Second-Draw Paycheck Protection Program Loan Guidance Issued by SBA

Overview:

The SBA issued an Interim Final Rule and Frequently Asked Questions dated January 19, 2021, to help lenders and borrowers comply with the rebooted Paycheck Protection Program (PPP). The guidance assists borrowers in calculating their reduction in revenue to qualify for a Second-Draw loan, revised payroll cost definitions, and new loan forgiveness requirements.

The information provided here should be treated as a summary of SBA's interpretation of the CARES Act, the Economic Aid Act, and the PPP regulations. Borrowers may apply for a PPP loan from January 13, 2021, until funds are fully allocated, or March 31, 2021. We previously summarized the changes under the Consolidated Appropriations Act, 2021 in the PPP HERE.

Maximum Amount Calculation:

When determining the maximum amount of borrower eligibility, payroll costs from either 2019 or 2020 may be used to substantiate a second-draw PPP loan amount calculation.

Generally, documentation must be provided to verify any figures or calculations provided by the borrower for whichever time-frame used for the calculation. However, if a borrower plans to submit an application to the same lender as used for a first-draw PPP loan and uses the same payroll timeframe used for a first-draw PPP loan, no additional documentation is required.

There are several variances in how borrowers should go about calculating their payroll costs. Self-employed borrowers with employees, self-employed borrowers without employees, farmers, ranchers, and partnerships can view specific instructions and how to calculate their maximum eligibility amount in the SBA's FAQ.

Revenue Reduction:

Second-draw loans are available to borrowers:

1. with 300 or fewer employees;
2. that have experienced a 25% or greater drop in revenue between comparable quarters in 2019 to 2020; and
3. that have previously received a first-draw PPP loan and will or has used the full amount only for authorized uses.

For the purposes of determining revenue reduction, borrowers should begin by calculating their overall revenue using the gross receipts for all income generated in 2020, compare this figure to the income generated in 2019, and determine if a decrease of 25% or greater has ensued in any comparable quarter. Alternatively, borrowers may compare annual gross receipts in 2020 with annual gross receipts in 2019 if they were in business for all of 2019. Any monies received from a first-draw PPP loan should not be included in this calculation.

Gross receipts are all revenue in whatever form received, including but not limited to, sales of products or services, interest, dividends, rents, royalties, fees, commissions, etc. Moreover, forms such as income from investments and business reimbursements must also be included in gross receipts calculation.

However, while most revenue must be included, it explicitly states that borrowers should not include the following items when calculating their gross revenue:

- taxes that have been paid to a taxing authority - such as sales taxes,
- profits from transactions with domestic or foreign affiliates; and
- monies collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder, or customs broker.

There are several forms of documentation that can serve as appropriate verification for substantiating a 25% or greater decrease in gross receipts including quarterly financial statements, quarterly or monthly bank statements, or annual tax filings from the Internal Revenue Service (IRS).

Updates to Reduction in Forgiveness:

The updated Interim Final Rule (IFR) revised the look-back period to calculate a reduction in forgiveness due to a change in Full-Time Equivalent (FTE) employee counts. The IFR also reinforced that certain reductions in salaries of employees will continue to reduce the eligible loan forgiveness amount.

Reduction in FTE: For both first-draw and second-draw loans, the borrower must first select a reference period: (i) February 15, 2019, through June 30, 2019; (ii) January 1, 2020, through February 29, 2020; or (iii) in the case of a seasonal employer. either of the two preceding methods or a consecutive 12-week period between February 15, 2019, and February 15, 2020. If the average number of FTE employees during the covered period is less than during the reference period, the total eligible expenses available for forgiveness is reduced proportionally by the percentage reduction in FTE employees.

Reduction in Employee Salaries: A reduction in an employee’s salary or wages in excess of 25% will generally result in a reduction in the loan forgiveness amount unless an exception applies. Specifically, for each new employee in 2020 and 2021, as well as each existing employee who was not paid more than the annualized equivalent of $100,000 in any pay period in 2019, the borrower must reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25% of base salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period (the "reference period"), subject to exceptions for borrowers who restore reduced wages or salaries. This reduction calculation is performed on a per-employee basis, not in the aggregate.

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