

Paycheck Protection Program Extended for Second Round of Financing

01/15/21

The Consolidated Appropriations Act (the “CAA”) signed into law on December 27, 2020 has authorized an additional round of Paycheck Protection Program (“PPP”) loans (the “Round 2 Loans”) to be funded from a \$284,450,000,000 federal appropriation. Although the process for applying for Round 2 Loans is generally the same as that for the initial PPP loans authorized last Spring (the “Round 1 Loans”), there are notable changes that make the Round 2 Loans more attractive to smaller borrowers.

Highlights of the Round 2 Loans include:

- Round 2 Loans are available to borrowers of Round 1 Loans
- Maximum Round 2 Loan amount is \$2 million (reduced from \$10 million maximum for Round 1 Loans)
- Borrowers eligible for Round 2 Loans may have no more than 300 employees (reduced from 500 employees for Round 1 Loans)
- Simplified application and [forgiveness](#) processes for Round 2 Loans of up to \$150,000
- Round 1 Loan borrower affiliation exceptions and multiple location exceptions for the hospitality industry continue to apply
- Certain specific types of entities are ineligible for Round 2 Loans, including entities owned or controlled by members of Congress or the executive branch; lobbying entities; foreign agents or Chinese owned or influenced entities; and recipients of grants under special CAA provisions for closed entertainment venues.

Demonstrated Income Decrease a Condition for PPP Round 2 Loans

An important condition of eligibility for Round 2 Loans is that the borrower must have suffered a 25% or greater decrease in its gross income for any calendar quarter in 2020 over the corresponding calendar quarter in 2019 as shown by tax returns or financial statements.

For Round 2 Loans of up to \$150,000, the CAA states that the Small Business Administration (“SBA”) will rely on the borrower’s certification as to revenue loss in considering the loan application, and will require documentary proof of loss only at the time of forgiveness. Nevertheless, we advise that each borrower make its determination in writing before applying for a Round 2 Loan so avoid confusion when applying for loan forgiveness.

As with the Round 1 Loans, loan amounts are 2-1/2 times the average monthly payroll expenditure of the borrower, with the clarification that the borrower can choose either the average monthly payroll for calendar year 2019 or for the 12 months immediately preceding the loan.

The regulations also allow the borrower to select its own “Covered Period” for any duration between 8 and 24 weeks, rather than having to choose 8 or 24 weeks as for the Round 1 Loans. This flexibility should enable simplified recordkeeping and easier forgiveness for Round 2 Loans.

Borrowers in the hospitality industry (NAICS code 72) such as hotels and restaurants are given favorable treatment as for the Round 1 Loans. Under the Round 2 Loans, they may obtain loans equal to 3.5 times their monthly payroll, but are still subject to the loan maximum of \$2 million.

Simplified Forgiveness Process for PPP Loans Up to \$150,000

The CAA has also simplified dramatically the forgiveness application for PPP Round 1 Loans of up to \$150,000 as well as for Round 2 Loans. Specifically, *Borrowers whose Round 1 Loans are \$150,000 or less and who have not yet submitted their forgiveness application should wait until the new simplified application is promulgated by the SBA.*

The new, simplified forgiveness application requires the borrower to specify only the number of employees the borrower was able to retain because of the PPP loan, the estimated amount of the PPP loan spent by the borrower in payroll costs and an attestation that the information provided is accurate. The borrower seeking forgiveness must also state that it has complied with all of the other requirements for a PPP loan and that it retains records proving such compliance.

Although the law specifies that a borrower applying for forgiveness for a loan of \$150,000 or less need not submit supporting documentation in addition to its certification, the borrower must have the information available for review by the lender or SBA in the event an audit or investigation is commenced.

Borrowers who have not yet submitted their applications for forgiveness and who have borrowed \$150,000 or less should wait to file their applications until the SBA provides the required new one-page form of application by January 20, 2021 as the CAA requires. If you have any questions about your business' eligibility for PPP Round 2 Loans or another PPP concern, contact [Douglas Lubic](#), [Peter Greenbaum](#) or another member of the Wilentz [Corporate Law](#) Team.

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Practice

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