

updated January 27, 2021

Provisions of the Consolidated Appropriations Act of 2021 (the CAA) Relevant to Nonprofit Organizations

On Sunday, December 27, the federal government passed a \$900 billion COVID-19 economic relief package, known as the Consolidated Appropriations Act of 2021 (the CAA). The CAA built on programs and provisions contained in several economic relief laws enacted earlier in the pandemic, including the Coronavirus Aid, Relief, and Economic Security Act (as amended, the CARES Act), the Paycheck Protection Program and Health Care Enhancement Act and the Paycheck Protection Program Flexibility Act. Much of the public attention drawn by the most recent law has focused on its direct payments of \$600 to individuals, but the law also contains numerous provisions relevant to nonprofit organizations, including re-opening the nonprofit and small business “forgivable loan” program known as the Paycheck Protection Program (the PPP).

The SBA released an [Interim Final Rule - Paycheck Protection Program](#) which outlines the key provisions of the PPP related to eligibility of applicants for PPP loans, which lenders are authorized to make PPP loans, the process for making PPP loans, loan increases, and loan forgiveness. The SBA separately published an [Interim Final Rule - Business Loan Program](#) establishing the rules for second draws. The SBA has now issued an [Interim Final Rule - Loan Forgiveness and Loan Review Procedures](#) to provide a single point of reference governing all aspects of loan forgiveness and loan review.

For information on factors to be considered in applying for forgiveness of existing PPP loans, please see our Legal Alert:

https://lawyersalliance.org/userFiles/uploads/legal_alerts/New_Loans_and_Loan_Forgiveness_under_the_Paycheck_Protection_Program_January_27_2021_Legal_Alert.pdf. For general information about the original PPP under the CARES Act (as amended), please see the legal alert that Lawyers Alliance released on March 31, 2020:

https://lawyersalliance.org/userFiles/uploads/legal_alerts/Paycheck_Protection_Program_CARES_Act_Legal_Alert_March_2020.pdf. This legal alert provides a brief overview of the provisions of the CAA that are most important to nonprofit organizations. Since the law’s passage, many have begun analyzing its many provisions, and exactly how nonprofits may take full advantage of its opportunities will become clearer with time. Further clarification and guidance with respect to the provisions of the CAA (including its effects on the PPP) are anticipated to be forthcoming in the very near future. Please stay tuned and get in touch with any questions (as indicated at the end of this alert).

Reopening and Enhancement of the Paycheck Protection Program (PPP)

- Includes \$284.5 billion in new PPP funding to the U.S. Small Business Administration (the SBA) and expands upon the PPP and reopens PPP loan applications through March 31, 2021. The SBA portal reopened January 11, 2021 – initially limited until January 13 to certain community financial institutions as participating lenders, but now open to all. The application format is determined by the participating lender selected by a borrower, and the relevant SBA forms can be found at: <https://home.treasury.gov/system/files/136/PPP-Borrower-Application-Form.pdf>

and <https://home.treasury.gov/system/files/136/PPP-Second-Draw-Borrower-Application-Form.pdf>.

- Restricts eligible borrowers of Second Draw PPP loans to those with 300 employees or less (along with certain other restrictions). The eligibility criteria for a First Draw PPP loan remain essentially unchanged from the original criteria under the CARES Act.
- Expands borrower eligibility to include 501(c)(6) organizations other than professional sports leagues and organizations with lobbying activities above a defined threshold.
- Sets aside a minimum of \$35 billion for organizations that have not previously applied for PPP loans.
- Expands eligible expenses for forgiveness purposes to include “covered” operations expenditures, property damage costs, supplier costs and worker protection expenditures.
- Expands eligible payroll expenses to include certain additional employee group benefits plans costs.
- Simplifies the forgiveness application process for loans up to \$150,000 by allowing the borrower to provide as the sole documentary support a one-page attestation (on a prescribed form) that the borrower complied with the terms of the PPP.

Creates the PPP Second Draw Loan Program for hard-hit small businesses that have used or will use the full amount of their first PPP loan, can demonstrate a reduction in gross receipts of at least 25% from a selected quarter in 2020 over the same quarter in 2019, and employ 300 or fewer people. Loans may be up to \$2 million per eligible borrower, and the program sets aside \$25 billion for loans restricted to qualifying organizations that employ 10 or fewer employees.

