

INSIGHTS

PPP Reboot Likely to Include Second Round of Funding for Distressed Businesses

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As Congress scrambles to craft the next phase of COVID-19 stimulus and relief legislation, both sides of the aisle appear to be in agreement on expanding the Paycheck Protection Program (PPP) to include more funds for small businesses that have already received a PPP loan. While differences remain between the proposals put forth by the Senate Democrats and Republicans, a common framework is beginning to emerge, strongly suggesting that the final legislation will include a new round of much-needed funding for small businesses impacted by the pandemic.

The Health, Education, Economic Assistance, Liability and Schools (HEALS) Act, proposed this week by Senate Republicans, includes \$190 billion for so-called “PPP Second Draw Loans.” Similar to the original PPP program under the CARES Act, it includes a maximum loan size of 2.5 times a company’s average monthly payroll costs and imposes a requirement that at least 60% of the loan proceeds be used for payroll. To be eligible for a second loan, however, a business must meet the SBA’s revenue size standard (if applicable), must have no more than 300 employees and must demonstrate at least a 50% reduction in gross revenues during the first half of 2020, as compared to the same period in 2019. Notably, the Republican proposal excludes publicly-traded companies from receiving second-round funding, as well as business in the financial services sector and entities affiliated with entities in the People’s Republic of China.

The Democrats’ plan calls for a “Prioritized Paycheck Protection Program” or “P4” loan, the terms of which are directionally similar to the Republicans’ proposal. It would be limited to companies with 100 or fewer employees that would also need to demonstrate a 50% revenue loss. Like the Republican plan, publicly-traded companies would be excluded from the P4 program.

Both proposals include provisions that should ease the process of applying for forgiveness--a procedure that up until now has been a source of confusion and frustration for both borrowers and lenders. The Republican proposal provides a simplified application procedure for loans up to \$150,000 where borrowers can obtain forgiveness based only upon an attestation of a good faith effort to comply with the PPP loan requirements. Likewise, for loans up to \$2 million, borrowers would need to complete required certifications, but would not need to submit documentation when seeking forgiveness. Democrats who have expressed concerns over the existing procedures for obtaining loan forgiveness are likely to agree to these types of simplification measures.

Finally, legislation clarifying the deductibility of expenses related to PPP loan forgiveness remains an issue that appears to have support from both Democrat and Republican lawmakers. Such a measure would make clear that borrowers are permitted for tax purposes to deduct expenses that relate to the forgiven amount, such as payroll, employee benefits, rent and utilities. While deductibility was not addressed in the Republican's most recent proposal, it did appear in earlier drafts and is expected to reemerge as an agreed-upon feature of the final legislation.

Bracewell's cross-disciplinary COVID-19 task force, which includes the firm's Policy Resolution Group, is continuing to monitor these legislative developments and is actively helping clients navigate the evolving issues they are facing, including potential access to stimulus programs. Your Bracewell point of contact can help you learn more.