



# Highlights of the New \$900B Stimulus Package and Additional PPP Funding

*What this means for you and your business*

## Presented by



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# Agenda

- Highlights of the Consolidated Appropriations Act, 2021 (New Stimulus Package)
- 2020 and 2021 Tax Considerations
- Paycheck Protection Program Round 1 Forgiveness Update
- Paycheck Protection Program Round 2 Qualifications and Eligibility for 2<sup>nd</sup> time applicants
- Employee Retention Credit
- EIDL Loans
- Q&A – webinar attendees





# New Stimulus Package: Consolidated Appropriations Act, 2021





# Consolidated Appropriations Act, 2021

- The Consolidated Appropriations Act, 2021 is a massive piece of legislation
  - It is almost 5,600 pages long, of which only 645 pages relate to COVID 19 relief.
  - For perspective, the CARES Act which established most of the COVID-19 relief programs was 880 pages.
  - The Act provides over \$900 billion of new economic relief in response to the ongoing COVID-19 crisis





# Relief for Individuals

- New Round of Direct Stimulus Payments
  - \$600 for each taxpayer (\$1,200 for married couples filing jointly) plus
  - \$600 for each qualifying child
- Payments begin phasing out at \$75,000 of modified adjusted gross income (\$150,000 for married couples filing jointly).
- Additional \$300 per week in unemployment benefits through March 14, 2021





# Relief for Businesses

- PPP Round 2 (PPP2) and changes to PPP1
- Modification of the Employee Retention Credit (ERC)
- Extension of the SBA loan payment program for up to 8 additional months beginning February 2021.
  - Note, if you had an SBA loan during 2020 and did not have to make your loan payments under this program, the amount of loan payments paid on your behalf to the SBA will NOT be taxable income to you in 2020
- Shuttered Venue Operators Grant





# Relief for Businesses

- New EIDL program targeting low income communities
- Extension of the paid sick and family leave provided for under the Families First Coronavirus Response Act until March 31, 2021
- Reasonable costs for business meals provided by a restaurant are 100% deductible for 2021 and 2022
  - Support your local restaurants!!!!



# Paycheck Protection Program

## LOAN APPLICATION FORM

### About You

Name.....  
Current address and postcode.....  
.....  
How long at this address.....





# Paycheck Protection Program

## Key changes to the Paycheck Protection Program

- Addresses deductibility of PPP related expenses
- Simplifying loan forgiveness
- Treatment of EIDL advances
- PPP Round #2





# Tax Deduction

One of the most significant parts of the Act is that it explicitly makes expenses paid using PPP loan funds tax deductible. Remember the cancellation of loan debt was previously memorialized to not be subject to income taxes.

Although this is great news for PPP borrowers, there is an issue that certain borrowers will run into.

This issue mainly affects the stockholders/partners of pass-through tax entities (S-Corporations and Partnerships) who do not receive loan forgiveness in the same year as they took out the PPP loan.

# PPP Basis Issues

In certain cases, PPP loan borrowers will be unable to receive the benefit of a tax deduction for PPP expenses in 2020, and instead will have to wait to take those expenses in 2021.

The reason for this is that for a loss to be taken for tax purposes, the taxpayer must have sufficient basis in the entity.

For example, let's say at the beginning of a year, a 100% stockholder of an S-Corp had \$10,000 of tax basis associated with her stock of the Company and had the following activity –

- Loss from operations of \$50,000 (includes the related expenses paid with PPP Loan proceeds) during 2020
- Loss from operations of \$25,000 in 2021
- PPP loan of \$150,000



# PPP Basis Issues

As illustrated below, the taxpayer would only be able to recognize \$10,000 of the 2020 loss on her tax return due to limitations in her tax basis.

	2020	2021
Basis at 1/1	\$ 10,000	\$ -
PPP Loan Forgiveness		150,000
CY Loss	(10,000) *	(25,000)
Suspended Loss CF	<u>          </u>	<u>(40,000)</u>
Basis 12/31	<u>\$ -</u>	<u>\$ 85,000</u>

\* Remaining loss of \$40,000 is carried forward to 2021

Now, let's see what happens when forgiveness is received in the same year.

