



## IMPORTANT HIGHLIGHTS

### Paycheck Protection Program: Round 3

December 30, 2020

#### Dear Valued Enterprise Bank Paycheck Protection Program Customer,

As you may know, a new stimulus package that includes additional funding for the Paycheck Protection Program ("PPP") was passed Sunday evening. The Consolidated Appropriations Act (the "Act") allocates \$284.5 billion to the Small Business Administration, with most of the funds going to a third round of PPP ("Round 3") and the remainder reserved to cover principal and interest payments for qualifying standard 7(a) and 504 SBA loans as well as a portion to a new grant program for live venue operators. We plan to refer to this new round as "Round 3" because technically Congress allocated additional funds this past summer. The new Act also includes a streamlined PPP forgiveness process for loans less than \$150,000 and the elimination of the CARES Act provision requiring PPP borrowers to deduct EIDL advances from the forgiveness amount.

The Act itself is over 5,500 pages, therefore this communication is intended to be a high-level summary of its major components specifically regarding the PPP provisions. Specific details of the Round 3 requirements are still to be outlined with rules and guidance to be issued by the SBA. Subject to eligibility requirements PPP Loans will be available to first-time qualified borrowers and to borrowers who previously received a PPP Loan. Back in early spring the SBA needed several weeks to release the interim final rules after passage of the CARES Act. We expect that between the time the SBA needs to draft the new rules, release the new program, and the time we need to update our systems, that we will begin accepting applications in 3-4 weeks.

#### \$284.5 Billion in New PPP Funding

In total, Congress set aside an additional \$284.5 billion for new and second draw PPP loans in Round 3, which will extend until March 31, 2021 to the extent funding lasts. PPP Loans will be available to first time qualified borrowers and to businesses that previously received a PPP Loan. The new funding includes set asides of \$15 billion for loans made by community financial institutions and a separate \$15 billion for loans made by banks and credit unions with fewer than \$10 billion in total assets.

The SBA is also directed to set aside no less than \$35 billion for first time PPP loans. Additionally, no less than \$25 billion is to be reserved for small businesses with fewer than 10 employees or that are requesting PPP loans of \$250,000 or less.

#### Second Draw Borrower Loans

Congress authorized second draw loans to allow certain small businesses to receive a second potentially forgivable Paycheck Protection Program (PPP) loan. These loans are intended for businesses that were the hardest-hit and which employ 300 or fewer employees. The maximum amount that a borrower may receive as a second PPP loan is \$2 million, which must be based on two and a half months of annual payroll or for the accommodation and food services sectors (entities classified under NAICS Code 72) three and a half months.

To be eligible for a second PPP loan, current economic uncertainty needs to make the PPP loan necessary to support ongoing operations. The business must have used or plan to use the full amount of the first PPP loan. Additionally, borrowers have to show a 25 percent decrease in revenue during any quarter in 2020 compared to the same quarter in 2019. Certain exceptions apply to entities that were not in existence for the entirety of 2019. The Act creates a streamlined revenue reduction requirement for loans of \$150,000 or less—borrowers are only required to submit a certification statement regarding the revenue loss at the time of submitting the loan application and must provide proof of the revenue loss at the time they submit a forgiveness application.

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## Expanded Borrower Eligibility

Congress added several new categories of eligible borrowers. Eligibility for Round 3 has been expanded to the following organizations:

- **News organizations** – certain news organizations with less than 500 employees;
- **501(c)(6) and destination marketing organizations** – small nonprofit business associations, such as chambers of commerce, and destination marketing organizations, such as tourism offices, with fewer than 300 employees and that engage in limited lobbying activities;
- **Bankrupt businesses** – trustees and debtors in possession may seek a PPP loan on behalf of the bankrupt entity; and
- **Housing cooperatives** – cooperative housing corporations with fewer than 300 employees.

The Act clarifies that businesses that were not in operation on February 20, 2020 are not eligible and also excludes entities involved primarily in political or lobbying activities.

## Simplified Forgiveness for Loans of \$150,000 or Less

The Act includes a streamlined forgiveness process for loans under \$150,000. Specifically, the SBA is required under the Act to develop a one-page certification that only requires eligible borrowers to provide a description of the number of employees the borrower was able to retain because of the PPP loan, the estimated amount spent on payroll costs, and the total amount of the loan—the certification will likely look very similar to the current Form 3508S for loans under \$50,000. Borrowers eligible to submit the streamlined forgiveness application must attest that they have accurately provided the required certifications and complied with the PPP rules. The record retention requirements are four years for employment records and three years for all other records related to the PPP. The Act also reaffirms the ability of the SBA to review any loan in any amount.

## EIDL Advance Treatment

Like some of you, we were caught by surprise when the SBA denied full forgiveness due to Economic Injury Disaster Loan (EIDL) advances. The Act repeals the provision in the CARES Act that required the reduction of the forgiveness amount by the amount of the EIDL advance received by a borrower—Congress set aside \$20 billion for this purpose. It is unclear how the SBA and Treasury will remedy the many borrowers that have already begun making payments on the EIDL advance or who may have already paid it back in full, but the SBA is required to draft rules to ensure any such borrowers are made whole.

## Deductibility of PPP Expenses

Another significant change covered in the Act is that business expenses paid for with proceeds of PPP loans are tax deductible, which is consistent with Congressional intent in the CARES Act. The IRS had taken the position that borrowers cannot deduct forgiven PPP expenses, but this has now been reversed legislatively. Since each borrower's facts and circumstances will vary, we strongly suggest you consult with your legal, tax and/or accounting advisors for advice on your specific situation.

## Clarification of Covered Period Termination

What we already suspected should be the case was formalized in the Act when Congress clarified that the "covered period" may end on any date selected by the borrower so long as the date is within the 8-week or 24-week general covered period selected by the borrower. This provides significant relief for borrowers who struggled with reporting employment statistics for the covered period when they expended funds prior to the end of the applicable period. While it remains to be seen how this provision will be implemented by the SBA, it should increase the effectiveness of the various safe harbors that exist to protect borrowers from foregoing forgiveness when they had to make reductions in payroll after their PPP funds were exhausted.

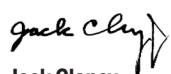
## Authorization for Increasing Round 1 and 2 Loan Amounts

The Act charges the SBA with establishing new rules that ensure that eligible recipients of loans from the initial rounds of the PPP are eligible to reapply for loans if they are entitled to additional funds in light of new requirements. Borrowers that have already received their PPP loan funds and are technically eligible for larger loan amounts due to rules and guidance issued after the loan was received are permitted to reapply in Round 3 for the additional funds to which they are entitled. Borrowers that returned a portion of their PPP funds, perhaps related to subsequent rules leading borrowers to question whether they received the proper amount, did not accept the full amount for which they initially qualified or when there were simple math errors made by the borrower or the bank, are entitled to reapply for a PPP loan under Round 3 in an amount equal to the difference between the amount obtained, if any, and the maximum amount permissible.

Please stay tuned for more information regarding the latest Paycheck Protection Program round. We encourage you to periodically visit our dedicated website section at: <https://www.enterprisebanking.com/news/article/paycheck-protection-program-ppp-updates> or reach out to your relationship manager.

Thank you for your trust in Enterprise Bank.

Sincerely,



**Jack Clancy**  
Chief Executive Officer  
Enterprise Bank



**Brian Bullock**  
Chief Commercial Lending Officer  
Enterprise Bank