

PAYCHECK PROTECTION PROGRAM PART 2

A SECOND ROUND OF FUNDING

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BACKGROUND

- In March 2020, Paycheck Protection Program (“PPP”) established under CARES Act to provide forgivable loans to small businesses and nonprofits to help those small businesses and nonprofits retain and rehire employees
- Borrowers able to apply for first round of financing under PPP through August 8, 2020 (“PPP1”)
- Borrowers no longer able to access PPP1

PPP2 - GENERALLY

- On December 27, 2020, Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act provided \$284 Billion for a second round of financing under PPP (“PPP2”) for small businesses and nonprofits experiencing significant revenue loss
- Eligibility for PPP2 based on revenue loss, but focus of program remains on retention and rehiring employees
- To qualify for 100% forgiveness, 60% of loan proceeds must be used for “Payroll Costs”

PPP2 - Generally

- Provides PPP1 borrowers chance to borrow a second time
- Provides new borrowers a chance to access PPP under PPP2
- Allows additional types of borrowers to access PPP under PPP2
- Expands how borrowers may use loan proceeds

PPP2 - GENERALLY

- At this time, no new loan applications or regulations from SBA (January 6 was deadline ... stay tuned ... Scholz Nonprofit Law will provide alerts)
- SBA trying to simplify applications and requirements for small borrowers
 - For loans of less than \$150,000 a simplified 1-page application and simplified 1-page forgiveness application (Scholz Nonprofit Law will provide alerts)

PPP2 - GENERALLY

- Borrowers required to certify “current economic uncertainty” makes loan necessary ... but ... borrowers of less than \$2 million are deemed to have made “necessity” certification in good faith
- PPP2 applications again submitted to traditional lenders (go to relationship lenders first ... best if you have credit relationship)
 - Be organized (make it easy for lender to say yes or to jump you to front of line)

PPP2 - GENERALLY

- PPP2 loans 100% guaranteed by SBA ... but lenders still have “know your customer” requirements under Bank Secrecy Act
- Check loan covenants and debt service coverage ratios in existing loan documents or any other limitations on incurrence of additional debt
- Have an officer’s certificate and resolutions demonstrating proper authorization (form officer’s certificate and resolutions on Scholz Nonprofit Law website)
- Complete application and any calculations neatly and in advance (it should be easier this time)

PPP2 - GENERALLY

- Organize required back-up material
 - Gross revenue and gross receipts (make sure your income statements are in order) to demonstrate hardship
 - “Payroll Costs” to calculate loan amount
- Prepare an officer’s certificate (check Scholz Nonprofit Law website)
- Must apply by March 31, 2021 (apply early ... before funds exhausted)

ELIGIBILITY TO RECEIVE PPP2 LOAN

- In addition to small businesses and nonprofits, eligible borrowers now include 501(c)(6) organizations and destination marketing organizations if
 - Organization has fewer than 300 employees
 - Organization does not receive more than 15% of receipts from lobbying
 - Organization's lobbying activities do not comprise more than 15% of its activities
 - Organization's lobbying costs did not exceed \$1,000,000 in most recent tax year, ended before 2/15/2020

ELIGIBILITY TO RECEIVE PPP2 LOAN

- Eligibility requirements for all borrowers (old and new):
 - In operation before February 15, 2020
 - Fewer than 300 employees

ELIGIBILITY TO RECEIVE PPP2 LOAN

- Must have used (or will use) all loan proceeds from original PPP1 loan
- Must demonstrate 25% reduction in gross revenue (gross receipts for nonprofits) for at least 1 calendar quarter, when compared to same calendar quarter in 2019
- Borrower may not receive both “Shuttered Venue” grant and PPP2

LOAN SIZE

- Maximum loan size is lesser of \$2 million or 2.5 x average monthly “Payroll Costs” in 1-year prior to loan application or calendar year 2020
 - 3.5 x average monthly “Payroll Costs” for accommodation and food service
 - For seasonal employers (operates not more than 7 months per year or no more than 1/3 of revenue in any 6 months) calculate maximum loan amount based on any 12-week period between 2/15/19 and 2/15/2020
 - New entities calculate based on 2.5 x average monthly “Payroll Costs”

LOAN SIZE

- “Payroll Costs”
 - Compensation to employees residing in USA (salary, wages, commissions or similar compensation)
 - Cash tips or equivalent (based on employer records of past tips or reasonable, good-faith employer estimate of tips)
 - Payment for vacation, parental, family, medical or sick leave