# PPP Basis Issues

As illustrated below, the taxpayer would now be able to fully recognize the loss of \$50,000 on her tax return in 2020 loss.

	2020	2021
Basis at 1/1	\$ 10,000	\$110,000
PPP Loan Forgiveness	150,000	
CY Loss	<u>(50,000)</u> *	<u>(25,000)</u>
Basis 12/31	<u>\$110,000</u>	<u>\$ 85,000</u>

As you can see from the above, the taxpayer ultimately gets to the same point, but in 2020 would have \$40,000 more in loss available to offset other taxable income on her return.



# PPP Basis Issues

Why does this matter?

Remember, in most cases passthrough income (loss) is not the only item on a shareholder/partners return.

For example, a shareholder would normally have a W-2 from the company. In the event a loss from the business is pass through to the shareholder, the shareholder may be able to apply that loss against her W-2 income, therefore reducing her taxable income.

Due to basis limitations, that loss could be limited.

# PPP Basis Issues

Tax basis issues can become complicated very quickly.

We strongly recommend that you discuss with your KLR tax advisor if there are any basis issues that you should be concerned about that may affect when you can deduct the expenses related to the PPP loan.





# Loan Forgiveness Changes

The Act includes the following changes to how forgiveness is calculated on PPP loans –

- **Simplifying Loan Forgiveness for Loans under \$150,000** – This change has been rumored for months now and will allow PPP borrowers with loans under \$150,000 to have their loans forgiven via a simplified one-page application process.
- **EIDL Advances** – An unexpected provision in the new law no longer requires PPP borrowers who apply for forgiveness to subtract the EIDL advance they may have received from their loan forgiveness amount.
  - Note – This is the \$10,000 or less grant you received when applying for an economic injury disaster loan (EIDL), not the EIDL itself.



# Paycheck Protection Program Round 2 (PPP2)

As expected, the new relief legislation establishes a second round of PPP loans. Here is a summary of PPP Round 2 (PPP2)

- \$284 Billion in funding for PPP2 Loans
- Eligibility 2<sup>nd</sup> time applicants –
  - Small businesses with 300 or fewer employees
    - Special rule for multi location restaurants/hospitality
  - Have spent or will spend the full amount of their original PPP loan
  - Can demonstrate a 25 percent revenue loss in any quarter of 2020 vs. the same quarter in 2019 (or annual reduction of 25% reduction 2019 vs. 2020)





## PPP2

- Expands PPP eligibility to small 501(c)(6) organizations that do not receive more than 15% of their revenues from lobbying activities and that have 300 employees or fewer, such as local chambers of commerce, economic development organizations, and tourism offices
- Loans are based on 2.5 months of average eligible monthly payroll costs (2019 or 2020), and will now be subject to a maximum loan amount of \$2MM. (\$4MM for affiliated groups); Seasonal employer rules exist.
- Hotels and Restaurants – Businesses with NAICS codes starting with 72 qualify for larger loans. Instead of being limited to 2.5 months of average monthly payroll costs, they will be eligible for loans up to 3.5 months their average monthly payroll costs (subject to the \$2 million dollar loan limitation)



## PPP2

The allowable uses for PPP funds have now been expanded. In addition to eligible payroll costs, mortgage interest, rent and utility payments, borrowers can use the funds to pay for covered:

- Operating expenses,
- Supplier costs, and
- PPE and other costs related to worker protection and facility modifications.
- Property damage costs

Covered Period is ANY period between 8 and 24 weeks and 60% minimum spend for payroll costs required



# Potential Paycheck Protection Program Loan

Compensation (Per W-3 Box 5)		\$ 5,000,000
Add Back: Compensation items not included above (Section 125 plans)		\$ 100,000
Less: Employees in excess of \$100,000		
Kahn	(140,000)	
Litwin	(140,000)	
Renza	(140,000)	
Total		(420,000)
Number of employees in Excess of \$100,000	3	
Add back: Employees capped at \$100,000		300,000
Eligible EMPLOYER PAID Benefits -		
401K matching contributions for 2019		250,000
Profit Sharing Contribution (paid in 2019)		500,000
State and local taxes assessed on compensation (RI Illustrated below from quarterly Form TX-17)		
JDF		5,000
ES		3,000
Total eligible Health Insurance paid for 2019	750,000	
Less: EE paid amounts	(250,000)	500,000
		6,238,000
12 month average for 2019		519,833
Multiplied x 2.5		\$ 1,299,583



