CLIENT ALERTS & INSIGHTS

Paycheck Protection Program Round Two

DECEMBER 23, 2020

Although not yet signed into law by President Trump, the house and senate have passed a second stimulus bill that provides for a second round of PPP loans up to an aggregate amount of $284 billion. The second round of PPP loans are more targeted and will be available to a smaller group of businesses.

In order to qualify for a second PPP loan, a business has to satisfy the following qualifications:

1. The business has less than 300 employees. Note that if a business has a 72 NAICS code, the 300 employee limit is calculated per location.

    - Remember the following when calculating the number of employees:

        - The number is calculated based on the average number of employees per pay period for the previous 12 months

        - A part time employee still counts as one employee

        - If your business utilizes a staffing agency, workers provided by the staffing agency are considered employees

2. Gross receipts during any quarter of 2020 were at least 25% lower as compared to the same quarter of 2019

    - For loans less than $150,000, the borrower only needs to make a certification of the change in gross receipts in order to apply for the loan. Supporting documentation as to the decrease in gross receipts will only be required at the time the borrower applies for forgiveness.

    - Although not specifically stated, for loans above $150,000, the implication is that supporting documentation as to the decrease in gross receipts will be required at the time of application.

3. The borrower cannot be owned more than 20% by a Chinese or Hong Kong company or a company that has “significant operations” in China or Hong Kong

4. The borrower cannot have any board members that is a Chinese resident

5. The borrower cannot receive an advance for the program set aside for shuttered performing venues

The amount of PPP loans are generally calculated in the same manner as the original PPP loan (i.e. 2.5 times monthly payroll), but has an overall cap of $2,000,000. Average monthly payroll is based on either (1) average monthly payroll for calendar year 2019 or (2) average monthly payroll for the one year period prior to the date the loan is funded.

Note that for businesses that have an NAICS code beginning with 72, average monthly payroll is multiplied by 3.5 instead of 2.5. The overall cap of $2,000,000 is still applicable to these entities.

The same affiliation rules that applied to the original PPP loan are applicable to this new round of PPP loans.

The covered period for the loan continues to be between 8 and 24 weeks.

In addition to permitted PPP proceeds to be used to pay for payroll, rent, interest and utilities, PPP proceeds are now permitted to be used to pay for (and the forgivable amount can include) the following items:

- Payment to suppliers

- Payment to repair property damage not covered by insurance which was caused by looting or rioting

- Expenses related to business improvements made to comply with safety protocols

- Payments for software that facilitates business operations

Note: Any wages for which the borrower is taking the payroll retention credit will not be forgivable for this round of PPP.

The requirement to spend 60% of the PPP loan on payroll costs remains.

Other items of note:

1. Expenses paid with PPP proceeds or with an EIDL emergency grant are now deductible for tax purposes.

2. Loans of less than $150,000 will have a simplified forgiveness process, which involves signing a one page certification.

3. Details on the process for audits of loans are to be disclosed within 45 days, this specifically includes metrics that the SBA will use to determine which loans will be audited.

4. There is a special program provided for shuttered performance based businesses (movie theaters, music clubs, theaters etc.). If a business receives a grant under the set aside for shuttered performing venues, then it cannot receive a PPP loan.

5. Also included in the pandemic relief package are key provisions for employers related to the Consolidated Appropriations Act. **Benesch published a bulletin detailing those key provisions here.**

For more information, please contact a member of the firm's Commercial Finance & Banking Practice Group.

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Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by the CDC and local officials.

