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Paycheck Protection Program Update: Coronavirus Response and Relief Supplemental Appropriations Act Allows Second Round of PPP Funding and Brings Significant Changes to PPP Loan Process

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The Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) was enacted on December 27, 2020. The new law, the federal government's follow-up to the CARES Act, provides for renewed stimulus payments to individuals and businesses and includes significant provisions relating to the Paycheck Protection Program (PPP). This Client Alert provides an overview of those provisions.

New PPP Loans

- CRRSA allocates approximately \$285 billion for a new round of PPP loans. First-time borrowers and prior PPP borrowers are both eligible for this funding, regardless of whether any previous PPP loans have been re-paid or forgiven.
- The loans are available to businesses with 300 or fewer employees, and the maximum loan amount is now \$2 million.
- The borrower must demonstrate that it has used, or will use, the full amount of its first PPP loan and that the borrower suffered a 25% gross revenue decline in any 2020 quarter compared with the same quarter in 2019.
- The loans will be available through March 31, 2021 and borrowers can obtain only one second draw loan.
- The loans will be based on 2.5 times the sum of average monthly payroll costs however restaurants and hotels may receive loans of up to 3.5 times the average monthly payroll costs.

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- There are several new categories of borrowers who can obtain PPP loans, such as business associations and chambers of commerce, provided they do not receive more than 15% of their revenues from lobbying, and lobbying activities do not comprise more than 15% of their activities.

New Expenses Qualify for Loan Forgiveness

- For new and prior PPP loans, 60% of the loan must be used for payroll costs in order to qualify for forgiveness, however the 40% nonpayroll costs have been expanded to include new expense items in addition to rent, mortgage interest payments and utilities.
- New eligible expenses include worker protection and facility modification expenditures such as personal protective equipment, software or cloud computing services, costs related to property damage due to public disturbances during 2020 that were not covered by insurance, and payments to essential suppliers.

Tax Treatment of PPP Loans

- CRRSA clarifies that gross income for federal tax purposes does not include any amount that would otherwise arise from the forgiveness of a PPP loan. The new law also reverses prior IRS rulings and clarifies that expenses paid with PPP loans, such as payroll, rent and utilities, can be deducted as business expenses, even if the loans are forgiven.
- Businesses can also obtain the Employee Retention Tax Credit for both 2020 and 2021 provided that the PPP loan and the tax credit do not cover the same payroll expenses.

Streamlined Loan Forgiveness

- CRRSA expands the streamlined PPP loan forgiveness process, increasing the eligibility from loans under \$50,000 to loans under \$150,000. Borrowers will need to provide a one-page certification, the form for which will be available later this month.
- This will affect the overwhelming majority of loans made under the PPP program, as 87.4% of loans issued nationwide (more than 135,000 in New Jersey alone) were under \$150,000.

CRRSA requires the Small Business Administration (SBA) to issue interim rules and related forms within the coming weeks. We will continue to monitor the regulations and guidance documents and will provide updates as they arise.

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