LOAN SIZE

- Allowances for separation or dismissal
- Payments for employee benefits like group health coverage (including insurance premiums) and retirement
- Payment of state and local taxes assessed on compensation

LOAN SIZE

- And ... for independent contractors/sole proprietors, wages, commissions, income or set earnings from self-employment
- NEW ELIGIBLE PAYROLL COSTS: Group life, disability, vision and dental insurance premiums

PERMITTED USES OF LOAN PROCEEDS

- Focus on 60/40 split for full forgiveness
- Same Permitted Uses as Under PPP1
 - “Payroll Costs” (60%)
 - Mortgage interest
 - Rent
 - Utilities

PERMITTED USES OF LOAN PROCEEDS

- New and Additional Uses of Loan Proceeds Under PPP2
 - Payments for software, cloud computing and other human resources and accounting needs
 - Uninsured costs related to property damage caused by civil unrest
 - Supplier costs for borrower's "essential needs" pursuant to written agreement executed before December 27, 2020 (e.g. contract, purchase order etc.) ... or ... costs related to perishable goods at any time
 - Costs for personal protective equipment and costs to comply with COVID-related safety guidelines

ELIGIBILITY FOR LOAN FORGIVENESS

- At least 60% of loan must be spent on “Payroll Costs”
- After receipt of loan proceeds, borrower entitled to select its own “covered period” between 8 and 24 weeks
- Retains rule reducing loan forgiveness for borrower reducing number of employees retained and reducing employee salaries more than 25%

ELIGIBILITY FOR LOAN FORGIVENESS

- For borrower's borrowing less than \$150,000, a simplified one-page procedure for forgiveness
- Borrower will receive forgiveness if borrower signs certification with description of number of employees borrower able to retain because of loan, estimated amount of loan spend on "Payroll Costs" and total loan amount (there may be additional certifications)

ADDITIONAL CHANGES UNDER PPP2

- Eliminates requirement that EIDL advances be subtracted from PPP forgiveness
- Loans made under PPP1 are eligible to utilize expandable forgivable expenses provided for under PPP2, “except for borrowers who have already had their loans forgiven”
 - Does this mean PPP1 borrowers can amend PPP1 loan forgiveness application to have more forgiven?
 - I predict this will be a mess!

ADDITIONAL CHANGES UNDER PPP2

- PPP2 allows borrower to return unforgiven PPP1 loan funds so borrower can apply for maximum amount under PPP2
 - If existence of PPP1 funding interferes PPP2 funding, borrower may return PPP1 funds
 - Maybe borrower has increased “Payroll Costs” and PPP2 more advantageous
- Allows borrowers to deduct expenses paid for with PPP2 loan proceeds

ADDITIONAL CHANGES UNDER PPP2

- Establishes a procedure in bankruptcy if SBA determines certain small business debtors in Chapter 11 are eligible for PPP2 loans
- SBA will automatically audit loans of \$2 million or more
- SBA will include a voluntary demographic information section in loan application

DIRECT APPROPRIATIONS FOR UNDERSERVED COMMUNITIES

- \$15 billion for loans issued by small and community financial institutions, community development financial institutions (CDFIs) and minority deposit institutions (MDIs)
- \$35 billion for first time borrowers
- \$15 billion for first time borrowers with 10 or fewer employees or for loans of less than \$250,000

DIRECT APPROPRIATIONS FOR UNDERSERVED COMMUNITIES

- \$25 billion for first time borrowers with 10 or fewer employees in low income areas or for loans of less than \$250,000 in low income areas
- \$25 billion for Minority Business Development Center programs under the Minority Business Development Agency (MBDA)
- \$20 billion for targeted EIDL funding
- \$57 million for Microloan programs

GRANTS FOR SHUTTERED VENUES

- \$15 billion for grants to live venue operators or promoters, theatrical producers, live performing arts organizations, zoos, museums, theater operators or talent representatives who demonstrate at least a 25% reduction in revenue
- \$2 billion set-aside for venues that employ 50 or fewer people (available for 60 days only)
- Initial grant of up to \$10 million with a possible second grant of 50% of initial grant

GRANTS FOR SHUTTERED VENUES

- Initial 14 days of grant program accepting applications from venues facing revenue loss of 90% or more
- Second 14 days of grant program accepting application from venues facing revenue loss of 70% or more
- Grants to be used for "Payroll Costs," rent, utilities and PPE