
Recent Changes to the Paycheck Protection Program

As the COVID-19 pandemic continues and the economic consequences increase, Congress and the Small Business Administration (the “SBA”) continue to pass legislation and issue guidance to support small business and non-profit organizations. On March 11, 2021, the American Rescue Plan Act of 2021 (H.R. 1319) (the “American Rescue Plan”) was signed into law, amending certain provisions of the Paycheck Protection Program (the “PPP”) under the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) and providing for an additional \$7.25 billion of loans under the PPP (“PPP loans”) for small businesses and non-profit organizations.¹ The SBA published an interim final rule (the “Interim Rule”), effective as of March 18, 2021, implementing the changes described in the American Rescue Plan.² On March 31, 2021, the President signed into law the PPP Extension Act of 2021 (H.R. 1799) (the “PPP Extension Act”), extending the March 31, 2021 PPP loan application deadline to May 31, 2021.³

I. PPP Loan Application Deadline:

The PPP Extension Act extends the March 31, 2021 PPP loan application deadline to May 31, 2021. The SBA may continue to process applications submitted prior to June 1, 2021 during the month of June. It may not, however, accept new applications in June.

II. Changes to Eligible Payroll Costs:

The Interim Rule clarifies certain payroll costs related to the Employee Retention Credit and COBRA coverage that are excluded from forgiveness. These excluded payroll costs are: (a) Qualified wages taken into account in determining (i) the Employee Retention Credit under section 2301 of the CARES Act, as amended by section 206 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), (ii) the Employee Retention Credit under section 3134 of the Internal Revenue Code, or (iii) the disaster credit under section 303 of the Relief Act, and (b) premiums for COBRA continuation coverage taken into account in determining the credit under section 6432 of the Internal Revenue Code.

III. Changes to the Shuttered Venue Operator Grants:

Certain entities that received first or second draw PPP loans may now apply for a Shuttered Venue Operator (“SVO”) grant created under Consolidated Appropriations Act, 2021 (H.R. 133); however, the SVO grant will be reduced by the amount of the second draw PPP loan and/or the first draw PPP loan if the first draw PPP loan was received after December 27, 2020. If the PPP loan applicant is approved for an SVO grant before the SBA issues a

¹ The modifications to the Paycheck Protection Program by the American Rescue Plan can be found [here](#).

² The full text of the Interim Rule can be found [here](#).

³ The full text of the PPP Extension Act can be found [here](#).

loan number for the PPP loan, the applicant is ineligible for the PPP loan and acceptance of any PPP loan proceeds will be considered an unauthorized use. Stated differently, an applicant may not apply for or receive a PPP loan after receiving an SVO grant.

IV. Changes to Eligibility:

The Interim Rule expands eligibility for PPP loans to tax exempt organizations described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, except for social welfare organizations under section 501(c)(4). This means that labor unions, benefit plans, agricultural organizations, and recreational clubs are now eligible to receive PPP loans. These new classes of non-profit organizations must meet specified limitations on the amount they receive from or spend on lobbying to be eligible for a PPP loan. Certain non-profit organizations remain ineligible for PPP loans if they would be ineligible if they engaged in the same business as a for-profit organization described under section 120.110 of title 13, Code of Federal Regulations—for example, lenders, passive real estate companies, foreign businesses and private clubs that limit membership. The amendments also allow for Internet Only Publishers to be eligible for a second draw PPP loan if they employ less than 300 persons and use the proceeds to support local or regional news. Importantly, entities applying for PPP loans on or after March 22, 2021, are only eligible for PPP loans if they employ 300 or less employees per physical location. They are no longer permitted to use the employee based alternative size standard for their industry.

V. Conclusion

The American Rescue Plan and the PPP Extension Act provide expanded support to small businesses and non-profit organizations still suffering as the COVID-19 pandemic continues. Further changes and guidance are expected in order to provide small businesses, non-profit organizations and their employees a clearer way forward in these uncertain times.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or e-mail authors Helene R. Banks (partner) at 212.701.3439 or hbanks@cahill.com; or Robyn Sablove (associate) at 212.701.3753 or rsablove@cahill.com; or e-mail publications@cahill.com.

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