Paycheck Protection Program and
Economic Injury Disaster Loan Program Revitalized

Through the passage of yet another piece of legislation, The Consolidated Appropriations Act, 2021, additional funding has been added to two separate programs designed to help small businesses access forgivable dollars to help them survive the COVID-19 pandemic. The two programs in question are the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loan (EIDL) program, both of which are administered through the Small Business Administration (SBA).

The PPP was created earlier this year and allows small businesses to apply for loans that can be completely forgiven if the loan dollars are used according to the terms and conditions of the program. The program has run out of funds or stopped accepting applications twice this year, most recently on August 8th. This newest round of legislation puts an additional $284B back into the program, and small businesses will once again be able to apply for these loans. It is important to note that not all of the dollars are available for any business type, nor are all of the dollars available at any type of lending institution. Below is a quick breakdown of some of the set-asides within the $284B pool of money that is available in total:

- $15B is being set aside for loans made by community financial institutions,
- $15B is designated for loans made by insured depository institutions, credit unions, or institutions of the Farm Credit System with less than $10B in assets
- $40B for eligible recipients that are receiving less than $250,000 and:
    - Have 10 or fewer employees; or
    - Are located in a neighborhood that is a low-income neighborhood or a moderate-income neighborhood
    - of the total $40B available here, $25B will be designated for **second draw** loans only
- At least $35B is specifically set aside for loans to eligible recipients that **have not** previously received a loan (first time applicants)

Second Draw PPP Loans - Businesses which already received a PPP loan earlier this year may be eligible for a “second draw” loan. In order to be eligible for a second draw PPP loan, you need to have 300 or fewer employees (that number was 500 employees for first time recipients in the initial rounds), and you need to be able to demonstrate that you experienced a reduction in gross receipts of at least 25% in any quarter when compared to the same time period from 2019.

Economic Injury Disaster Loans - The EIDL program, which has been in existence for several years, added a payment advance feature to the EIDLs that provided an additional $1000 per employee, up to a maximum of $10,000 for any business qualifying for an EIDL. Those funds tacked on as a payment advance that were above and beyond the actual loan amount could be 100% forgiven, though the loan itself would remain a loan that requires repayment with interest. That program also received an additional $20,000,000,000 to be used for the forgivable advance portion of those loans.

Tax Implications and PPP Loan Forgiveness: As VGM offered in a series of Webinars, there was a concern that soon after borrowers began obtaining the loan, the IRS issued Notice 2020-32, which concluded that expenses paid with PPP funds would not be deductible. Thus, while the forgiveness of the funds would not generate taxable income, the denial of a deduction related to the use of the funds would effectively make the loan taxable. Many tax experts opined that this was the correct interpretation from a tax policy perspective, but it came as unexpected and unwelcome news to thousands of borrowers.

Ever since the IRS published Notice 2020-32, borrowers, tax professionals and other stakeholders lobbied for Congress to overrule the IRS and provide a double benefit: tax-free forgiveness of loan proceeds AND deductible expenses paid with PPP funds. Section 276 of Division N of The Consolidated Appropriations Act, 2021 does just that, providing that "no deduction shall be denied or reduced, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income." Importantly, this rule applies to ALL borrowers; even those who have already applied for forgiveness. Thus, **expenses paid with PPP funds are now completely deductible**.

Other Loan Forgiveness Details:

1) The bill provides taxpayers to "double dip" in a number of scenarios: for example, receipt of an Economic Injury Disaster Loan advance will no longer be taxable, and any expenses paid with the advance will remain deductible. The same holds true for borrowers of traditional Section 7 SBA loans who had six months of their principal and interest paid pursuant to the CARES Act.
2) The EIDL Advance Grants of up to $10,000 are no longer required to be deducted from your PPP loan forgiveness. Previously, PPP recipients who also received an EIDL Advance Grant were required to reduce the amount of PPP forgiveness by the amount they received through the EIDL Advance Grant.

While both the PPP and EIDL programs are administered by the SBA, the application process is different for each program. If you wish to apply for an EIDL, you can do so directly with the SBA here: https://covid19relief.sba.gov/#/.

To apply for a PPP loan, contact the lending institution of your choice to begin the application process. As outlined above, not all banks have access to all of the funds, so if you can't apply through your first choice, you may need to go to another lending institution to receive your loan. There is a list of SBA approved lending institutions found here: https://www.sba.gov/document/support-paycheck-protection-program-participating-lenders.

Please reach out to Craig Douglas (craig.douglas@vgm.com) or Mark Higley (mark.higley@vgm.com) if you have any questions about either of these programs.