# PPP2 Application FAQs

- 1) Does my PPP1 loan (or other loans such as EIDL) count as a gross receipt?
- 2) Does PPP Loan Forgiveness count as a gross receipt?
- 3) What about related party revenue?
- 4) How do I support the 25% decline in gross receipts?
- 5) How do I calculate, Accrual vs Cash?



# Economic Necessity

When applying for a PPP loan, borrowers are required to certify that:

*"Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."*

This certification has gotten a lot more attention recently as PPP1 borrowers with loans over \$2M are now being required to fill out questionnaires asking for various financial information about the borrower pre and post PPP loan activities.



# PPP Loan Due Diligence File

SBA will review individual PPP Loans for eligibility:

- Based upon provisions of Laws, rules and guidance available at the time of PPP loan application
- Loan amounts calculated correctly
- Loan forgiveness supporting documents
- Must retain PPP documentation for 6 years after loan forgiven or repaid in full

**If SBA determines that a borrower is ineligible for a PPP loan, the loan cannot be forgiven!**

**Also SBA will seek repayment of the loan and if borrower repays the loan the SBA will not pursue administrative enforcement or referrals to other agencies.**



# PPP Loan Due Diligence File

## Items to have in the file:

- A copy of your loan application and loan agreement/promissory note
- Copies of any supporting documentation you provided to the bank
- Copies of your PPP borrowing amount calculation (including all payroll related reports – Forms 940, 941, W3, W2s, etc.)
- A copy of any correspondence with your bank as to the submission and acceptance of the application
- A timestamped print out of all official relevant laws/guidelines in effect on the date you submitted your application
- A memo discussing your organization's eligibility and reasons why it took a PPP loan.
- A copy of forgiveness application and all related supporting documentation
- Lender and any SBA approval of forgiveness and communication

A close-up photograph of two hands shaking in a firm grip over a desk. The desk is covered with various business documents, a pen, and a smartphone. The image has a soft, slightly blurred background, emphasizing the handshake as a symbol of agreement or partnership.

# Employee Retention Credit



# Employee Retention Credit

Originally introduced as part of the CARES Act, the ERC originally offered a credit of up to \$5,000 (50% of the first \$10,000 in wages) per employee for wages paid by employers whose operations were fully or partially suspended by a shutdown order or whose gross revenues declined more than 50% when compared to the same quarter in the prior year.

This credit has not had much press in 2020 because if a business applied for a PPP loan, they were ineligible for this credit. For many businesses, the PPP loan was more beneficial than the credit.



# Employee Retention Credit

In an unexpected move, the Act not only extended the Employee Retention Credit through June 30, 2021 it expanded the eligibility to include those businesses who obtained PPP loans.

This change in eligibility is retroactive to the Cares Act effective date!

Let's discuss the changes to the ERC in two sections –

Section 1 – 2020 (3/13/2020 to 12/31/2020)

Section 2 - 2021 (1/1/2021 to 6/30/2021)





# ERC Section 1

## Eligibility -

Generally speaking, the ERC is available to businesses whose –

- 1) Operations were fully or partially suspended by a government shut down order

or

- 1) whose gross revenues declined more than 50% when compared to the same quarter in the prior year.



# ERC Section 1

## Eligibility (cont.) -

### Fine Print –

- 1) ER's with more than 100 average EE's for 2019, only wages paid to employees who are not providing services due to the shutdown order.
- 2) For ER's with less than 100 average EE's for 2019, all wages paid to employees count, regardless of whether or not they actually worked.





# ERC Section 1

## What wages are eligible?

Only wages paid during the **shut down period** or where sales **(tax basis)** declined more than 50% vs. the same quarter in the prior year.

