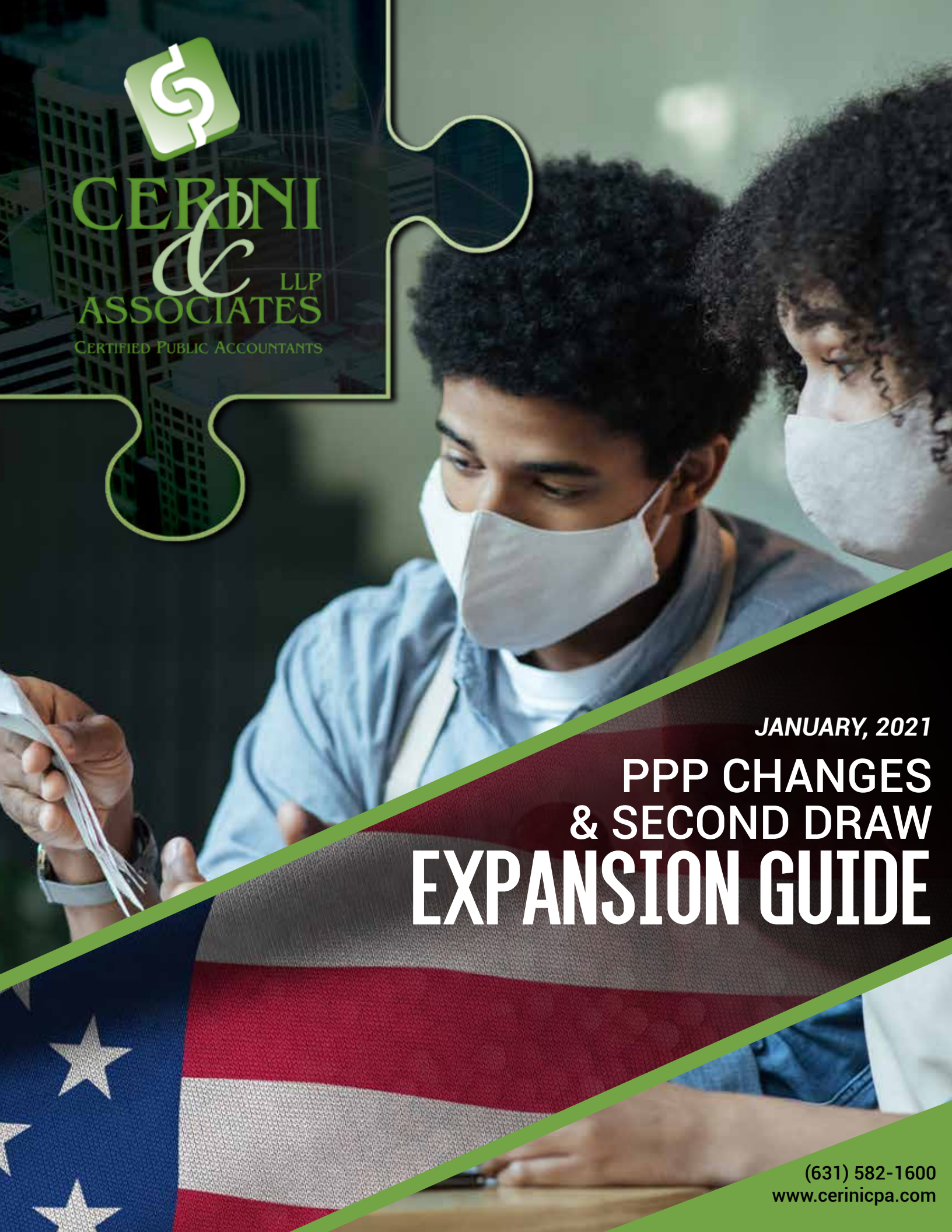




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PPP CHANGES & SECOND DRAW EXPANSION GUIDE

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Arguably the most popular provision of the CARES Act for businesses and nonprofit organizations was the **Paycheck Protection Program (PPP) Loans**, which provided these organizations with a necessary lifeline to assist with the COVID-19 pandemic. The original program provided employers with loans of up to \$10,000,000 based on 10 weeks (2.5 months) of their average monthly payroll. The loans were intended to be used to cover payroll and certain other costs, and, subject to certain guidelines, were eligible for forgiveness to the borrower.

