

Congress Passes New Paycheck Protection Program Loans



December 24, 2020 | **CLIENT ALERTS**

On December 21, 2020, the US Congress passed the Consolidated Appropriations Act 2021 (the “Act”) which includes the long-awaited second stimulus package. Among the notable features of the Act is another round of Paycheck Protection Program (“PPP”) loans. These “second-draw” PPP loans (“PPP 2” loans) share many of the same characteristics as the initial round of PPP loans, however there are important differences and additions that are highlighted below.

First, the eligibility requirements for the PPP 2 loans are different than those for the initial round of PPP loans. In order to be eligible, a borrower must:

- Have been in business on February 15, 2020;
- Demonstrate that they have realized a reduction in gross receipts of twenty-five (25) percent or more in one of the first, second, third, or if applying on or after January 1, 2021, fourth quarter of 2020 as compared to the same quarter in 2019;
- Have 300 or less employees, including any affiliated entities; and
- Have used or will use all of their initial PPP loan.

The maximum amount of the PPP 2 loans is two (2) million dollars, reduced from the initial PPP loan maximum of ten (10) million dollars.

The loan amount a borrower is entitled to is calculated by multiplying their average monthly payroll for either the one-year period prior to the date the loan is made or the 2019 calendar year by 2.5. However, if a borrower operates under a North American Industry Classification System code beginning with the prefix 72 – hotels and restaurants – they may apply for 3.5 their average monthly payroll based on one of the two periods previously

mentioned. Both of these loan amount calculations are subject to the two (2) million dollar maximum. If the borrower is a seasonal employer, they may make their calculation based on any consecutive twelve (12) week period between February 15, 2019 and February 15, 2020.

In addition to payroll costs, rent, utilities and mortgage interest, the PPP 2 loans also allow for four more categories of permissible expenses:

- **Covered operations expenditures** – a payment for any business software or cloud computing service that facilitates business operations, product or service delivery, processing, payment or tracking of payroll expense, HR, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses;
- **Covered property damage** – cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation;
- **Covered supplier costs** – expenditure made by an entity to a supplier of goods for the supply of goods that are essential to the operations of the entity at the time at which the expenditure is made; and made pursuant to a contract, order or purchase order in effect before covered period or with respect to perishable goods in effect before or during the covered period; and,
- **Covered worker protection expenditures** – to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by DHHS, CDC, OSHA, or any other equivalent requirements established or issued by state or local governance from March 1, 2020 through the end of the national emergency declaration.

Payroll costs must still constitute at least sixty (60) percent of the total expenditures for the loan to be fully forgiven. However, for PPP 2 loans under \$150,000, there will be a streamlined forgiveness process that will expediate the process for borrowers and lenders alike.

Any borrower who returned all or part of the initial PPP loan may apply for a PPP 2 loan.

Finally, the Act clarifies Congress' intent that any qualified expenditures made pursuant to a PPP or PPP 2 loan are eligible to be deducted by the borrower, regardless of whether they are expected to be forgiven or not.

If you have any questions about the PPP 2 loans, or any other aspects of the federal government's COVID-19 relief package, please contact us at Lippes Mathias Wexler Friedman LLP.

PLEASE NOTE: THE ACT WILL NOT TAKE EFFECT UNTIL SIGNED BY THE PRESIDENT. IF HE VETOES THE ACT, IT WILL TAKE FURTHER CONGRESSIONAL ACTION, EITHER TO OVERRIDE THE VETO OR TO PASS SIMILAR LEGISLATION. IN THAT EVENT, ALL OR PART OF THE CONTENT OF THIS ALERT MAY BE SUBJECT TO CHANGE.

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