold and pay the total applicable taxes deferred no later than April 30, 2021. Under Notice 2020-65, the IRS will impose interest, penalties, and additions to tax beginning May 1, 2021, for employers who fail to withhold and deposit the deferred payroll taxes by April 30, 2021.

While Notice 2020-65 provides further guidance from the IRS and Treasury, the Payroll Tax

Memo constituted an executive action that amounts to a deferral of tax only; the Payroll Tax Memo doesn't change how much tax employees and employers actually owe. Only Congress has the ability change that, and they elected not to in the CAA.

Section 274 of the CAA extends the repayment period through December 31, 2021. Two important takeaways from this extension: First, the period of time an employer has to collect the amount of deferred employee payroll taxes is extended from ending on April 30, 2021, to ending on December 31, 2021 – an extra eight months of recapture means that the increased withholdings will be lower than they would have had no action been taken. Second, the IRS will not impose interest, penalties, and additions to tax on deferred unpaid tax liability until January 1, 2022.

By way of example, assume an employer participated in the payroll tax deferral and pays its employees bi-weekly. Under the Payroll Tax Memo as originally enacted, the employer would have no more than 9 pay periods to withhold the deferred amounts. Under Section 274 of the CAA, the employer can withhold these amounts over 26 pay periods through December 2021. To the extent employment terminates prior to the final pay period in December 2021 and the deferred employee payroll taxes are not collected in full, the employee will remain responsible for the remaining balance, which should be collected from the employee's final paycheck. To the extent there are insufficient funds to collect the full remaining balance, the employee is still liable for the outstanding balance.

COVID RELIEF LAW DECODED: EMPLOYEE RETENTION CREDIT

In December 2020, Congress passed and the President signed into law a $900 billion COVID-relief package (the "CAA") attached to a $1.4 trillion Consolidated Appropriations CAA for 2021 (the "CAA"). The CAA provides several tax-focused initiatives, such as refundable tax credits, extensions and clarifications to the Coronavirus Aid, Relief, and Economic Security ("CARES") Act passed back in March 2020, as well as new tax provisions targeted to assist individuals and businesses in weathering the ongoing COVID-19 pandemic and the associated economic fallout.

Employee Retention Credit

As originally enacted in March 2020, the CARES Act provided for the Employee Retention Credit ("ERC"), a refundable tax credit against certain employment taxes equal to 50% of the qualified wages an eligible employer pays to employees after March 12, 2020, and before January 1, 2021. As originally drafted, the ERC was mutually exclusive with respect to a PPP loan – a business could have one or the other but not both – and most businesses who qualified for a PPP loan and the ERC chose to take the PPP loan.

Section 206 of Subtitle B of the CAA amends the existing ERC, and, in a major policy shift, provides that employers who received PPP loans in 2020 *may still qualify* for the ERC with respect to wages that are not paid with forgiven PPP loan proceeds. Further, employers who obtain a PPP loan in 2021 are eligible to claim the ERC as well.

The ERC was a complicated provision of the CARES Act, and the CAA adds several more layers of complexity. Since most businesses qualified for both the ERC and the PPP loan and chose the latter, it's important to step back and understand the ERC more fully in light of this major shift.

As originally enacted under the CARES Act, the ERC required businesses to navigate a two-step process to determine whether it was an eligible employer and able to count up to $10,000 of wages paid per year for each employee towards the ERC. As the first step in the ERC process, an employer would have to determine whether its business in operation during calendar year 2020 experienced either (1) the full or partial suspension of the operation of the business during any calendar quarter because of governmental orders limiting commerce, travel, or group meetings due to COVID-19, or (2) a "significant decline" in gross receipts. Under the first test, once a business experienced a full or partial suspension of operations, the quarter in which the suspension occurred became an "eligible quarter." Under the second test, a "significant decline" in gross receipts requires a 50% decrease comparing a calendar quarter from 2020 against the same calendar quarter in 2019, and once a business experienced the "significant decline," every quarter would be an eligible quarter until the end of the quarter in which the business's gross receipts returned to at least 80% of what they were for the same quarter in 2019.

Assuming the business satisfied either of the tests noted above, the second step in the ERC process hinged on whether or not the business averaged more than 100 full-time equivalent ("FTE") employees during 2019. If the business averaged more than 100 FTEs during 2019, only those wages paid to an employee during an eligible quarter to *not provide services* are eligible for the ERC. In plain English, if a business paid an employee to not work, then those wages paid qualify for the ERC. Wages paid to employees to continue working (either on-site or remotely) do not qualify for the ERC. If instead the business averaged less than 100 FTEs for 2019, then *all wages* paid to an employee during an eligible quarter can qualify for the ERC, irrespective of whether the employee worked or not.