Additionally, healthcare costs paid on behalf the EE are eligible to included as wages .

Wages paid in accordance with the family and medical leave as part of the Coronavirus Relief Act are ineligible.

Severance payments are ineligible.



# ERC Section 1

\*Important\* - Wages paid for with PPP funds are not eligible. We're going to discuss this later.

## **Related party wages**

A 51% owner's wages are eligible for the credit, but wages paid to the relatives of that owner are not eligible.





# ERC Section 1

## **How do I receive the credit?**

The credit will be applied against payroll taxes due on the employer's payroll tax filings.

## **What if my credit is greater than my taxes due?**

In the case where the allowable credit is greater than the payroll taxes due for the quarter, that excess will be considered an overpayment and the excess amount “refunded” to the employer.



# ERC Section 1

## Important notes–

- 1) Can't be voluntarily, needs to be govt order.
- 2) Gov. asking for social distancing does not count.
- 3) If the work could be replaced by teleworking, you will not qualify.
- 4) Think reductions in capacity or complete closure orders from the government.





# ERC Section 1

## **How do non-profits determine gross receipts?**

Generally speaking, a decrease in gross receipts is determined by looking at all the income sources of the non-profit (investment income, service income, sales income, gifts, etc.)



# ERC Section 1

**I'm a PPP borrower and didn't claim the credit during 2020, can I retroactively claim it?**

In theory, those PPP borrowers who want to retroactively claim the credit can go back and file amended returns for the applicable quarters in 2020 (Most likely Q3 and Q4), but we recommend waiting to see what guidance the IRS puts out on this topic (including how to handle PPP related wages vs shutdown wages).

In our opinion, the IRS doesn't want all those amended returns. We think either special form or a modification to the Q1 941 will occur to address this issue. Stay tuned.





# ERC Section 1

## How does this affect my PPP1 Loan?

For those PPP1 borrowers who have not applied for forgiveness yet and may qualify for these credits, wait to apply!!

We have work to do in order to maximize this credit. Unfortunately, we need some further guidance from IRS to see what the fine print is here.

As of right now, we do not know how those who have applied for PPP forgiveness will be affected, but most likely they will lose some ability to maximize the credit.



# ERC Section 1

## Tax Effect –

Unlike the PPP, you do not get to keep the deduction for tax purposes. Any wages credited back to an Employer are not eligible for deduction on the tax return.

No word on how this will affect accrual basis taxpayers who retroactively apply for this credit.





# ERC Section 2

## ERC changes effective 1/1/21 –

- Increases the rate from 50% of wages to 70%
- Increases the limit of wages from \$10,000 per year, per employee to \$10,000 per QUARTER, per Employee.
  - Effectively raises the credit from up to \$5,000 per employee to up to \$14,000 per employee.
- Reduces the quarterly gross receipts test from 50% to 20%
  - Note – There are some caveats to this rule.



# ERC Section 2

## ERC changes effective 1/1/21 –

- Increases the average employee cutoff from 100 to 500 when determining eligible wages.
- Eligible small employers (less than 500 employees) can claim an advance on the credit at any point during the applicable quarter.
  - This is a great opportunity for those businesses who may be ineligible for PPP2 to get some much needed cash flow.





# EIDL Loans







# Refresher

Along with the PPP loans, the CARES Act established funding for Economic Injury Disaster Loans (EIDLs).

For those of you who participated we want to remind of you of some of the fine print in the EIDL Loan Agreement.

# Fine Print #1

Financial Statements –

- 1) The loan agreement requires the Borrower to provide financial statements within 3 months of the Borrower's fiscal year end.
- 2) And may also require that such financial statements be accompanied by an "Accountant's Review Report".





## Fine Print #2

### Limitation on Distribution of Assets –

Borrower will not, without the prior written consent of SBA, make any distribution of Borrower's assets, or give any preferential treatment, make any advance, directly or indirectly, by way of loan, gift, bonus, or otherwise, to any owner or partner or any of its employees, or to any company directly or indirectly controlling or affiliated with or controlled by Borrower, or any other company.





