

## **LEGISLATIVE AND RELEVANT REGULATORY HISTORY PAYROLL PROTECTION PROGRAM:**

### **CARES ACT (signed March 27, 2020)**

- Created and initially funded (\$349 Billion) the Payroll Protection Program (PPP).
- These funds were fully loaned by April 16, 2020 (14 days).

### **PAYROLL PROTECTION PROGRAM AND HEALTH CARE ENHANCEMENT ACT (signed April 24, 2020)**

- Appropriated additional funding (\$320 Billion).
- SBA started accepting applications on April 27, 2020.

### **PAYROLL PROTECTION PROGRAM FLEXIBILITY ACT OF 2020 (signed June 5, 2020)**

- Extended Forgiveness Period from 8 weeks to 24 weeks.
- Reduced payroll expenditure requirement from 75% to 60%.
- Corrected several other program deficiencies.

*This act was the first “game changer” for our smallest businesses. Prior to this Act, many small businesses were not participating in the PPP program out of concern that their reduced operating level would not allow them to meet the 8 week forgiveness requirement and that they would be saddled with debt that they could not pay. We saw a significant up-tick in small business PPP applications and lending after this Act was passed.*

*Between April 2, 2020 and June 25, 2020, the SBA issued twenty five separate Interim Final Rule (IFR) documents.*

### **S. 4116 (Signed July 3, 2020)**

- Extended the program until August 8, 2020)
- As of June, 2020, \$669 Billion had been appropriated and \$140 billion (20.93%) remained available.

*It was in the October/November, 2020 period that Congress, professionals and small business advocates started to recognize that too many of our smallest businesses (mostly women and minority owned businesses) were not seeing the relief and / or level of assistance that was intended under PPP. There were multiple reasons, including complicated lending platforms (mostly among the largest banks, not “community banks”), a general misunderstanding of the program (exacerbated by necessary changes to the program), language and out reach barriers, and the fact that too many of our smallest business owners were so busy simply trying to survive that they had little time to focus on program applications. It was around this time that we saw the program and subsequent guidance begin to focus on our smallest (including women and minority owned) businesses.*

House Ways and Means Committee  
Testimony of Thomas Lauzon, CPA  
President, Salvador and Babic, PC  
Member, Governor's Economic Mitigation & Recovery Task Force

**IRS REVENUE RULING 2020-27** (Issued November 20, 2020). In the CARES Act, Congress specifically legislated that the proceeds of a forgiven PPP loan would not be taxable income. The legislative intent was to hold small businesses harmless from taxation as a result of receiving a forgiven PPP loan. After months of silence, the IRS issued this Revenue Ruling, which stated that expenses paid with forgiven PPP proceeds would not be deductible. This Revenue Ruling was essentially a federal tax on the proceeds, which ran contrary to the legislative intent. Members of Congress and the business community were outraged by the late issuance of this Revenue Ruling. Congress promised immediate correction. That correction occurred approximately one month later with the passage of CAA21.

### **CONSOLIDATED APPROPRIATIONS ACT OF 2021** (Signed December 27, 2020)

- Created the “Second Draw” program, allowing businesses with a 25% reduction in revenue – in any calendar quarter of 2020 v. 2019 – to apply for a second draw. Qualifying restaurants and hospitality venues (NAICS CODE 72) were allowed an increase of 40% on their Second Draw loans.
- As promised, Congress “smacked down” the IRS and made expenditures paid for with forgiven PPP proceeds full deductible.
- Appropriated an additional \$284.5 Billion to the program.
- Restated the application period.
- Reduced the maximum loan amount.
- Focused the initial lending period on under-served businesses.
- Opened the program to 501(c)(6) organizations.
- Simplified forgiveness process for loans under \$150,000.00.
- Added types of allowed expenses under the program.

*The creation of the Second Draw program was the second “game changer” for our smallest and hardest hit businesses. The Second Draw program provided an invaluable benefit to our restaurant, arts, wedding venue and hospitality industries by allowing a Second Draw PPP loan and increasing their benefit under the Second Draw loan by 40%.*

**SBA 13 CFR PART 120 (INTERIM FINAL RULE).** On March 3, 2021, the Small Business Administration (SBA) issued a new Interim Final Rule (IFR) relating to the Paycheck Protection Program (PPP) that now allows these borrowers to use either Gross Income or Net Profit as reported on Schedule C to maximize the loan amount.

*This IFR was the third and last “game changer” for our smallest and hardest hit businesses. In this IFR, the SBA changed what many small business advocates saw as a seriously flawed formula that limited the PPP benefit that our smallest business could receive. Under the prior rules, a sole proprietor grossing \$60,000.00 and netting \$25,000.00 would qualify for a PPP loan of \$5,208.00. Under the revised formula, a PPP loan would provide \$12,500.00.*

### **PPP EXTENSION ACT OF 2021** (Signed March 26, 2021)

- Extended the program from March 31, 2021 to June 30, 2021

**WHO BENEFITED AS THE PPP WAS REFINED?.**

**March 27, 2020 – CARES ACT.**

- The CARES Act PPP clearly benefited our largest businesses with the financial resources to access the program quickly. This program released \$349 Billion in 14 days (a disbursement rate of approximately \$25 Billion per day). The vast majority of these businesses met the program requirements by spending 75% on payroll within the 8 week required period and sought and received forgiveness in calendar year 2020. Businesses falling into this category will **not** be affected by H. 315.

