CLIENT ALERTS & INSIGHTS

Updated Summary on Paycheck Protection Program (PPP) Round 2

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On January 6, 2021, the SBA issued more detailed guidance on the implementation of Paycheck Protection Program (PPP) round 2. The biggest upshot from the SBA's releases are that except for a limited set of changes (which are discussed below), PPP round 2 will essentially be administered and subject to the same rules as PPP round 1.

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 and for certain news organizations, 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.

   - For loans above $150,000, supporting documentation as to the decrease in gross receipts will be required at the time of application.

   - Note that gross receipts are also calculated on an affiliated basis.

3. The borrower had to have received and spent all of the proceeds from PPP round 1.

   - Note that the deadline to apply for a PPP round 1 loan has been extended to 3/31/21.

4. The business had to be in existence as of February 15, 2020.

5. A borrower's business has not permanently closed. Temporary closure is permissible, but if a business has been permanently shuttered or liquidated, it cannot receive a PPP round 2 loan.
6. 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.
7. The borrower cannot have any board members that is a Chinese resident.
8. 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 per borrower of $2,000,000. There is a $4,000,000 cap on groups of borrowers that have the same parent. 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 and certain news organizations, average monthly payroll is multiplied by 3.5 instead of 2.5. The overall cap of $2,000,000 per borrower and $4,000,000 for borrowers with a common parent is still applicable to these entities.

The same affiliation rules (and exceptions) 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 still have not been disclosed.
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. See Benesch's guidance on this program here.

Finally, as with most guidance, there will likely be updates with some frequency. Of note, I question whether a company will become subject to the audit for liquidity if the company takes a PPP round 2 loan and that causes its total PPP borrowings (inclusive of round 1) to exceed $2,000,000.

Please contact Commercial Finance & Banking partner Matt Delguyd if you have any questions.

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