## Fine Print #3

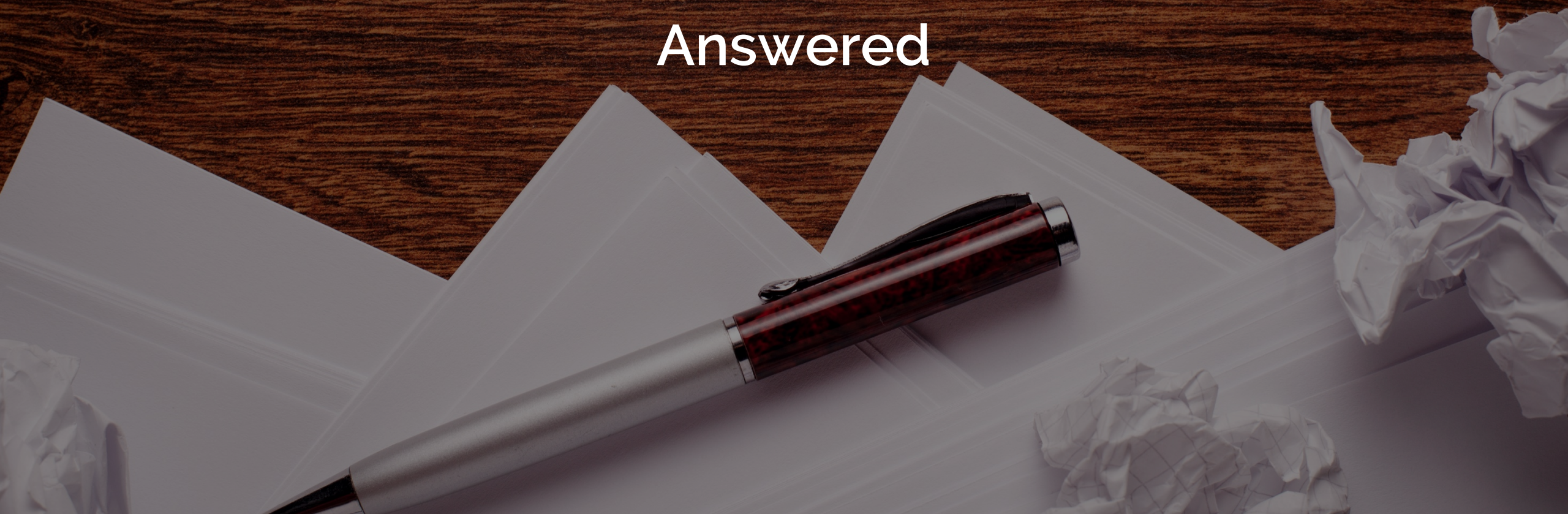
Collateral – If the loan agreement was for more than \$25,000, generally speaking the SBA took a 100% interest in all assets of the Company.

Per the loan agreement –

- Borrower will not sell or transfer any collateral (except normal inventory turnover in the ordinary course of business) described in the "Collateral" paragraph hereof without the prior written consent of SBA.
- Borrower will neither seek nor accept future advances under any superior liens on the collateral securing this Loan without the prior written consent of SBA.



# Your Questions Answered







?

Are there changes to the short form for PPP Forgiveness?



?

What happens to your forgiveness if you sell your business?



?

Will the simplified \$150,000 forgiveness be allowed for PPP1 and PPP2 separately or will it be a total of \$150,000 for both?





?

Could you explain the question regarding Necessity Certification of a 2nd PPP loan?

Is there any further guidance on the Safe Harbor Rule #1 to try to avoid the FTE calc?

?



?

Can a start-up apply for round 2 when the forgiveness application from round 1 (\$50k) is still in review?

A person in a white shirt is seated at a wooden desk. They are holding a black smartphone in their left hand and gesturing with their right hand. A silver laptop is open in front of them. To the right, another person's hands are visible, holding a white pen and a tablet. On the desk, there is a white notebook, a pair of glasses, and a document with a blue bar chart. The text "Final Thoughts" is overlaid in the center.

## Final Thoughts



# We're Here.



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