

### **New COVID Relief Bill – Paycheck Protection Program (Round 2)**

As a result of recently passed stimulus legislation called the Economic Aid Act, additional funding has been made available under the Paycheck Protection Program (“PPP”) for both first and second-time borrowers.

It is anticipated that borrowers applying for a first PPP loan will be able to do so through community financial institutions beginning Monday, January 11, 2021 with priority being given to minority-owned and underserved businesses. Borrowers that have received a PPP loan and qualify for an additional loan, regardless of whether or not the first loan has been forgiven (or is in the process of being forgiven), should expect applications to be taken starting January 13, 2021. Applications close on March 31, 2021.

While a majority of the terms of the PPP loans (including financial terms of 1% interest, no personal guarantees required, no collateral required, 5 year term, 100% backed by the SBA) remain unchanged, many other eligibility terms, including those summarized below have been changed. The Small Business Administration’s PPP website has not been completely updated, it is still the best resource for first time borrowers. The website is available at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program> and the materials should be reviewed in detail before any applicant applies for a PPP loan in 2021.

While further rulemaking is forthcoming from the Small Business Administration (“SBA”), initial guidance has been released in the form of the [First Interim Final Rule](#) and the [Second Interim Final Rule](#). The First Interim Final Rule contains helpful FAQs for both first and second time borrowers.

### **Second Draw PPP Loan Eligibility**

- **In addition to the first draw PPP loan criteria, to be eligible for a second PPP loan, borrowers must:**
  - have used, or plan to use, the full amount of their first PPP Loan;
  - Employee 300 or fewer employees (unless the borrower is a business with a North American Industry Classification System) (Accommodation and Food Services business); and
  - Experienced a year-over-year (or 2019 fiscal quarter over 2020 fiscal quarter) revenue decrease of at least 25%. Tax returns will be the primary basis to

demonstrate a year-over-year reduction and a first PPP loan that was forgiven will be excluded from calculation of “gross receipts” and the basis for calculation of revenue. The Second Interim Final Rule has a detailed discussion of reduced revenue calculations.

Note that various carveouts relative to the calculation of an eligible borrower’s size have been added and removed for the second tranche of PPP loans. If your business is near the 300 employee limit (either alone or with affiliates) or you have questions on how to calculate a decline in revenue, please contact us to assist with further analysis.

If a prospective borrower’s application for the first PPP loan is under review for potential disqualification due to the fact that the borrower may have been ineligible for an initial loan, the borrower is prohibited from applying for or receiving a second PPP loan until the ongoing eligibility review has been completed.

A single corporate group may not receive PPP loans totaling more than \$20,000,000 (and the corporate group may not receive more than \$4,000,000 in second draw PPP loans). Businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent and it is the borrower’s responsibility to notify the lender if this is the case.

### **Second Draw PPP Loan Amounts**

Section 307 of the Economic Aid Act provides that the maximum loan amount for a second draft PPP loan is equal to the lesser of: (i) 2.5x a borrower’s monthly payroll costs or (ii) \$2 million.

Borrowers who apply for PPP loans in 2021 and who are not self-employed are permitted to use the precise 1-year period before the date on which the loan is made to calculate loan size (based on a payroll costs multiple) or an amount of payroll costs from 2019 or 2020 per the calculation methodology below:

Step 1: Aggregate payroll costs (defined below) from 2019 or 2020 for employees whose principal place of residence is the United States

Step 2: Subtract any compensation paid to an employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred.

Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that borrower may be refinancing with the PPP loan seek to refinance. Do not include the amount of any “advance” under an EIDL COVID-19 loan.

“Payroll costs” means: (i) compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records); (ii) payment for vacation, parental, family, medical, or sick leave; (iii) allowance for separation or dismissal; (iv) payment for employee benefits (including

retirement and health care plans); (v) payment of state and local taxes assessed on compensation of employees. At least 60% of PPP loan proceeds must be used to pay payroll costs of the borrower.

As always, Bodman's attorneys are available to assist you as businesses adjust to this difficult time and we will be providing frequent updates and additional FAQs as the situation develops. If you have questions about this information, please contact your Bodman attorney or Darren Burmania at (616) 205-3313 or [dburmania@bodmanlaw.com](mailto:dburmania@bodmanlaw.com) or Joseph Morrison at (734) 930-2942 or [jmorrison@bodmanlaw.com](mailto:jmorrison@bodmanlaw.com) or Adam Weiner at (313) 392-1076 or [aweiner@bodmanlaw.com](mailto:aweiner@bodmanlaw.com). Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.