PPP2: Executive Summary of Recent Changes to the Paycheck Protection Program

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Today's Topics

- Background Overview of Paycheck Protection Program
- Eligibility and Considerations for "Second Draw" Loans
- Expanded Categories of PPP Loan Recipients
- Expanded Categories of Forgivable Expenses
- Tax Deductibility of PPP-Funded Expenses
- Other Changes and Clarifications
- Forgiveness / Audit Process Considerations
- Timing Considerations and Next Steps
- Shuttered Venue Operator (SVO) Grants

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Background Overview of PPP

- Small business loans that may be forgiven
  - Loans may be forgiven (wholly or partially) based on the use of funds as well as FTE and compensation/wage levels
  - Favorable terms for eligible borrowers, even if not fully forgiven
- PPP closed to new loan applications on August 8, 2020
  - Before closing in August, over 5.2 million PPP loans were approved (appx. $525 billion in principal amount)
  - There were "leftover" PPP appropriations (appx. $130 billion) when the program closed in August

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Background Overview of PPP (cont.)

- Latest stimulus bill appropriates $284 billion to reopening the PPP to both first- and second-time eligible borrowers
  - New PPP loans will be available through March 31, 2021
  - Set-asides for first-time borrowers, smallest/hardest hit borrowers and smaller/community lenders
- After uncertainty last week and through the weekend, the President signed the bill into law last night (December 27)
  - PPP provisions did not seem to be the focus of any major objections
  - Rather, the size of individual stimulus payments and other budget priorities delayed the bill being signed into law

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Executive Summary / Proceed With Caution

- This presentation is an <u>executive summary</u> of PPP-related rules and amendments
- The law now requires SBA to write new implanting rules and regulations in the coming weeks
  - Based on the initial PPP roll-out after passage of the CARES Act, SBA's additional rulemaking, guidance and FAQs could significantly alter our understanding of the latest legislative changes
- Keep up-to-date on latest developments and consult with your counsel, accountant and/or financial advisors if you have questions related to your specific circumstances

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Eligibility & Considerations for Second Draw Loans

- "Second draw" PPP loans will be available to fewer borrowers than "first draw" loans
- To be eligible for a second loan, a borrower must generally:
  - Have 300 or fewer employees <u>and</u>
  - Demonstrate a 25% decrease in "gross receipts" in any quarter of 2020 compared to the same quarter in 2019
    - Modified comparison periods for "seasonal" and newer businesses
- Borrowers that received a "first draw" PPP loan must have used the full amount of their initial loan before receiving the disbursement of their second draw loan

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Considerations for Second Draw Loans

- The maximum principal amount of "second draw" loans will generally be calculated in the same manner as initial PPP loans (2.5 X average monthly payroll costs)
  - A 3.5X multiplier will apply to "second draw" loans for restaurants, bars, hotels and other borrowers with NAICS codes beginning with 72
- However, the maximum amount of a second PPP loan will be $2 million (compared to $10 million for first round loans)
- This maximum loan cap applies regardless of industry/NAICS code

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Newly-Eligible PPP Loan Recipients

- IRC Section 501(c)(6) entities (e.g., chambers of commerce) and "destination marketing organizations" will now be eligible for PPP loans if (among other things):
  - They have 300 or fewer employees <u>and</u>
  - Satisfy certain limitations on lobbying receipts, activities & expenses
- Certain broadcasting stations, newspapers and public broadcasters will also be eligible if (among other things):
  - They have 500 or fewer employees per physical location <u>and</u>
  - The loan will be used to support expenses for "locally focused or emergency information" programming components

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Expressly Ineligible PPP Borrowers

- Publicly-traded companies
- Entities and individuals primarily engaged in political or lobbying activities (including self-identified "think tanks")
- Entities with any board member who is a resident of the People's Republic of China (PRC)
- Entities that have 20% or greater equity ownership (direct or indirect) by PRC- or Hong Kong-based entities or individuals
- Entities and individuals that receive a "shuttered venue operator" (SVO) grant
- Not a retroactive change, however

Expanded Categories of Forgivable Expenses

- The scope of forgivable expenses has been broadened to include the following:
  - Certain operating expenditures (generally for software/cloud services)
  - Property damage costs resulting from 2020 public disturbances
  - Certain supplier costs (not totally open-ended)
  - Worker protection expenditures (rather broad category)
- Expansion will apply retroactively to both first and second draw PPP loans (excluding loans already forgiven)
- New legislation maintains the 60% / 40% forgiveness split between payroll costs and non-payroll costs