Against this backdrop, on its face Section 206 of the CAA provides that the ERC and PPP loans are no longer mutually exclusive; taxpayers who claimed the PPP in 2020 can go back and claim the ERC as well, and Section 206(e) provides that the effective date (March 12, 2020) is the beginning of the original ERC under the CARES Act. The devil is in the details, however, since Section 206 of the CAA does not allow for double dipping – a taxpayer can take advantage of both the ERC and a PPP loan, but cannot use both with respect to the same dollars of payroll costs.

Speaking of those details: Section 206(c)(1) of the CAA amends Section 7A(a)(12) of the Small Business Act and provides that any payroll costs for which a taxpayer claims the ERC is not eligible to be forgiven as part of a PPP loan. Further, Section 206(c)(2) amends Section 2301(g) of the CARES Act to allow a taxpayer to elect to not include certain wages and allocable health care costs in the ERC computation. This is an important amendment, since Section 206(c)(1) establishes the ERC as having first priority over a PPP loan with respect to payroll cost inclusion; Section 206(c)(2) seems designed to preserve those payroll costs for PPP loan forgiveness (instead of automatically allocating them to the ERC). Read another way, a business could elect to not include certain payroll costs under the ERC and instead allocate them to a PPP loan; to the extent a business has already taken a PPP loan and received forgiveness on the loan, any payroll costs included in the PPP loan forgiveness cannot be applied with respect to the ERC.

In addition to the changes brought on by Section 206 discussed above, Section 207 of Subtitle B of the CAA makes a number of further changes and amendments to the original ERC, including (i) an extension of the end date of the ERC from December 31, 2020, through to June 30, 2021; (ii) an increase in the refundable tax credit rate from 50% to 70% of qualified wages; (iii) an increase in the limit on per-employee creditable wages from $10,000 per year to $10,000 for each quarter; (iv) a reduction of the required year-over-year decline in gross receipts from 50% to 20%; (v) introduction of a safe harbor (in conjunction with (iv) herein) that allows employers to use prior-quarter gross receipts to determine eligibility; (vi) an increase in the number of employees counted when determining the relevant qualified wage base from 100 to 500; and (vii) introduction of rules allowing employers who were not in existence for all or part of 2019 to be able to claim the ERC.

It is important to note: the computational changes brought on by Section 207 are <u>not retroactive</u> back to March 12, 2020 (unlike Section 206); instead, these changes to the ERC are forward looking and apply during the period January 1, 2021, through June 30, 2021, <u>only</u>.

While the changes introduced by Section 207 seem relatively straightforward, there are a few nuances worth additional consideration.

First, under Section 2301(b) of the CARES Act, an employee could incur a maximum of $10,000 of qualified wages for the entirety of 2020 (with the corresponding ERC capped at $5,000 per employee). Under the CAA, Section 207(c) amends this provision to increase the maximum amount of qualified wages to $10,000 for any quarter, so an employer stands to gain up to a maximum ERC of $14,000 per employee (assuming $10,000 of qualified wages in each of Q1 and Q2 2021).

Second, under Section 2301(c)(2)(A) of the CARES Act, the second test determining whether a business experienced a "significant decline" in gross receipts required a 50% decrease comparing a calendar quarter from 2020 against the same calendar quarter in 2019. Under the CAA, Section 207(d)(1) provides that, for 2021 the test is satisfied if gross receipts are less than 80% in comparison to the same calendar quarter in 2019 (not 2020). Additionally, Section 207(d)(2) allows businesses that would otherwise not qualify even under this less stringent 80% standard to compare gross receipts by looking at the immediately preceding calendar quarter and comparing it to the corresponding quarter in 2019. By way of example, if a business cannot satisfy the 80% gross receipts test for Q2 2021, it can look at Q1 2021 and compare gross receipts there to Q1 2019 to determine eligibility.

Third, under Section 2301(c)(3)(A) of the CARES Act, the second step in the two-step process noted above to determine qualified wages hinged on whether the business averaged 100 or more FTEs during 2019. Section 207(e) of the CAA increases the threshold of FTEs from 100 to 500, making it significantly easier for businesses to qualify for the more lenient standards of the qualified wages provision of the ERC.