For purposes of calculating the revenue reduction for a Second Draw PPP loan, a borrower must compare its quarterly gross receipts for one quarter in 2020 with its gross receipts for the corresponding quarter of 2019. A borrower in operation in all four quarters of 2019 is deemed to have experienced the required revenue reduction if annual tax forms substantiate a 25% or greater revenue reduction in 2020 compared to 2019. “gross receipts” is defined consistently with the definition of SBA’s size regulations in 13 C.F.R. § 121.104, as “all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances.” Any forgiveness amount of a prior PPP loan is excluded from gross receipts. To aid borrowers, the SBA has issued [guidance on Second Draw PPP Loans](#), which explains how to calculate these revenue reductions, amongst other things.

Economic Injury Disaster Loan (EIDL) Advance grants

- Includes \$20 billion for new EIDL Advance grants, and extends emergency EIDL Advance grants through December 31, 2021.
- Targets a new round of EIDL Advance grants to small employers who are located in low-income communities, have suffered economic loss of greater than 30%, and employ 300 or fewer employees.
- Repeals EIDL Advance Grant reduction of PPP loan forgiveness.

Emergency Capital Investment Program

- Establishes a \$9 billion fund and program to provide capital investments to support Community Development Financial Institutions (CDFIs) and Minority Depository Institution credit unions.

- Includes \$3 billion in emergency support to CDFIs.

Shuttered Venues

- Includes \$15 billion in funding specifically for shuttered venues.
- Live venue operators or promoters, theatrical producers or live performing arts organization operators, talent representatives, movie theatres, and “relevant” museums may apply for grants of up to \$10 million to support six months of salaries and other costs, including rent, utilities, and maintenance, if they were “fully operational” as of February 29, 2020; if they have seen a reduction of at least 25% in gross earned revenue during at least one quarter of 2020; and if they have opened or intend to open.
- Institutions that have lost more than 90% of their revenues may apply within the first two weeks from the CAA becoming law. (For more information on this program, see <https://www.natlawreview.com/article/front-and-center-new-sba-grant-program-shuttered-venue-operators>.)

Employee Retention Tax Credit (ERTC)

- Extends the ERTC through July 1, 2021.
- Improves the refundable payroll tax credit by reducing the required year-over-year decline in gross receipts from 50% to 20%, while increasing the credit from 50% to 70% of workers’ “creditable wages,” increasing the maximum per-worker benefit to \$14,000.
- Expands full benefit to all employees of employers with 500 or fewer employees. Larger employers can apply the credit only to workers who are paid but are not working.
- Allows employers who receive PPP loans to also qualify for the ERTC with respect to wages not paid for with forgiven PPP loan proceeds.
- Improves coordination between the PPP and ERTC.
- Organizations may now retroactively apply for the ERTC and should keep in mind likely upcoming deadlines if claiming such credit on 2020 Q4 employment tax returns (due January 31, 2021).

Charitable giving incentives

- Extends into 2021 the CARES Act’s above-the-line deduction of \$300 for 2020 (and \$600 deduction for couples filing jointly), while imposing a penalty for overstating contributions.
- Extends for one year the increased limits on deductible charitable contributions for individuals who itemize and for corporations.

Other

- Eviction moratorium and rental assistance
 - Extends the CDC’s temporary halt in residential evictions to prevent further spread of COVID-19 until the end of January 2021.
 - Provides \$25 billion for a new federal emergency rental assistance fund, through which states and local governments may distribute rental assistance payments to eligible households for housing expenses incurred due to the pandemic.
- Paid sick leave

- Extends the refundable payroll tax credits for paid sick and family leave that were established by an earlier pandemic response bill, through March 31, 2021.
 - Extends through 2025 the 12.5% tax credit for paid family and medical leave originally enacted in 2017.
- Unemployment insurance and self-insured employers
 - Extends the 50% federal coverage of the costs of self-insured “reimbursable” employers through March 14, 2021.
- Education and childcare funding
 - Includes \$82 billion in education funding for States, public and private K-12 schools, and public, private nonprofit, and for-profit institutions of higher education.
 - Provides \$250 million to Head Start programs and \$10 billion in childcare funding for both providers and families, due to increased costs caused by the pandemic.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert, please email CAA@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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