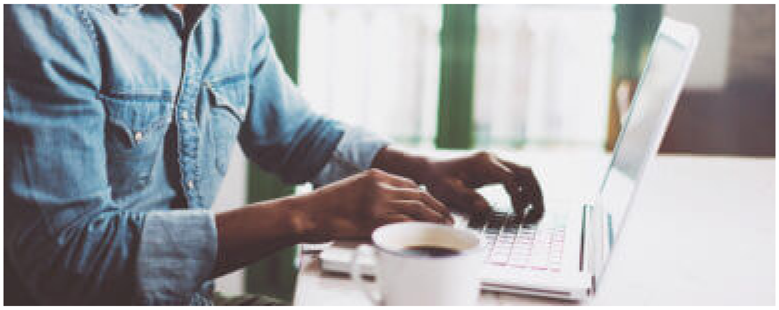
Nine Months Later, A Second Economic Relief Package



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Please Note: The Consolidated Appropriations Act of 2021 has passed both chambers of Congress, but it must be signed by the President before it becomes law. Late Tuesday, December 22, 2020, President Trump expressed unhappiness with the Act and requested that Congress make changes. Thus the information here is preliminary and subject to change in the event the bill is modified.

Sometime in the coming hours, it is expected that President Trump will sign into law the 2021 Congressional Appropriations Act ("Act"). The 5,593-page bill, rumored to be the longest bill ever passed by Congress, provides $900 billion in economic relief for individuals, small businesses, and others, as the country and its citizens continue to be mired in the personal and economic consequences of a global pandemic.

The Act covers a large number of topics, including extended unemployment benefits, economic stimulus payments, technical tax matters, emergency sick and family medical leave, and payroll tax credits. We will be providing additional details related to the Act over the next several weeks, but here is a brief summary of three provisions.

Income tax deductibility of expenses paid with Paycheck Protection Program ("PPP") loans

Individuals and businesses, as well as their tax professionals, may breathe a collective sigh of relief as the Act includes a provision allowing full deductibility for income tax purposes of expenses paid with PPP loan proceeds. The provision is applicable to taxable years ending after the enactment date of the CARES Act, which was March 27, 2020.

The "New and Improved" PPP

In a section of the Act titled the "Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act," over $284 billion is provided for businesses not receiving a PPP loan previously, and a "second draw" for first-round borrowers.

Generally, to qualify for a second draw, a business must have spent all of the proceeds of its first loan, have no more than 300 employees, and have suffered a 25% or greater quarterly reduction in gross receipts during 2020 compared to the same quarter in 2019. New organizations eligible for PPP loans include news organizations focusing on local news, destination marketing organizations, and certain Internal Revenue Code Sec. 501(c)(6) organizations.

Special consideration is provided for businesses in the accommodations and food services sector (NAICS 72 entities). For these organizations, the loan amount is calculated at 3.5 times the borrower's average total monthly payroll costs whereas the loan amount is 2.5 times the borrower's average total monthly payroll costs for non-NAICS 72 businesses. For all entities, the maximum loan amount for PPP loans is now $2,000,000 (rather than $10,000,000). Average monthly payroll costs may be determined based on calendar year 2019 or the one-year period before the date on which the loan is made, with special rules specific to seasonal applicants and recently started businesses. Publicly-traded companies are among those prohibited from receiving a second draw.

Rather than being bound by a definitive 8 or 24-week covered period, loan recipients may choose a covered period of 8 or 24 weeks or a duration in between. Also, the end date for round one loans has been extended from December 31, 2020 to March 31, 2021.

A simplified forgiveness application for PPP loans of $150,000 or less

There will be a one-page forgiveness application for loans not more than $150,000. SBA is instructed to create the form within 24 days from enactment of the Act. The form will require the borrower to provide the number of employees the borrower was able to retain because of the loan; the estimated amount of the covered loan spent by the borrower on payroll costs; and the loan amount. In addition, the borrower must certify that they accurately provided the required certifications and complied with the requirements of the program.

While the simplified process does not alleviate the potential for a loan review by the SBA, it does reduce the time period that loan documentation should be retained by the borrower. Borrowers should retain employment records for four years and all other records for three years, as opposed to the six years originally required.

Do you have questions about the upcoming bill? Contact your Dean Dorton advisor, or contact us at:

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