SHAPIRO
LIFSCHITZ &
SCHRAM

1742 N Street, N.W.
Washington, DC 20036
T: 202.689.1900
F: 202.689.1901
www.slslaw.com

CLIENT ALERT: SUPPLEMENTAL FEDERAL COVID-19 RELIEF

January 11, 2021

On December 27, 2020, the *Coronavirus Response and Relief Supplemental Appropriations Act, 2021* (the "**Supplemental Act**") became federal law. Part of a massive $2.3 trillion omnibus spending package, the Supplemental Act provides approximately $900 billion in the form of loans, direct payments, grants, and program funding to individuals, small businesses, schools, and state governments, and it is the most significant (and undoubtedly long overdue) federal Covid-19 relief legislation following the enactment last spring of the Cares Act. The Cares Act of course established the widely-used and now familiar Paycheck Protection Program ("**PPP**"), which has provided over $500 billion in forgivable loans to millions of businesses, non-profits, and self-employed individuals. This client alert summarizes and highlights the most significant changes to the PPP resulting from the Supplemental Act.

<u>New Round of Funding</u>: Perhaps the most important feature of the Supplemental Act is an additional $284 billion for new PPP loans, both for first-time PPP borrowers and also for certain businesses that received a PPP loan in the first round. In order to receive a second round PPP loan, a business must:

- have not more than 300 employees;
- have used or will use the full amount of their first PPP loan on eligible expenses; and
- demonstrate at least a 25% reduction in gross receipts in any calendar quarter of 2020 relative to the same quarter in 2019.

Borrowers that were ineligible or failed to qualify or otherwise receive a PPP loan in the first round may apply for an initial PPP loan in the second round, which is generally intended to benefit smaller businesses and those that have been especially hard-hit by the pandemic. The Supplemental Act Includes set-asides for first-time PPP borrowers with 10 or fewer employees, second-time PPP borrowers with 10 or fewer employees, and first-time PPP borrowers who are newly eligible -- with eligibility being expanded to include certain 501(c)(6) nonprofits, hospitals, newspapers, TV and radio broadcasters, and housing cooperatives. Borrowers may choose a "covered period" during which to use PPP loan proceeds of between 8 and 24 weeks following the date of the PPP loan.

The amount of a PPP loan previously available was generally 2.5x the borrower's average monthly payroll costs, up to a maximum loan amount of $10 million. The Supplemental Act retains the same 2.5x payroll formulation for most borrowers, although restaurants and hospitality borrowers may now borrow up to 3.5x average monthly payroll, and the maximum loan amount for all borrowers is now $2 million.

<u>New Eligible Expenses</u>: Previously, in order for a PPP loan to be fully forgiven, not less than 60% of the loan proceeds had to be used during the covered period to fund payroll costs, and the remaining 40% had to be used during the covered period to fund mortgage or rent payments, and utilities. Under the Supplemental Act, the 60% payroll requirement remains, but forgivable categories of non-payroll costs and expenses have been

SHAPIRO LIFSCHITZ & SCHRAM

1742 N Street, N.W.
Washington, DC 20036
T: 202.689.1900
F: 202.689.1901
www.slslaw.com

expanded to the following (noting that PPP loans made before the Supplemental Act also have the benefit of these expanded categories):

- expenses for software and cloud computing, accounting and human resources
- costs related to property damage from public disturbances in 2020 to the extent not covered by insurance
- expenses owed to suppliers pursuant to a contract in effect prior to taking out the PPP loan to the extent such contract was essential to the operations of the borrower
- expenses for personal protective equipment and other items (such as air filtration equipment, for example) necessary for borrowers to comply with federal, state and local COVID-19 health and safety requirements from and after March 21, 2020

The Supplemental Act also makes clear that group insurance benefits provided by employers are included in payroll costs, including group life, disability, vision, or dental insurance. This provision also applies to loans made before the Supplemental Act.

Simplified Forgiveness: While the Supplemental Act rolls out a second round of funding, many first round PPP loan borrowers are still in the process of applying for forgiveness. For borrowers with loans of less than $150,000, the Supplemental Act simplifies the forgiveness application to a streamlined one page form that requires a description of the number of employees the borrower was able to retain as a result of the PPP loan, the estimated total amount of the PPP loan spent on payroll costs, and the total loan amount. Borrower must certify that the required certification at the time the PPP loan was made was correct and accurate, and that the borrower complied with all requirements for the PPP loan. The Supplemental Act also provides for clear record retention requirements for documents relevant to the PPP loan – borrowers must retain employment records for 4 years and other documents for 3 years.

Business Expenses Deductible: While the CARES Act was clear that PPP loans themselves would not be treated as taxable income, it was silent as to the tax treatment of expenses. The IRS released a notice in April 2020, and more recently a Revenue Ruling in November 2020, making clear that taxpayers could not deduct PPP eligible expenses for 2020 if the taxpayer had a reasonable expectation of PPP loan forgiveness. In a win for borrowers, the Supplemental Act reverses that decision, reiterating that forgiven PPP loans are excluded from gross income and providing that borrowers may deduct expenses paid with forgiven PPP loan proceeds. The effective date of this provision is the date of enactment of the CARES Act. The Supplemental Act also provides that owners of pass-through entities (s corporations, LLCs, and partnerships) will receive a step-up in basis with respect to PPP loan forgiveness.

The above is only a brief summary of the highlights of the Supplemental Act pertaining to the PPP, which continues to the be the primary federal program for Covid-19 assistance for businesses. The Supplemental Act additionally provides for a broad array of payments and program funding for individuals, grants and other relief for businesses, and also extensive tax provisions intended help alleviate the economic hardship caused by the pandemic for both individuals and businesses.

1742 N Street, N.W.
Washington, DC 20036
T: 202.689.1900
F: 202.689.1901
www.slslaw.com

Please do not hesitate to contact us to discuss your specific business or individual situation and how we can assist you in availing yourself of federal, state and local aid programs. For specific questions on PPP loans, please contact Jonathan Pisha, Esquire (phone: (917) 969-4302; email: pisha@slslaw.com).

With the start of a new year and the promise of effective vaccines being widely available to the public this summer (hopefully sooner), we are relieved and full of hope and optimism that the end of the pandemic can finally be seen on the horizon. Nonetheless, the challenges and hardships facing all of us in the near-term continue to be acute and substantial, and a full-economic recovery will likely be a long and gradual process. All of the lawyers at Shapiro, Lifschitz & Schram are available 24/7 to partner with you and your business in continuing to meet and overcome the difficulties and obstacles you and your businesses are facing during this extraordinarily challenging period. First and foremost, we continue to wish and hope for the health, safety and wellness of our clients and their loved ones.