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Paycheck Protection Reboot:

What the Latest PPP Rules Mean for New and Existing Borrowers

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Gabriel Herman

The CARES Act and SBA Loans



Gabriel Herman

- A member of Fox Rothschild's corporate practice group, Gabe advises clients on a wide range of business matters, with a particular focus on mergers and acquisitions, real estate transactions, financing transactions and ownership transition programs
 - As former outside counsel to a number of the nation's largest SBA lenders, Gabe brings a unique and informed perspective to PPP loans
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- Fox Rothschild has assembled a multidisciplinary team of attorneys to guide clients in securing the assistance made available through this massive new law
 - Our deep experience in corporate financing and lending, and specific experience in advising on Small Business Administration loans, enable us to direct clients to the smartest and most strategic options



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Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act

- The Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (the “Economic Aid Act” or “Act”) was signed into law and modified the PPP, EIDL, and other government programs
- The Act provides \$284 Billion in funding for a continuation of the PPP
 - Second Draw PPP Loans for prior borrowers
 - First Draw PPP Loans for first-time borrowers
 - Updated loan forgiveness process
 - Newly authorized categories of eligible (forgivable) expenses
 - Reversing prior IRS Tax Rulings
 - Renewal of Economic Injury Disaster Loan Program (EIDL)
- Applications available for First Draw; Second Draw on 1/13/2020



Second Draw PPP Loan: Terms

- Loan Term:
 - 5 year term at 1% interest
 - No collateral, no personal guaranty
 - Covered Period between 8 and 24 weeks at the election of the borrower
 - Affiliation rules apply
- Maximum Loan Amount: Lesser of \$2 Million or 2.5X average total monthly payroll costs during, at applicant's option, the 1 year period before the date on which the loan is made or 2019 calendar year
 - \$2 Million Max Loan or 3.5X for Hospital Industry
 - \$4 Million aggregate maximum for corporate groups (affiliates)
- For full forgiveness, Borrowers must spend a minimum of 60% of proceeds on payroll costs and 40% eligible expenses



Second Draw PPP Loan: Eligibility

1. Received a 1st Draw PPP Loan and used or will use proceeds before receipt of 2nd Draw PPP loan funds
2. Business, together with its affiliates, employs 300 or fewer employees
 - Borrowers with NAICS code beginning 72 (restaurant or hospitality sector) are eligible if employ not more than 300 employees per location
3. Experienced a 25% reduction of gross receipts in one quarter of 2020 when compared to the same quarter of 2019
4. Not permanently shutdown

Eligible Businesses: Corps, LLCs, nonprofits, self-employed workers, independent contractors, sole proprietors, veterans' orgs., Tribal business concerns, housing cooperatives*, news organizations*, 501(c)(6)*



Second Draw PPP Loan: Gross Receipts

- Applicants Operating in 2019: Must demonstrate that it had gross receipts during the first, second, third or fourth quarter of 2020 that were at least 25% lower than the gross receipts during the same quarter in 2019
 - Applicants are able to choose the relevant quarter
 - Quarters are based on calendar quarters
- Applicants NOT Operating in 2019: Must have been in businesses on Feb. 15, 2020 and demonstrate gross receipts during the second, third, fourth quarter of 2020 that were at least 25% lower than the gross receipts during the first quarter of 2020



Second Draw PPP Loan: Gross Receipts

- Gross Receipts: Includes all revenue in whatever form received or accrued (in accordance with your accounting method) from whatever source, including sales of products/services, interest, dividends, rent, royalties, fees and commissions
 - Does not include amounts received from First Draw PPP Loan
 - Gross receipts are aggregated with affiliates
 - Determine whether accrual or cash accounting
 - Special rules for applicants that have acquired other businesses
- Loans of Less than \$150K: When applying, applicants must certify that they had a 25% reduction in gross receipts, but must submit supporting documentation on or before submitting an application for loan forgiveness



Second Draw PPP Loan: Application

Applicant must certify that:

- Current economic uncertainty makes the loan request necessary to support ongoing operations
- Borrower and its affiliates had a reduction in gross receipts in excess of 25%
 - Loans greater than \$150,000, must provide documentation when applying
 - Loans less than \$150,000, Borrowers must certify reduction
- Before 2nd PPP Loan is disbursed, will have used the full amount (and any increase) of First Draw Loan
- Has not received a Shuttered Venue Operating Grant



