

# New Stimulus PPP Package: What You Need to Know

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Late on December 21, 2020, Congress passed its latest stimulus package. The bill, which runs over 5,000 pages, expands the Paycheck Protection Program (“PPP”), which was originally established when the CARES Act was enacted earlier this year. The stimulus bill allocates \$284 billion for new PPP loans.

## PPP Take One: Changes for Existing Loans

The stimulus bill expands the utility of PPP loans for most businesses:

- Borrowers may now choose their “covered period” for purposes of the forgiveness calculation, so long as the end-point of the covered period occurs during the 4 month period that starts 8 weeks after loan disbursement and ends 24 weeks after loan disbursement. The covered period starts on loan disbursement.
- Permitted uses of PPP funds have been expanded to include certain operational expenditures (mostly software to facilitate post-COVID business operations), property damage costs related to “public disturbances” in 2020 that were not covered by insurance, supplier costs that are either essential or arise from commitments predating a borrower’s covered period, and worker protection expenditures related to adapting a business or workplace to COVID-19 health and safety guidelines.
- “Payroll Costs” – on which 60% of PPP loans must be spent – now includes group life, disability, vision, and dental insurance in addition to health insurance.
- Tax deductions will be allowed for otherwise deductible expenses paid with the proceeds of a PPP loan that is forgiven, reversing a much bemoaned provision of the CARES Act. In addition, calculations of gross income will not include any amount that would otherwise arise from the forgiveness of a PPP loan, and the tax basis and other attributes of a borrower’s assets will not be reduced as a result of the loan forgiveness.
- Economic Injury Disaster Loan amounts will not be deducted from PPP loan forgiveness for borrowers who participate in both programs.
- Forgiveness applications for PPP loans under \$150,000 will be streamlined and made simpler for borrowers.

The stimulus bill also includes a host of special rules and clarifications for farmers, ranchers, news organizations, non-profits, and religious institutions.

While these changes are retroactive to existing PPP loans, they do not apply to loans “for which the borrower received forgiveness.” It is not clear from the text of the bill whether this means 100% forgiveness or if partial forgiveness would be sufficient to exclude the loan from the applicability of these changes.

## PPP Take Two: Second Draw Loans

The stimulus bill adds a new PPP loan option, dubbed “Second Draw Loans.” These loans are open to eligible borrowers who have already received (and fully used) a PPP loan. The maximum loan size for a Second Draw PPP loan will be \$2 million and applicants will have to show they suffered a 25% decline in gross receipts on a year-over-year basis in at least one quarter of 2020 (e.g., revenue for Q2 2020 was no more than 75% of revenue for Q2 2019). For most businesses, the Second Draw loan amount will be 2.5 times their average monthly payroll during 2019 (or 3.5 times 2019 average monthly payroll for restaurants, hotels, and certain other hospitality businesses).

## What hasn't changed?

Many of the key features of the original PPP loans have remained untouched, including the general eligibility rules and the requirement that PPP borrowers spend at least 60% of loan proceeds on payroll costs (based on the new definition). The new legislation also makes clear that guidance will continue to evolve: the stimulus bill directs the SBA to release additional program rules and regulations, some of which must be released as soon as 10 days after the bill is passed.

## Other Notable Provisions for Small- and Medium-Sized Businesses

The stimulus bill is jam-packed, with a little something for everyone. In addition to revamping PPP loans, the bill reserves portions of the newly authorized funds for minority-owned or very small businesses (in some cases, with 10 or fewer employees) and for loans made by small and community banks.

There will also be increased oversight of the PPP loans: the bill requires that the SBA submit an audit plan to the House of Representatives within 45 days, outlining its policies and procedures for conducting forgiveness reviews and audits of loans, including metrics to determine which loans will be audited. The SBA will also have to submit monthly reports to the House and Senate on its audit activities.

The bill also creates a separate set of grants, outside of the PPP loans, for entertainment businesses that have been particularly hard hit by the pandemic. The so-called “shuttered operator venue grants” will be available for museums, movie theaters, concert halls, and other venues as well as performing arts organizations and ancillary businesses. Grants will be based on 2019 gross revenues and capped at \$10 million. Businesses that receive one of these grants will not be eligible to receive a PPP loan.

Finally, after well-publicized wrangling in Congress that delayed the drafting of the stimulus bill, there is little mention of changes to the Federal Reserve’s Main Street Lending Facilities. Those programs do not get a second round of appropriations like the PPP loans; however, the bill leaves the door open for additional lending facilities in future legislation.

*As of this posting, the stimulus bill has not been enacted into law. Choate’s team is continuing to monitor developments on this legislation.*

## FOR MORE INFORMATION

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