

Round 2: Recent Changes to the Paycheck Protection Program

Mike Zahrt
Business & Tax Attorney
mzahrt@fosterswift.com
(616) 726 - 2223

Taylor Gast
Business & Tax Attorney
tgast@fosterswift.com
(517) 371 - 8238

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PPP Highlights from the Economic Aid Act:

- Limited eligibility for “Second Draw” loans. Program reopen for first time borrowers, too.
- Expanded permissible expenses for First Draw and Second Draw loan proceeds.
- Favorable tax treatment of forgiven loans.
- Favorable forgiveness results for EIDL advances and loans under \$150,000.

Second Draw Eligibility Requirements:

- Less than 300 employees:
- Gross receipts during any quarter of 2020 were at least 25% lower compared to the same quarter in 2019.
- Borrower must have received and spent all of the proceeds from the First Draw loan.
- The borrower's business must not be permanently closed.
- The loan must be "necessary."

Eligibility: Employees and Gross Receipts

- Calculating number of employees:
 - Average number of employees per pay period for the previous 12 months, including affiliates.
 - Part-time employees count as an employee; so do employees from a staffing agency.
 - Businesses with a 72 NAICS code (e.g., restaurants). are permitted more than 300 employees.
- Calculating gross receipts:
 - Gross Receipts includes all revenue in whatever form received or accrued from any source.
 - For loans under \$150,000, the borrower may certify they meet this requirement. All others must provide supporting documentation.

Eligibility: The Necessity Certification

- Old Guidance: (1) Economic Uncertainty, (2) Ability to Operate, and (3) Access to Liquidity:
 - FAQ 31 : “[A]ll borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations **at the time of the loan application**. . . Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”
- New Guidance: SBA Form 3509
 - How well did you predict the future?
 - Business Activity & Access to Liquidity

Necessity Questionnaire: Business Activity Questions

- Shut down order?
- Order to significantly alter operations?
 - Capacity limits
 - Reconfigured workspace
- Voluntarily ceased or reduced operations?
 - Employee with covid
 - Disrupted supply chain
- Altered operations due to covid?
- Did your business undergo any capital improvement projects?

Necessity Questionnaire:

Access to Liquidity

- Cash on hand at the end of the quarter before the loan application. Book value of shareholder equity on same date.
- Any dividends/distributions?
- Pre-paid any indebtedness?
- How many employees or owners made over \$250,000?
- Any equity publicly traded? Partially owned by a publicly traded company?
- Received any other CARES Act stimulus (e.g., HHS Provider Relief Fund)?

Draw 2 Loan Amount:

- Loan amount equals 2.5 multiplied by monthly payroll costs, capped at \$2 million.
- Restaurants and hotels receive a multiple of 3.5 x payroll costs.
- \$4 million cap on an affiliated group.
- See SBA and Treasury guidance of 1/19/2021.

Other Draw 2 Rules:

- Choose your own covered period – between 8 and 24 weeks.
- Expanded permissible expenses:
 - Covered Operations Expenditures: primarily software or cloud computing services
 - Covered Property Damage Costs
 - Covered Supplier Costs: orders before the covered period or for perishable goods
 - Covered Worker Protection Expenditures: PPE, barriers, ventilation/filtration, drive-thru windows.

Updated Tax Rules:

- CARES Act: Forgiven loans will not create taxable income.
- IRS Notice 2020-32: No deductions for PPP expenses.
- Economic Aid Act: Deductions for PPP expenses.

Other Favorable Rules:

- EIDL advances do not reduce forgiveness.
- Forgiveness applications for loans of \$150,000 or less will be a one-page certification. Not an “auto-forgive,” but a very simplified application process.
- 501(c)(6) organizations may apply. E.g., chambers of commerce, business leagues, etc.

PPP Audits

- It is early in the audit process – still few details.
- Your lender will require you to submit the documents that borrowers are “not required to submit.” This includes necessity support.
- The SBA may review:
 - Eligibility,
 - Loan amount,
 - Use of proceeds,
 - Forgiveness calculation
- Borrowers may appeal to the SBA Office of Hearings and Appeals within 30 days of the SBA’s decision.

Questions?

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