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American Rescue Plan Act of 2021: Significant PPP Changes Benefit Nonprofits and Internet Publishing Organizations

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On March 12, 2021, the President signed the American Rescue Plan Act of 2021 (the Act), a \$1.9 trillion package intended to help recovery from the COVID-19 pandemic. Among other things, the Act injects an additional \$7.25 billion into the Paycheck Protection Program (PPP) and expands eligibility for forgivable loans under the PPP for nonprofit organizations and "Internet Publishing Organizations."

Expanded Nonprofit Eligibility

Congress had initially limited PPP loan eligibility under the CARES Act to nonprofit organizations described in Sections 501(c)(3) and 501(c)(19) of the Internal Revenue Code as long as they met applicable size limitations under PPP. The Small Business Administration subsequently announced through its [PPP Frequently Asked Questions](#) that it would consider organizations exempt from income taxes under Section 115 of the Internal Revenue Code as being the type of entities "described in Section 501(c)(3)" if they could make certain certifications. As part of the [Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act](#) (the Economic Aid Act) enacted as part of the Consolidated Appropriations Act of 2021 at the end of 2020, Congress extended eligibility to 501(c)(6) organizations that met certain size limits and limits on lobbying activities.

The Act now extends PPP eligibility to most nonprofits other than 501(c)(4) organizations by adding authorization for loans to "additional covered nonprofit entities." An "additional covered nonprofit entity" is defined in the Act as "an organization described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, other than paragraph (3), (4), (6), or (19), and exempt from tax under section 501(a) of such Code." Of note, Congress provided, with a few exceptions, that any otherwise eligible nonprofit entity that would be prohibited from receiving a PPP loan under 13 CFR §120.110 if it were a for-profit business concern would not be eligible. This would include entities primarily engaged in lending, life insurance companies, and private clubs. A complete listing is available [here](#). Please note that entities described in subsections (a) and (k) of the linked regulation are not excluded from eligibility.

Additional covered nonprofit entities are subject to limitations on lobbying activities similar to those applicable to 501(c)(6) organizations under the Economic Aid Act. These limits include:

- may not receive more than 15 percent of its receipts from lobbying activities;
- lobbying activities may not comprise more than 15 percent of the total activities of the organization; and
- the cost of the lobbying activities during the most recent tax year that ended prior to February 15, 2020 did not exceed \$1 million.

In addition to expanding eligibility to new types of nonprofit entities, the Act also expands eligibility to larger nonprofit organizations. The Act allows 501(c)(3), 501(c)(6) and 501(c)(19) entities to qualify as long as they have no more than 500 employees per physical location (based on pure headcount – fulltime, part-time and "other" employees and NOT a fulltime equivalency calculation). Additional covered nonprofit entities are

eligible as long as they have no more than 300 employees per physical location and meet limitations on lobbying similar to those for 501(c)(6) organizations.

Nonprofit organizations, including additional covered nonprofit entities, are eligible for second draw PPP loans if they otherwise meet the requirements for a second draw loan (at least a 25 percent reduction in gross receipts, having received and expended a first draw PPP loan and have no more than 300 employees).

Internet Publishing Organizations

In a similar fashion to the way the Economic Aid Act made news organizations eligible for PPP loans, the Act now makes "Internet Publishing Organizations" eligible for PPP loans. An "Internet Publishing Organization" is defined by the Act as an entity that is assigned a NAICS code of 519130 and certifies in good faith that it is "an Internet-only news publisher or Internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information."

An Internet Publishing Organization is eligible for a PPP loan as long as the organization employs no more than 500 employees at any physical location and certifies that "proceeds of the loan will be used to support expenses at the component of the business concern or organization that supports local or regional news."

Our team of attorneys and advisors continues to monitor these changes and will provide further updates about these matters. For additional guidance, please contact [Jeff Wagner](#) or your Baker Donelson attorney.