Food and Beverage Industry Alert – PPP Clarifications from Treasury Department

April 8, 2020

We at Anchin hope that you– our friends in the food and beverage industry– are safe and healthy.

We know that you are all having very different journeys on this COVID-19 rollercoaster. Some of you are having unprecedented success while others may be fighting to survive. We want to let you know that we are examining the government's CARES Act package with you and your business in mind, and are committed to helping you to move forward in the best possible way.

The Treasury Department has released FAQs providing further clarification of the PPP loan program. Knowing that this program can help support your business in this challenging landscape, we have included a link which houses the Treasury Department's content, as well as some key takeaways below. We suggest that you review this update carefully to determine how it may affect your application and the calculation of your loan amount.

Treasury website at: https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequenty-Asked-Questions.pdf

Items of particular interest from the Treasury FAQ's include:

Item 2 indicates another method for a business to qualify as a small business eligible for PPP under the SBA's "alternative size standard". A business that has not otherwise qualified may do so by meeting both a maximum tangible net worth test of $15 million as of March 27, 2020, AND an average net income limit of $5 million over the previous two fiscal years. If your company failed the 500 or fewer employee test, you may still be eligible to apply for a PPP Loan if you do not exceed these two limits which are defined in the FAQs. Unfortunately, this test is still subject to the Affiliation rules (see Item 6).

Item 6 repeats that a minority owner will be deemed to have control if they have the right to prevent a quorum or otherwise block action by the Board or the Owners. The only way to avoid this is for that owner to irrevocably give up those rights prior to application for PPP. Otherwise, the existing Affiliation rules still apply.

Item 7 clarifies the $100,000 limit per employee in calculating payroll cost. The cap is to be applied only to the cash compensation of each employee and not to the health or retirement benefits, or state and local taxes assessed on compensation. Therefore, the total benefits costs are added to your payroll costs for the period being used (see Item 14 below) when determining your average monthly payroll costs.

Item 10 clarifies that companies that utilize a PEO are eligible for PPP and describes what these applicants should provide as documentation.

Item 14 states that borrowers have the choice of calculating their Payroll Costs using calendar year 2019 OR the previous 12 months. It also clarifies that a "new business" is one that was not in business from February 15th to June 30th, 2019. It further states that in determining headcount for the SBA size test, borrowers may use the average employment over the same time periods used in their Payroll Cost calculation, OR they may use the prior 12 months. Lastly, borrowers should only average the headcount for the months which they have been in business during the chosen measurement period.

Item 16 explains that federal payroll taxes and withholding taxes are to be ignored for all purposes (payroll costs in determining loan amount, the qualified spend during the 8-week benefit period, and also for loan forgiveness).

Item 17 states that companies who already filed their application for a PPP loan prior to this guidance are not required to amend or update their application. However, if their Lender has not yet processed their application, they may revise their application based on clarifications in this FAQ. So if you would benefit from this new guidance, contact your Lender immediately and inquire if you may revise your application!

Our Anchin COVID-19 Resource Team continues to monitor the ongoing flow of clarifications and changes to the PPP Program by the Treasury. Please contact your Anchin Relationship Partner for additional information or contact us at COVID19@anchin.com.

Disclaimer: Please note this is based on the information that is currently available and is subject to change.