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PPP Reboot: What New and Existing Borrowers Need to Know About the Stimulus Package

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Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (“Economic Aids Act”)

- Part of the comprehensive Consolidated Appropriations Act of 2021
- Modified the PPP, EIDL, and other government programs, and added grant programs
 - \$806.45B for PPP loans, of which \$284B for PPP Second Draw Loans
 - First Draw and Second Draw PPP loans – expires March 31, 2021
 - Economic Injury Disaster Grants
 - Shuttered Venue Operator Grants
 - Tax Provisions



Second Draw PPP Loans - Eligibility

- Eligible Businesses: Corps, LLCs, nonprofits, self-employed workers, independent contractors, sole proprietors, veterans' orgs., Tribal business concerns, housing cooperatives*, news organizations*, 501(c)(6)*
 - Same borrower vs. affiliate borrower
- In existence on 2/15/2020
- Not permanently shutdown



Second Draw PPP Loans – Eligibility (cont'd.)

- Must have received a 1st Draw PPP Loan and used or will use proceeds before receipt of 2nd Draw PPP loan funds
- 300 or fewer employees, except for hospitality industry and certain news organizations
 - Borrowers with NAICS code beginning 72 (restaurant or hospitality sector) are eligible if employ not more than 300 employees per location
- Gross receipts reduction test



Second Draw PPP Loans - Ineligibility

- If not eligible for a First Draw PPP Loan
- Engaged primarily in political activities or lobbying activities
- If an entity organized under the laws of, or with significant operations in, the People's Republic of China or Hong Kong owns at least 20% of the economic interest in the applicant
- Has as a board member a resident of the People's Republic of China
- Registered under the Foreign Agents Registration Act
- Recipient of a shuttered venue operators grant
- An entity in which certain designated high level federal government officials hold a controlling interest
- A publicly listed company



Second Draw PPP Loans - Gross Receipts Reduction Test

- 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
 - If in operation for only part of 2019, comparison made from any of the 2019 quarters in operation to any quarter in 2020



Second Draw PPP Loans - Gross Receipts Reduction Test

- Applicants NOT Operating in 2019: Must have been in businesses on 2/15/2020 and demonstrate gross receipts during the second, third, fourth quarter or 2020 that were at least 25% lower than the gross receipts during the first quarter of 2020



Second Draw PPP Loans - Gross Receipts Reduction Test (cont'd.)

- Gross Receipts: All revenue from whatever sources (per accounting method)
 - Excluded: capital gains/losses, taxes, affiliate transaction proceeds, PPP loan proceeds, investment income
 - Do not deduct cost of goods sold
 - Do not deduct subcontractor costs, employee-based costs
 - Must aggregate gross receipts for all affiliates



Second Draw PPP Loans - Loan Amount

- Loan amount – 2.5 X average total monthly payroll costs during, at applicant’s option, the one year period before the date on which the loan is made or 2019 calendar year (special base periods for seasonal employers and for borrowers who did not exist for the entire one year preceding 2/15/2020)
 - \$2M maximum loan and \$4M aggregate maximum for corporate groups (affiliates)
 - Multiplier is increased to 3.5 for hospitality industry
 - Partnerships –use the net earnings of all general partners from self-employment for 2019 or 2020, with certain adjustments, not in excess of \$100,000, plus employee payroll costs
 - Special formula for farmers that are self-employed or independent contractors



Second Draw PPP Loans - Loan Terms

- 5 year term at 1% interest
- No collateral, no personal guaranty
- Covered Period between 8 and 24 weeks at the election of the borrower



Second Draw PPP Loan - Application

- Application portal now open
- Documentation required with application:
 - Form 941 or equivalent
 - State quarterly wage unemployment insurance tax reporting forms
 - Evidence of retirement and employee group health, disability, vision and dental insurance contributions
 - Evidence of reduction in gross revenues



Second Draw PPP Loan – Application (cont'd.)

- If applying to same lender, and relying on 2019 data for both First Draw Loan and Second Draw Loan, do not need to resubmit same documentation
- Simple certification form for 2nd Draw Loans of \$150,000 or less
 - No documentation required until apply for forgiveness
- If First Draw PPP Loan is under SBA review for eligibility or loan amount, application for as Second Draw Loan will not be processed until resolved



Second Draw PPP Loan – Application Certifications

Applicant must certify that:

- Was In operation on 2/15/2020 and is not permanently closed
- 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%



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Second Draw PPP Loan – Application Certifications (cont'd.)

Applicant must certify that:

- Will use proceeds only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program rules, including to retain workers and maintain payroll or for other authorized uses
- 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 Operator Grant
- Series of certifications that borrower is not ineligible for stated reasons



1st & 2nd Draw PPP Loans: Economic Necessity

 Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

- Requirement for both 1st and 2nd Draw PPP Loans
- At the time of applying, Borrowers must certify and assess in *good faith*:
 - Current business activity,
 - Access to other sources of liquidity; and
 - Fact specific Analysis
- Businesses should document their decision at the time of applying
- “Loan Necessity Questionnaire” for Borrowers that, together with affiliates, have received \$2M or more



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 2/15/2020
 - Certain News organizations– NAICS code beginning with 511110 or 5151 – 500 employee/location
 - 501(c)(6) nonprofits, housing cooperatives, eligible destination marketing organization -300 employees
 - If obtains and uses First Draw before 3/31/21, can apply for a Second Draw PPP Loan



First Draw PPP Loan – Eligibility (cont'd.)

- Not eligible:
 - A publicly listed company
 - Engaged primarily in political activities or lobbying activities
 - An entity in which certain designated high level federal government officials hold a controlling interest



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*



Loan Forgiveness & Covered Period (cont'd.)

- 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
- FTE Reduction limitations still apply



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 (cont'd.)

- **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
- **New - 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
3. Borrowers may obtain Employee Retention Tax Credits for 2020 and 2021

*** 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



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Changes Impacting Current Borrowers (cont'd.)

- 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)

- Grants of \$1,000 per employee, with a maximum grant of \$10,000
- Grants are not taxable income and businesses will not forgo a tax deductions
- Previous applicants that did not receive the full amount can reapply for balance

EIDL Loans

- 30-year term at 3.75%; Loans of \$25,000 or more require collateral
- Working capital and operating expenses
- May receive PPP and EIDL, but no “double-dipping”
- SBA will issue guidance on applying for additional funds if used all PPP and EIDL funds

Applications for EIDL Grant/Loan extended through 12/31/21



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Other Provisions

- Tax Provisions
 - PPP authorized expenses are tax deductible
 - Federal tax break
 - State taxes
- Grants to live venue operators and promoters, theatrical producers, and live performing arts organization, museum operators, motion picture operators, talent representatives that suffered economic loss as a result of the pandemic
 - \$10M maximum grant
 - May not receive a new First Draw or Second Draw PPP Loan and Shuttered Venue Operator Grant



Additional Fox Rothschild LLP Resources

- **Resource Center:** CARES Act, PPP and FFCRA
 - <https://www.foxrothschild.com/coronavirus-resources/cares-act-ppp-and-ffcra/>
- **Article:** *Will You Be Ready for a Paycheck Protection Program Audit?*
 - <https://www.foxrothschild.com/publications/will-you-be-ready-for-a-paycheck-protection-program-audit/>
- **Article:** *Stimulus Package Expands PPP, Simplifies Loan Forgiveness and Adds Disaster Grants*
 - <https://www.foxrothschild.com/coronavirus-resources/publications/stimulus-package-expands-ppp-simplifies-loan-forgiveness-and-adds-disaster-grants/>



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