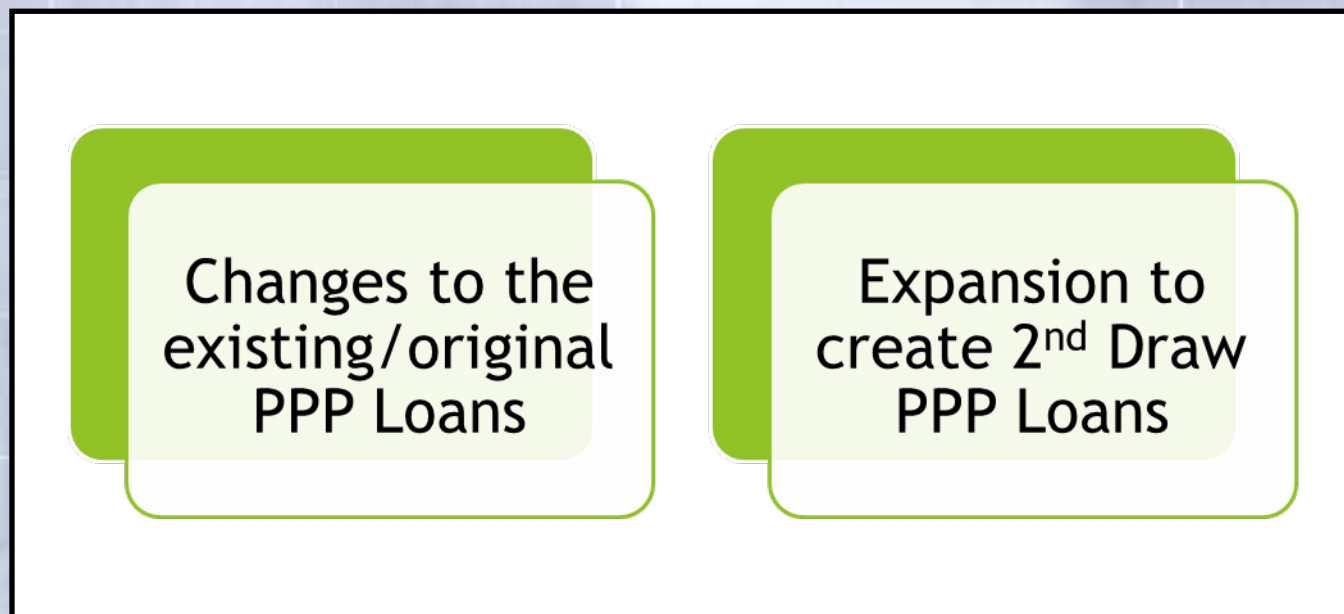
As the pandemic has continued into 2021, many businesses and nonprofits are still suffering from reduced operations and revenues. As result, included in the 2021 appropriations & COVID-19 relief bill passed in late December 2020 was the *“Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act,”* which had a goal of continuing the PPP loan program and contained other small business support.

This COVID-19 Stimulus and Relief contained two key provisions for borrowers – another change in the program terms of existing PPP loans and the creation of a PPP second draw facility (PPP2). The appropriations act included many other sections and acts which impacted PPP borrowers as well including a welcome taxation change on the PPP Loans.

For borrowers who have not yet received forgiveness there have been several changes to the original/existing PPP Loans.

ADDITIONAL COVERED EXPENSES

The original PPP Loans uses were limited to payroll costs and certain covered rent, interest and utility costs, not to exceed (but not required to be) 40% of the total loan proceeds. The new COVID-19 relief now allows 4 additional categories of expenditures:



Covered Operations Expenditures	Software Cloud Computing	Payroll Processing Human Resources	Sales or Billing Functions Accounting	Inventory Management
Covered Property Damage	Damages that occurred due to "public disturbances" that occurred during 2020			
Covered Supplier Costs	Expenditure for Goods or Supply of Goods that are 1. Essential to the operations of the entity AND 2a. Purchased pursuant to a contract or purchase order in effect before the covered period OR 2b. With respect to perishable goods, in effect at any time during the covered period			
Covered Worker Protections	Operating or capital expenditure to facilitate the adoption of any OSHA, CDC or state/local government order . May include Ventilation systems, increased outdoor space, sneeze guards or employee PPE.			
These changes are retroactive to any PPP Loans, assuming no forgiveness has been requested				
These expenditures are included in the 40% non-payroll cost allowance				

For borrowers who were having difficulty achieving full forgiveness, these additional expenditures may prove helpful; however, passing this after nearly all borrowers have exhausted funds feels like too little, too late.

Borrowers can now use expenses as follows:

At LEAST 60% (Can be more)	At MOST 40% (Can be Less)
Payroll Costs	Interest on Mortgage Payments
Cash Compensation	Rent
Health Benefits	Utilities
Retirement Contributions	Covered Operations Expenditures
State and Local Taxes	Covered Property Damage
	Covered Supplier costs
	Covered Worker Protections

In May 2020 and again in November 2020, the IRS issued guidance stating that expenses paid with PPP funds would be nondeductible, which was counter to congressional intent. This change also created potential massive tax exposures for many borrowers. In the new COVID relief act taxpayers were now given favorable certainty to the tax treatment of PPP paid expenses.

