



Insight

A New Congressional COVID-19 Relief Bill and The Paycheck Protection Program

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Executive Summary

- Re-authorizing the Paycheck Protection Program is a key aspect of Congress' latest relief package and the provision of additional funding constitutes \$285 billion of a \$900 billion package.
- An expanded range of eligible businesses are able to apply for a second PPP loan, this time up to a maximum of \$2m, down from the previous limit of \$10m.
- The text, however, places a significant burden on the Small Business Administration over the holiday season, most notably the requirement to enact all required regulations within 10 days, and concern remains as to whether covering two and a half months of payroll will be sufficient to keep businesses afloat in the months ahead.

Introduction

Nine months after the last legislative response to the unique economic and social dangers posed by COVID-19, the trillion-dollar [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#), Congress has agreed on a second \$900 billion legislative package, tied to a larger government funding bill snappily titled H.R. 133, The Consolidated Appropriations Act, 2021. Key aspects of the [package](#) include: a ten-week \$300 period of jobless benefits; another round of stimulus checks, this time \$600 per person; the re-authorization and additional funding of the Paycheck Protection Program; \$25 billion in emergency rental assistance; and curbing the Federal Reserve's (Fed) emergency lending powers. This piece focuses on the potential implications for the Paycheck Protection Program.

Context

Title IV of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, signed into law on March 27, 2020, sets aside [\\$349 billion for the relief of small businesses](#), to be administered by the Small Business Administration (SBA) in the form of the Paycheck Protection Program (PPP). The SBA commenced the PPP on April 3, 2020, and closed the program on April 16, 2020, on the exhaustion of the \$349 billion appropriated by Congress. Congress later provided [an additional \\$310 billion](#) for the PPP in H.R.266, the Paycheck Protection Program and Health Care Enhancement Act. This brought the total funds available to the SBA and the PPP to \$659 billion, a total not far short alone of the estimated [\\$840 billion cost of the 2009 Recovery Act](#).

Per the original drafting of the CARES Act, the PPP was due to expire at midnight on June 30 regardless of funds remaining. Just hours before the expiration of the program, Congress authorized an extension through August 8. This date passed without a second extension to the program, with the result that the SBA ceased taking applications to the program.

As a result, the PPP remains frozen in time as of August 8. As at this date the SBA has disbursed \$525 billion of the \$659 billion so far appropriated by Congress to this program, with **\$134 billion, or 20 percent**, of PPP funds remaining available to the program.

The Proposed Act

Division N, Title III of the Consolidated Appropriations Act, also known as the “Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act,” covers the significant changes made to the PPP. Most notably, the PPP is reopened and, crucially, businesses are able to obtain a second PPP loan. Congress has authorized \$284.5 billion to the SBA for PPP loans, accounting for the significant majority of the total \$325 billion in small business relief provided for by the Act. Congress has also authorized \$20 billion for new Economic Injury Disaster Loans (EIDL) grants, and \$15 billion for grants dedicated to shuttered venues such as museums and theatres.

The loan amount is once again based on a calculation of two and a half months of payroll but in total may not exceed \$2m, down from the \$10m permitted by the CARES Act. Again, to be eligible businesses must attest to a 25 percent decline in quarterly gross receipts from the same quarter last year. The list of eligible businesses is however once again expanded to include 501(c)(6) non-profits, including local newspapers and broadcasters.

The Act also adds a “simplified” application to the program for businesses seeking loans less than \$150,000, requiring that they submit significantly less documentation to lenders.

For banks, the Act doubles down on “hold harmless” language found in the CARES Act by making it very clear that lenders may rely on any documentation submitted and specifically excludes lenders acting in good faith from enforcement actions.

From a program perspective the SBA are required to establish regulations enacting this Act within 10 days of passage of the bill. A 10-day period would be ambitious for any agency over the Christmas break and during a presidential transition, but this will be doubly colossal an undertaking for the SBA, **which struggled with the initial implementation of the program**, and SBA still has to provide clarity as to certain terms including forgiveness. 45 days after enactment the SBA must submit to Congress a detailed audit plan.

One notable exclusion from the final bill text concerns the tax deductibility of expenses paid for using funds received from a PPP loan. Despite the fears of Treasury Secretary Mnuchin and the IRS that full deductibility of these expenses would amount to improper double-dipping, Congress did not include any language in the final language to impose “guardrails” or restrictions that might allow some businesses but not others to claim these deductions. Congress also confirmed that any PPP loans would be considered as gross income for those borrowers.

Another notable absence from the package is dedicated support for minority-owned small businesses outside of similar set-asides for community-based lenders as seen in the CARES Act. The SBA is required to issue guidance within 10 days “addressing barriers to accessing capital for minority, underserved, veteran, and

women-owned business concerns for the purpose of ensuring equitable access to covered loans.” In addition, Congress will require that any PPP application forms have a section allowing, but not requiring, a borrower to include demographic information about themselves including sex, race, and ethnicity. That support specific to minority-owned businesses is not expressly called out in the PPP language is countered by the establishment, elsewhere in the Act, of a \$9 billion Emergency Capital Investment Fund, administered by Treasury, to support the efforts of low- and moderate-income community financial institutions.

Conclusions

The PPP was the single largest source of support for the economy for the month of April. In that same month the economy shed 20 million jobs. It is difficult to imagine how much worse this may have been without the prompt intervention of the SBA, although [one MIT paper](#) estimates that as of the first week of June the PPP had saved 2.3 million jobs.

Despite that success, the PPP was not without flaws, from the administrative and operational burden placed on the SBA, to what was initially far too little in the way of funding for the program, to a lack of clarity as to terms, particularly forgiveness. It is somewhat troubling that Congress’s package does nothing to address these flaws and in some ways adds to it by giving the SBA only 10 days to enact the required regulations. Additionally, perhaps the biggest concern is the fact that a PPP second loan will only cover two and a half months of payroll when many businesses expect that the negative impacts of COVID-19 will be felt for significantly longer.

The PPP was an enormous success and will once again be a force for good, and it clearly deserves to be reauthorized. It remains to be seen whether what Congress has enacted will be enough.