Finally, Section 207(g) of the CAA introduces a completely new rule (separate from the amendments discussed earlier) providing qualifying employers the ability to receive the ERC in advance. Under this new rule, an employer who averaged fewer than 500 FTEs for 2019 can elect to request advance payment of the credit in an amount not to exceed 70% of qualified wages paid by the employer in the corresponding quarter in 2019. To the extent the amount received by the employer under this advance exceeds the amount of the actual credit it would qualify for in the appropriate quarter for 2021, the employer's payroll tax will be increased by the excess amount received.

COVID RELIEF LAW DECODED: PPP-FUNDED EXPENSE DEDUCTIBILITY

In December 2020, Congress passed and the President signed into law a $900 billion COVID-relief package (the "CAA"). The CAA provides several tax-focused initiatives, such as refundable tax credits, extensions and clarifications to the Coronavirus Aid, Relief, and Economic Security ("CARES") Act passed back in March 2020, as well as new tax provisions targeted to assist individuals and businesses in weathering the ongoing COVID-19 pandemic and the associated economic fallout.

PPP-Funded Expense Deductibility

The biggest tax controversy since the inception of the Paycheck Protection Program ("PPP") surrounds the deductibility of PPP expenses for income tax purposes. Under the original CARES Act, Section 1106(i) included language excluding forgiven PPP loan proceeds from taxable income but was silent on deductibility of expenses paid with those same proceeds. Section 276 of Subtitle B of the CAA does away with this uncertainty and clarifies that not only does gross income not include any amount that would otherwise arise from the forgiveness of a PPP loan, but also provides that deductions are allowed for otherwise deductible expenditures incurred and paid for utilizing PPP loan proceeds, irrespective of whether the PPP loan is forgiven.

Many business owners and tax practitioners advocating for deductibility claimed that Congress's original intent regarding taxability of funds and allowable deductions was clear; not only should the forgiven PPP loans not be taxed as income, but the expenditures incurred utilizing PPP loans should be tax deductible. However, the Internal Revenue Service ("IRS") and not a few practitioners disagreed, arguing that to allow businesses to deduct expenses paid for with tax-exempt income would constitute a double-dipping giveaway.

In May 2020 the IRS issued guidance under Notice 2020-32 that PPP loan forgiveness would be treated as a form of tax-exempt income, but any approved business expenses paid with a PPP loan proceeds would be disallowed as expenses associated with tax-exempt income. That meant, while the PPP loan forgiveness would not generate any taxable income, all the expenses paid with PPP loan monies would not generate any tax deductions either.

In November 2020 the IRS expanded upon its position under Notice 2020-32 when it issued Revenue Ruling 2020-27, holding that a taxpayer computing taxable income on the basis of a calendar year could not deduct eligible expenses in its 2020 tax year if, at the end of the tax year, the taxpayer had a reasonable expectation of reimbursement in the form of loan forgiveness on the basis of eligible expenses paid or incurred during the covered period.

Section 276 *Clarification of Tax Treatment of Forgiveness of Covered Loans* overturns the IRS's position in Notice 2020-32 and Rev. Rul. 2020-27, stating unequivocally that it was not Congress's intent to disallow the deduction of otherwise deductible expenses. The CAA takes it a step further and clarifies that gross income does not include forgiveness of certain loans, emergency Economic Injury Disaster Loan ("EIDL") grants as provided by the CARES Act.

COVID RELIEF LAW DECODED: Paycheck Protection Act Extension

The Consolidated Appropriations Act of 2021 (the "CAA") includes revisions and additions to the Paycheck Protection Program ("PPP").

The extended PPP: (1) accepts applications from eligible borrowers that did not receive a PPP loan under the earlier program; (2) permits qualifying businesses that received a PPP loan under the earlier program to receive a second PPP loan—known as a Second Draw Loan; (3) allows existing PPP borrowers who are ineligible for a second draw to spend any remaining PPP funds on permitted expenses, which includes additional forgivable expenses; and (4) changes PPP rules for existing PPP borrowers, new PPP borrowers, and second draw borrowers in areas such as eligibility, forgivable expenses, and loan forgiveness.

The more significant components of the extended PPP are discussed below:

<u>First Draw PPP Loans</u>

The CCA reopens the PPP for new loan recipients ("First Draw Loans"). First Draw PPP Loans can be used to help fund payroll costs, including benefits. Funds can also be used to pay for mortgage interest, rent, utilities, worker protection costs related to COVID-19, uninsured property damage costs caused by looting or vandalism during 2020, and certain supplier costs and expenses for operations.

