

## Key Highlights of New Round of PPP Loans Included in COVID Relief Package

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On December 21, 2020, Congress approved a \$900 billion COVID-19 relief package ([the Consolidated Appropriations Act, 2021](#) (the “Act”)), which included revisions and extensions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The Act authorized an additional \$284.45 billion for loans to small businesses under the Paycheck Protection Program (PPP) and extended the program through March 31, 2021. Although the Act has not yet been signed into law it was passed by a bipartisan, veto-proof majority in each house of Congress. Key provisions of the Act related to the extension and expansion of the PPP Program are summarized below.

### **New First Time Loans**

Eligible small businesses who were not able to receive a PPP loan in the first round of funding before that program expired on August 8, 2020 will again have an opportunity to apply for a PPP loan. PPP loans for new applicants will be subject to the same program rules that were in place in the two initial rounds of funding.

To address concerns that in the first round of funding the smallest and hardest hit businesses were not able to obtain PPP loans, the Act specifically sets aside \$35 billion for first time applicants and \$15 billion for first time loans to small businesses with not more than 10 employees or small businesses located in distressed areas.

The Act also provides that debtors in bankruptcy are now eligible for PPP loans and the loans will be treated as administrative expenses.

### **Small Businesses Eligible for Second PPP Loan**

Small businesses that previously received a PPP loan may be eligible for a second PPP loan under the Act if the business has used all of its first round PPP funds. Second draw PPP loans cannot exceed \$2,000,000 and are limited to small businesses with 300 or fewer employees and that can demonstrate a loss of 25% of gross receipts in any quarter during 2020 when compared to the same quarter in 2019. In addition, there is a set aside of \$25 billion for second draw PPP loans to small businesses with not more than 10 employees or small businesses located in distressed areas.

While the eligibility criteria for a small business requesting a second PPP loan remains substantially similar to the eligibility criteria for the first time loans, the Act revises the qualification based on having fewer than 500 employees to having fewer than 300 employees. In addition, the affiliation rules and exemptions applicable to determining whether an entity meets the requirements of an eligible small business remain applicable to second draw loans but exemptions based on fewer than 500 employees is reduced to having fewer than 300 employees. The Act also contains new restrictions on the eligibility of small business that are owned by entities organized in or have significant operations in the People’s Republic of China or the Special Administrative Region of Hong Kong. In addition, small businesses with a board member who is a resident of the People’s Republic of China may also be ineligible.

### **Expansion of Eligible and Forgivable Expenses**

In addition to payroll, rent, utilities and interest on mortgages that are permitted expenses under the CARES Act, the Act allows for small businesses to use PPP proceeds for additional expenses such as personal protective equipment for employees, costs associated with outdoor dining, supplier costs, costs associated with software, cloud computing and other human resources and accounting needs, and property damage costs due to public disturbances that occurred during 2020 that are not covered by insurance. The Act also adds group life, disability, vision and dental benefits to items that may be included in the calculation of payroll costs.

Foley Hoag LLP will update this summary as needed in the coming days and weeks, including to address any changes that are made before

the bill is signed into law and any regulations that are expected to be issued by the U.S. Small Business Administration with regard to the expanded PPP Program.

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