Expenses paid with PPP Loan Funds are now fully deductible for Federal Tax purposes



There is substantial uncertainty currently as to whether or not the Federal PPP Deductibility will flow through to New York State & City tax returns.

The new relief gave explicit wording that no deduction for Federal tax purposes will be denied for any expenses paid with PPP loans and that the forgiveness will result in tax-exempt income which will increase the basis for pass-through taxpayers.

Typically, New York State and New York City would have what is known as “rolling conformity” with the tax code, however, as part of the budget passed in 2020 they specifically opted to not confirm automatically with the Internal Revenue Code for periods between March 2020 and January 2021. The changes to the PPP deductions were added to the Small Business Act that authorizes these loans and not the tax code; however, taxpayers should be cautious until further guidance is issued.

For borrowers with loans of less than \$150,000, this new COVID-19 Stimulus now creates a more simplified “*rubber stamp*” process for forgiveness.

The SBA will be releasing an updated form that is no more than 1 page in length and requires only limited information and further, **no documentation**.

The new form will require:

1. *The number of employees retained*
2. *An estimate on the amount spent on payroll costs*
3. *The borrowers loan amount*
4. *Attestation to certain certifications (TBD, but likely similar in substance to Form 3508S) and has complied with program terms.*

These borrowers will need to retain payroll records for 4 years and other cost records for 3 years as part of this streamlined process.

The new bills also passed several other crucial changes for PPP Loans:

- ▶ Expanded eligible borrowers to include 501(c)(6) organizations and “*Destination Marketing Organizations*,” so long as no more than 15% of their income and expenses are spent on lobbying and they had no more than \$1,000,000 in lobbying expenses in the prior year.
- ▶ **Economic Injury Disaster Loan (EIDL) Grants**, offered for up to \$10,000, will no longer reduce PPP Loan forgiveness as first called for in the CARES Act. For any borrower who has already applied for forgiveness, guidance is forthcoming.
- ▶ For borrowers with loans over \$2,000,000, the SBA is required to report to congress its audit plan by February 2021.
- ▶ Group insurance payments, such as dental, vision, group life and disability were formally included as allowable payroll costs.

Borrowers who meet certain criteria may be eligible to receive a second draw PPP Loan (PPP2) to provide continued assistance during this period of hardship.

SECOND DRAW ELIGIBILITY

For borrowers to be eligible for a PPP2 Loan, there are 2 key criteria they must meet: the employee size and a decline in gross receipts. For employee size, borrowers must have less than 300 employees. Typically the SBA would review employees as all people who work on a “full-time or part-time basis” and normally over the prior 12 month average. Absent further guidance, we still believe this to be the case.

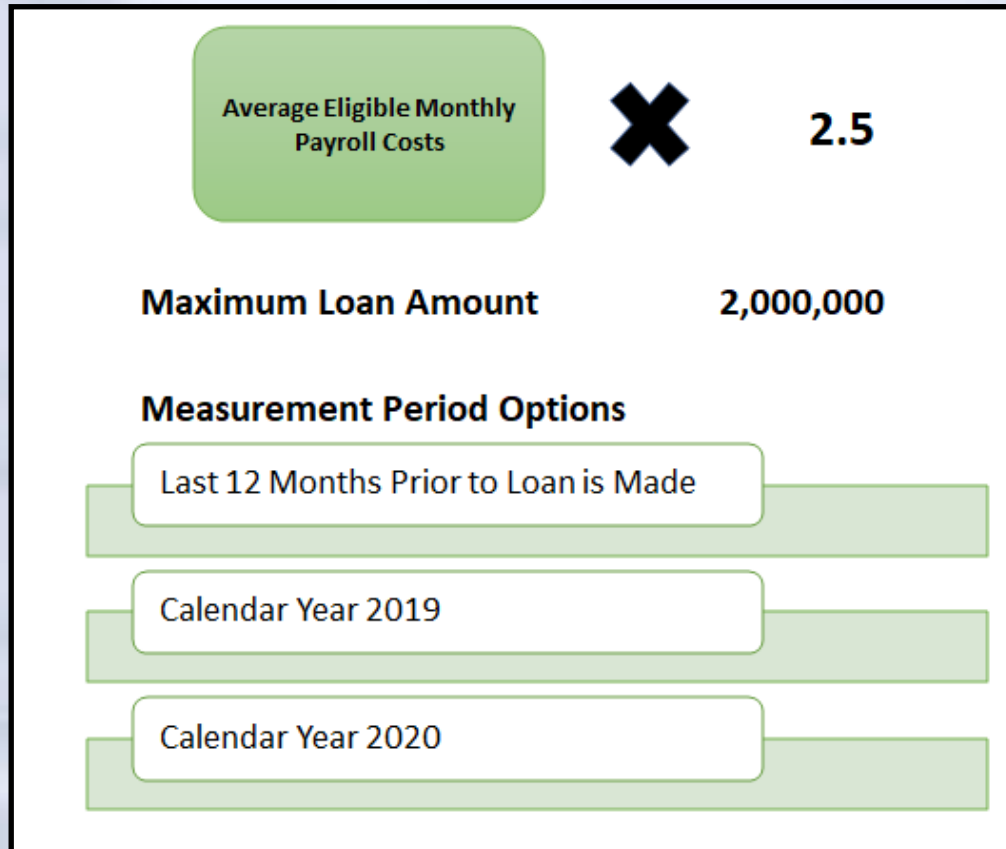
For gross receipts, for profit borrowers will use the SBA Size regulation 121.104, which includes “all revenue in whatever form received or accrued (in accordance with the entity’s accounting method).” This includes sales and investment incomes. The Interim Final Rules place an emphasis on tax forms and many borrowers use the same method of accounting for tax and financial. If the borrower uses a different method, it is likely that either will be acceptable. For nonprofit organizations they should use the same definition as Section 6033 of the tax code, which governs 990 filing.

