

Congress allows tax deductibility for Paycheck Protection Program expenses

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In an update to an article we previously published, the Consolidated Appropriations Act 2021 (<https://tinyurl.com/HR133SARCP>) answers a question formerly left open by prior Paycheck Protection Program legislation by specifying that business expenses paid with forgiven PPP loans are tax-deductible.

This legislation supersedes IRS guidance (<https://tinyurl.com/IRS2027>) that such expenses could not be deducted and brings the policy in line with the expectations of hundreds of business associations, which have argued that the deductions were Congress's intent when it created the original PPP as part of the \$2 trillion CARES Act.

The new relief bill clarifies that "no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross

income provided" by Section 1106 of the CARES Act (which has been redesignated as Section 7A of the Small Business Act). This provision applies to loans under both the original PPP and subsequent PPP loans.

In addition to clearly providing for the tax deductibility of business expenses paid by forgiven PPP loans, the CAA 2021 adds \$300 to extended weekly unemployment benefits, and provides more than \$300 billion in aid for small businesses. It also makes 501(c)(6) nonprofits eligible for loans, and it offers severely impacted businesses the opportunity to apply for a second loan.

As with the existing PPP loans, the costs eligible for loan forgiveness in the second round of PPP loans include payroll, rent, covered mortgage interest, and utilities. The new legislation adds additional categories, including costs attributable to cloud computing services, as eligible for forgiveness. To be eligible for full loan forgiveness, PPP borrowers will have to spend 60% of the funds on

payroll over a covered period of either eight or 24 weeks (the same requirements as original PPP loans).

Original PPP loans and subsequent PPP loans alike will be able to seek loan forgiveness through a simplified application process. PPP borrowers with loan amounts of \$150,000 or less may obtain loan forgiveness by submitting a one-page certification to their lenders that describes the number of employees retained due to the loan, estimates the total amount of the loan spent on payroll costs, and states the total loan amount. Notably, the SBA may review and audit these loans to ensure against fraud. PPP borrowers that submit the one-page certification are advised to maintain documentation that accurately supports the certification.



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