	NATIONAL				VERMONT		
	COUNT	\$	LOANS OVER \$1,000,000	AVG LOAN	COUNT	\$	AVG LOAN
4/16/2020	1,661,367	342,277,999,103	44.53%	206,022	6,983	1,000,127,478	143,223

**April 24, 2020 - PPP AND HEALTH CARE ENHANCEMENT ACT**

- This Act re-funded the CARES Act PPP (\$320Bn). Early disbursements (three weeks or so) benefited a backlog of unfunded applications submitted by larger businesses. Disbursements after approximately May 31, 2020 began to reach businesses with 50 and over employees as those businesses became more educated with regard to participation. Once again, these larger businesses met the program criteria by spending at least 75% of the proceeds on payroll within the required 8 week period. The 8 week period for businesses receiving a PPP loan on or before May 31, 2020 expired on July 31, 2020. Largely, these businesses applied for and received forgiveness well before December 31, 2020. Accordingly businesses obtaining a PPP loan as a result of funding provided by the Enhancement Act appropriation would very likely **not** be affected by H. 315.

	NATIONAL				VERMONT		
	COUNT	\$	LOANS OVER \$1,000,000	AVG LOAN	COUNT	\$	AVG LOAN
5/30/1930	4,475,599	510,234,498,923	35.50%	114,004	11,222	1,170,104,201	104,269

**June 5, 2020 - PPP FLEXIBILITY ACT OF 2020**

- With the extension of the forgiveness period to 24 weeks and the lowering of the payroll threshold requirement to 60% (from 75%), this Act demonstrated a clear shift in focus away from our largest businesses and began a focus on smaller (1 – 25 employee) businesses. Assume a business funded under this Act applied for and received a PPP loan on June 30, 2020. Their 24 week forgiveness period would have ended on approximately December 17, 2020. Given the turnaround time, it is highly likely that these businesses would be affected by H. 315 and taxed. In addition, there were inexplicable delays by the SBA in granting forgiveness. Business A and Business B submitted virtually identical forgiveness applications. Business A received forgiveness in two weeks. Business B received forgiveness in 8 weeks (without an explanation for the delay). Business A would not be affected by H. 315. Business B would.

**June 5, 2020 - PPP FLEXIBILITY ACT OF 2020 (continued)**

	NATIONAL				VERMONT		
	COUNT	\$	LOANS OVER \$1,000,000	AVG LOAN	COUNT	\$	AVG LOAN
6/30/2020	4,885,388	521,483,817,756	34.80%	106,744	11,929	1,187,439,086	99,542
8/8/2020	5,212,128	525,012,201,124	34.10%	100,729	12,401	1,201,175,929	96,861

**SUMMARIZING THE LENDING DATA:**

	NATIONAL				VERMONT		
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6/30/2020	4,885,388	521,483,817,756	34.80%	106,744	11,929	1,187,439,086	99,542
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The preceding is cumulative data. What happens if we isolate the activity within each period?

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	COUNT	\$	LOANS OVER \$1,000,000	AVG LOAN	COUNT	\$	AVG LOAN
4/16/2020	1,661,367	342,277,999,103		206,022	6,983	1,000,127,478	143,223
5/30/1930	2,814,232	167,956,499,820		59,681	4,239	169,976,723	40,098
6/30/2020	409,789	11,249,318,833		27,451	707	17,334,885	24,519
8/8/2020	326,740	3,528,383,368		10,799	472	13,736,843	29,103

**December 27, 2020 - CONSOLIDATED APPROPRIATIONS ACT OF 2021**

- This Act focused like a laser on our smallest and hardest hit businesses by creating a “Second Draw” program for businesses with a 25% reduction in revenue, reducing the maximum loan size, providing a 40% increase in loans to NAICS Code 72 businesses (restaurants and hospitality) and opening lending first to women owned, under-served and minority owned businesses. By any measure, every business – our smallest businesses - funded under this Act would be adversely affected by H. 315.

	NATIONAL				VERMONT		
	COUNT	\$	LOANS OVER \$1,000,000	AVG LOAN	COUNT	\$	AVG LOAN
4/18/2021	4,733,661	240,161,960,611	16.90%	50,735	8,146	534,045,696	65,559

*This data includes both First Draw and Second Draw Loans.*

In conclusion, it is my testimony that – based upon an examination of the lending activity and available lending data – I believe a policy decision to tax forgiven PPP loan proceeds in 2021 on any level would largely affect Vermont’s smallest, most disadvantaged and hardest hit businesses and industries most.