Borrower Eligibility	<ul style="list-style-type: none"> •Must be a business concern, NFP or contractor •Substantially same as eligible borrower for original draw PPP
Employee Size	<ul style="list-style-type: none"> •Must have less than 300 employees •Employees \neq FTE - “Full Time or Part Time Basis”
Original Draw PPP	<ul style="list-style-type: none"> •Must have used (but not necessarily forgiven) original PPP Loan Draw
Gross Receipts	<ul style="list-style-type: none"> •Must show a 25% decline in “Gross Receipts” in 2020 vs same quarter in 2019 - not versus consecutive quarters! •Can be in either 1st, 2nd, 3rd OR 4th Quarter or Annual

Entity Type	For Profit Entity	Nonprofit Entity
Included	Sales from Goods Receipts from Services Interest, Dividends, Rents, Royalties (regardless of derived in ordinary course of business)	Contributions, gifts, grants or similar amounts Gross amount of dues or assessments Gross receipts or sales from unrelated business activities Investment Income (Interest, Dividends, Rents, Royalties)
Excluded	Loan contributions Capital Gains Capital contributions PPP Loan Forgiveness Sales tax collected	Donated Services Unrealized Capital Gains PPP Loan Forgiveness
Statute Reference	121.104 SBA Size Regulations	IRC 6033; Reg 1.6033-2(g)(4)

In order to be eligible for a second draw PPP Loan, borrowers would have needed to be an otherwise eligible borrower for the original PPP Loans and have used their original draw.

The PPP2 loan size calculation is substantially similar to the original loan calculation; however, the limit on loan size is considerably smaller.



The new laws allow for a borrower option to use the last 12 months, calendar year 2019 or calendar year 2020 of payroll costs (*calculated the same as the first loan*). Since most borrowers already have the 2019 costs calculated and for many who qualify these would be higher, it is likely most borrowers will use 2019.

For any borrowers who are restaurants (*NAICS Code 72xxxxx*), they are eligible to use a larger multiplier of 3.5 average monthly payroll costs.

The second draw loans have the same permitted uses otherwise (*as updated*) for PPP loans.

Prior to this change, employers were unable to claim an ERTC if they had at any point claimed a PPP Loan. As part of this relief package, borrowers who take a PPP Loan are now also eligible to claim an ERTC, assuming they meet the eligibility criteria.

It is important to note that any wages (*including health insurance costs*) which are used for the ERTC will NOT count as PPP eligible payroll costs. This is to prevent a clear situation of "double dipping," but it's important to note that the disallowance is on the PPP Side which means the ERTC in theory has priority over the PPP in determining eligible wages. Therefore, a borrower that claims an ERTC will not be able to use these wages in calculating eligible PPP forgiveness costs.

For many PPP Loan borrowers, it is important to note that the passage of this act has increased both potential PPP expenses (*to include covered operational expenses and other expenses*). While borrowers may be able to do both a PPP Loan and an ERTC, there now runs the potential for "optimization" to allow for borrowers who are facing significant financial difficulties to maximize these sources.

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