First Draw PPP Loan: Eligibility

- Businesses that did not receive a PPP loan during the first round will be eligible to participate subject to the original program requirements, unless modified by the Economic Aid Act
- Notable Program Conditions:
 - Covered Period between 8 and 24 weeks at the election of the borrower
 - Maximum Loan Amount of \$10 Million or 2.5X average monthly payroll
 - Not more than 500 employees (exceptions for NAICS code 72)
 - No gross-receipts reduction tests
 - Affiliation rules apply
 - Must have been operating on February 15, 2020
- May not receive a PPP Loan and Shuttered Venue Operator Grant



Loan Forgiveness & Covered Period

- Forgiveness Amount equal to costs incurred/expenditures made during Covered Period:
 - Payroll Costs; Rent Obligations, covered mortgage interest payments; utility payments
 - Operations Expenditures*
 - Property Damage*
 - Supplier Costs*
 - Worker Protection Expenditure*
- Historically costs incurred or expenditures made during Covered Period
- Covered Period: Beginning on loan origination date and ending on the date selected by borrower that occurs between 8 and 24 weeks after origination
- For full forgiveness, Borrowers must spend a minimum of 60% of proceeds on payroll costs and 40% eligible expenses



Forgiveness Amount – Expanded Uses

- Payroll Costs; Rent, covered mortgage interest payments; utility payments
- **New - Operations Costs:**
 - Any payment for any business software or cloud computing that facilitates business operations (accounting and HR)
 - Product or service delivery
 - Processing payment and Sales and billing functions
 - Tracking of payroll expenses
 - Tracking of supplies, inventory, records and expenses
- **New - Property Damage:** Costs related to property damage due to disturbances that occurred during 2020 that are not covered by insurance



Forgiveness Amount – Expanded Uses

- **New - Supplier Costs**: Expenditures pursuant to a contract, or purchase order for goods in effect prior to receiving the loan that are essential to the borrower's operations at the time the expenditure was made— Costs of perishable goods can be made before or during the Covered Period
- **Worker Protection Expenditures**
 - Operating or capital expenditures to facilitate PPE and adaptive investments to help borrowers comply with federal health and safety guidelines or equivalent state and local guidance related to COVID-19
 - Purchase, maintenance, or renovation that expands:
 - (i) Drive-thru window facilities,
 - (ii) indoor/outdoor air ventilation or filtration systems,
 - (iii) physical barriers,
 - (iv) expansion of indoor/outdoor space, and
 - (v) health screening capabilities



Loan Forgiveness & Simplified Application

Loans up to \$150,000: Borrower shall submit a 1-page certification that provides:

1. The number of employees retained due to PPP
 2. Estimated amount of loan spent on payroll expenses, and
 3. Total loan value
- Borrower to retain employment records for a period of four years
 - SBA Reserves the right to audit

 - Loans of \$2 Million or More
 - Process Remains Unchanged
 - Loan Necessity Questionnaire



Changes Impacting Current & Future Borrowers

Tax Considerations:

1. The amount of loan forgiveness is not taxable income; and
2. Deductible expenses paid with forgiven PPP proceeds will remain tax-deductible

*** State specific tax concerns should be evaluated***

Economic Injury Disaster Loan

- **Revised:** EIDL Grant shall no longer reduce PPP Loan Forgiveness
- SBA will automatically remit a reconciliation payment to the PPP lender for the previously-deducted EIDL Advance plus interest—Borrowers that already received forgiveness that was reduced by an EIDL Loan are not required to request the reconciliation payment



Changes Impacting Current Borrowers

- 1st Draw PPP Borrowers who have not yet received forgiveness and who returned amounts disbursed, or did not accept the full approved loan amount, may reapply for a loan for an amount equal to the difference between the amount retained and the maximum amount available
- Borrowers whose loan calculations have increased based on revised guidance will now have the ability to work with their lenders to increase their loan value
 - **Exception:** Borrowers who have already received forgiveness are not eligible for new benefits retroactively; May apply for 2nd Draw Loan



Economic Injury Disaster Loan Program

EIDL Grant (Advance)

- EIDL grants are not taxable income and businesses will not forgo a tax deduction for qualified expenses paid for with EIDL funds
- \$1,000 per employee with a maximum grant of \$10,000
- If you previously applied for an EIDL Grant and did not receive the full amount, you can reapply for the balance



Economic Injury Disaster Loan Program

EIDL Loans

- Working capital and operating expenses (including the continuation of health care benefits, rent, utilities, and fixed debt payments)
- 30 year term at 3.75%. Loans of \$25,000 or more require collateral
- Applications for EIDL Grant/Loan extended through December 31, 2021
- Historically capped at \$150,000
- May receive PPP and EIDL, but no “double-dipping”
- SBA will issue guidance on the process for applying for additional funds if used all PPP and EIDL proceeds



Gabriel Herman
gberman@foxrothschild.com



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