Full Forgiveness Terms

First Draw PPP Loans made to eligible borrowers qualify for full loan forgiveness if during the 8- to 24-week covered period following loan disbursement:

- Employee and compensation levels are maintained;
- The loan proceeds are spent on payroll costs and other eligible expenses; and
- At least 60 percent of the proceeds are spent on payroll costs.

Eligibility

Eligible small entities, that together with their affiliates (if applicable), have 500 or fewer employees—including nonprofits, veterans organizations, tribal concerns, self-employed individuals, sole proprietorships, and independent contractors—can apply. Entities with more than 500 employees in certain industries that meet SBA's alternative size standard or SBA's size standards for those particular industries can also apply.

Reapplying and Loan Increases

Existing PPP borrowers that did not receive loan forgiveness by December 27, 2020 may: (1) reapply for a First Draw PPP Loan if they previously returned some or all of their First Draw PPP Loan funds, or (2) under certain circumstances, request to modify their First Draw PPP Loan amount if they previously did not accept the full amount for which they are eligible.

Application Process

Borrowers may apply for a First Draw PPP Loan until March 31, 2021, through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, eligible non-bank lender, or Farm Credit System institution that is participating in PPP.

Access to First Draw PPP Loans

At least $15 billion is being set aside for First Draw PPP loans to eligible borrowers with a maximum of 10 employees or for loans of $250,000 or less to eligible borrowers in low- or moderate-income neighborhoods.

Small Business Administration Guidance

To promote access for smaller lenders and their customers, the Small Business Administration (the "SBA") has indicated that it will initially only accept loan applications from community financial institutions starting on January 11, 2021. The PPP will open to all participating lenders shortly thereafter.

The SBA has published revised regulations related to First Draw PPP Loans here.

<u>Second Draw PPP Loans</u>

The CAA offers certain eligible borrowers that previously received a PPP loan to apply for a "Second Draw" PPP Loan with the same general loan terms as their First Draw PPP Loan. Second Draw PPP Loans can be used to help fund payroll costs, including benefits. Funds can also be used to pay for mortgage interest, rent, utilities, worker protection costs related to COVID-19, uninsured property damage costs caused by looting or vandalism during 2020, and certain supplier costs and expenses for operations.

Full Forgiveness Terms

Second Draw PPP Loans made to eligible borrowers qualify for full loan forgiveness if during the 8- to 24-week covered period following loan disbursement:

- Employee and compensation levels are maintained in the same manner as required for the First Draw PPP loan;
- The loan proceeds are spent on payroll costs and other eligible expenses; and
- At least 60 percent of the proceeds are spent on payroll costs.

Eligibility

A borrower is generally eligible for a Second Draw PPP Loan if the borrower:

- Previously received a First Draw PPP Loan and will or has used the full amount only for authorized uses;
- Has no more than 300 employees; and
- Can demonstrate at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.

Maximum Loan Amount and Increased Assistance for Accommodation and Food Services Businesses

For most borrowers, the maximum loan amount of a Second Draw PPP Loan is 2.5x average monthly 2019 or 2020 payroll costs up to $2 million. For borrowers in the Accommodation and Food Services sector, the maximum loan amount for a Second Draw PPP Loan is 3.5x average monthly 2019 or 2020 payroll costs up to $2 million.

Application Process

Borrowers can apply for a Second Draw PPP Loan until March 31, 2021, through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, eligible non-bank lender, or Farm Credit System institution that is participating in PPP.

All Second Draw PPP Loans will have the same terms regardless of lender or borrower.

Access to Second Draw Loans

At least $25 billion is being set aside for Second Draw PPP Loans to eligible borrowers with a maximum of 10 employees or for loans of $250,000 or less to eligible borrowers in low- or moderate-income neighborhoods.

SBA Guidance

To promote access for smaller lenders and their customers, SBA has indicated that it will initially only accept Second Draw PPP Loan applications from community financial institutions starting on January 13, 2021. The PPP will open to all participating lenders for Second Draw PPP Loans shortly thereafter.

The SBA has published revised regulations related to First Draw PPP Loans here.

Morse is focused on assisting our clients through these unprecedented and challenging times. Please contact Matthew L. Mitchell or Joseph E. Hunt should you have questions concerning this subject, or any other COVID-19 response matters.