

Qualifying Borrowers Now Eligible for a Second Round of Forgivable PPP Loans

Under new legislation signed into law on December 27, 2020, certain qualifying borrowers will be eligible to obtain a second forgivable Paycheck Protection Program (“PPP”) loan to assist with costs related to the COVID-19 pandemic.

- **Eligibility:**

- The borrower must have *expended all of the proceeds of a first-round PPP loan*. Forgiveness of the first-round loan is not required prior to the application for the second-round loan.
- The borrower had a *decline in gross receipts of no less than 25 percent* in at least one quarter of 2020 from the corresponding quarter in 2019.
 - Entities not in business in 2019 but in business prior to February 15, 2020 can employ special rules. Entities not in business until after February 15, 2020 are not eligible for first-round or second-round PPP loans.
- The borrower *employs not more than 300 employees*.
 - Borrowers eligible for the special affiliation rules for the first-round PPP (primarily restaurants and hospitality businesses with more than one physical location) can apply the same rules to the second round, except that the limit for each physical location is 300 employees rather than 500.
- Recipients of a “Shuttered Venue Operator Grant” will not also be eligible for PPP loans.

- **Loan Terms:**

- The maximum loan for the second round is \$2 million.
- Most borrowers can borrow up to 2.5 times the entity’s average monthly payroll for the prior year up to the \$2 million maximum. This amount is comparable to the amount that could be borrowed in the first round.
 - Seasonal employers can use the average payroll for a 12-week period.
 - Eligible businesses not in business for a full year can apply special rules.
- Borrowers with an NAICS code starting with 72 (accommodation and food service businesses) can borrow a larger amount equal to 3.5 time the average monthly payroll, but are still subject to the \$2 million maximum.
- A simplified application process will be available for loans under \$150,000.

- **Forgiveness:**
 - The loan amount will be forgiven on essentially the same basis as the first-round PPP forgiveness terms.
 - At least 60 percent of the loan proceeds must be spent on qualifying “payroll costs.”
 - The definition of “payroll costs” has been expanded to include group life, disability, dental and vision insurance costs in addition to group health. (See [here](#).)
 - As with the first-round loans, salaries over \$100,000 (prorated to the “covered period”) will only qualify up to the prorated \$100,000 limit.
 - The remaining 40 percent can be spent on allowable business expenses.
 - As has been the case, rent, utilities and mortgage interest are allowable.
 - The new legislation, however, has added newly allowable non-payroll costs, including certain software and computing costs, supplier obligations, uninsured property damage from civil unrest and expenditures for employee and customer safety due to COVID-19 response. (These apply to non-forgiven first-round loans as well; see full details [here](#).)
 - The “covered period” within which proceeds must be spent must be between eight and 24 weeks, but borrowers can now choose any period within that range.
 - The same potential reductions in forgiveness due to reductions in workforce or compensation will apply as with the first-round PPP loans, but the same “safe harbors” that allow a borrower to avoid the reductions will also be extended to the second round.
 - Borrowers will not be penalized if:
 - they could not find qualified employees after a good-faith search; or
 - they were unable to restore business operations to pre-pandemic levels due to COVID-related operating restrictions.
- **Barriers to Access:** The legislation directs the Small Business Administration to issue guidance that will address barriers to capital for minority, veteran, woman-owned and other underserved business concerns. There was criticism during the first round of PPP loan origination that underserved communities did not have full opportunities to access the loan program.

More information on second-round PPP loans is available from Vandennack Weaver attorneys at 402-504-1300 or info@vwattys.com.