Additional "Covered Period" Flexibility

- In addition to the expanded categories of forgivable expenses, PPP borrowers will now have the flexibility to choose a "covered period" that ranges from a minimum of eight to a maximum of 24 weeks
  - For example, the covered period could be 12 or 15 weeks, rather than the minimum or maximum durations generally provided for under previous program rules
- It appears this change will apply to both first and second draw PPP loans, which could impact forgiveness application decisions of existing PPP borrowers

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PPP - Funded Expenses Eligible for Federal Tax Deductions

- Expenses that are otherwise deductible for federal income tax purposes will no longer be disallowed due to the fact that the expense was funded by a forgiven PPP loan
  - "[N]o deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided" by PPP loan forgiveness
  - Applies to both first and second draw PPP loans
- This change supersedes IRS guidance to the contrary released over the last several months
  - States do not necessarily need to follow this federal approach

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Other Proposed Changes/Clarifications (In Brief)

- Directs SBA to implement a program for borrowers who did not take their maximum loan amount (or returned funds) to "top off" their loans
- Provides that "group life, disability, vision [and] dental insurance" costs all qualify as forgivable "payroll costs"
- EIDL advances received by PPP loan recipients no longer need to be deducted from PPP loan forgiveness amounts
- Authorizes $20 billion in targeted EIDL advances through end of 2021
- New conflict-of-interest rules for certain government officials
- Addresses availability and treatment of PPP loans in bankruptcy
- Facilitates and extends timeframes for other SBA relief programs

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Forgiveness / Audit Process Considerations

- A new, simplified forgiveness process will be created for PPP loans with an original principal amount below $150,000
  - One page certification and records retention requirements
  - Attestation of compliance with PPP rules and regulations
- Within 45 days, SBA must report to Congress on its plans and policies for conducting forgiveness reviews and audits of PPP loans, including the metrics SBA will use to determine which loans it will audit
  - Thereafter, SBA must report to Congress on its audit and review activities on a monthly basis

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Timing Considerations and Next Steps

- Now that PPP2 has been signed into law, SBA must issue new rules, create new forms and processes to reopen the PPP and implement the latest changes
- Banks must also prepare to process new loan applications
  - Banks will be in the midst of processing loan forgiveness applications from the first wave of PPP borrowers
- The initial rollout of PPP was bumpy, with constantly changing rules, FAQs and calculations
  - Unclear how SBA will prioritize speed of relief versus clarity/consistency in reopening PPP and implementing PPP2

Shuttered Venue Operator (SVO) Grants

- Stimulus legislation appropriates $15 billion to a new "shuttered venue operator" grant program
  - Similar to PPP in certain respects, but technically a separate program
- SVO program will provide grants to eligible live venue operators or promoters, theatrical producers, live performing arts organization operators, certain museum/zoo operators, motion picture theater operators and talent representatives
  - Potential SVO grantees should compare against PPP loan, if eligible
  - SVO grants will be made in waves, with those hardest hit funded first
  - Appears SVO program will be administered directly by SBA (not banks)

Conclusions

- Hard hit small businesses should confirm employee calculations and begin collecting revenue/gross receipts information to be prepared in case SBA and lenders are able to reopen PPP quickly
- Continue to follow latest legislative and regulatory developments to ensure compliance with program terms
- Remember that much detailed information about PPP/PPP2 may become public through government reports and FOIA requests
- Enforcement actions can be severe for false certifications, misuse of funds and misrepresentations to lenders/government (including potential criminal sanctions)

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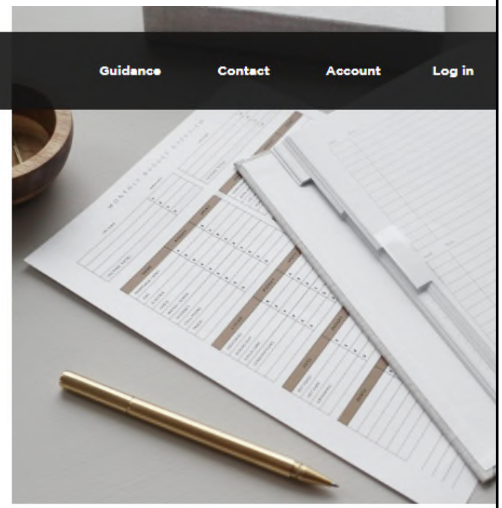

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