

SBA Reopens Portal for PPP Round Two Applications; Quick Action Recommended

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The SBA, in consultation with the Department of Treasury, has announced that it is reopening its portal for first draw and second draw PPP applications to all eligible PPP lenders today, January 19, 2021. The portal had previously been reopened to community financial institutions for first draw applications on Jan. 11 and second draw applications on Jan. 13 and to small eligible lenders (those with less than \$1 billion in assets) on Jan. 15.

The deadline for submitting applications is March 31, 2021. Eligible borrowers desiring to apply for a first draw PPP loan (or increase in a first draw PPP loan) or second draw PPP loan should do so as soon as practicable in view of the funding available under the Economic Aid Act and last year's experience with applications for first round PPP loans.

A copy of the application for a first draw PPP loan may be found here [[PPP First Draw Borrower Application Form \(sba.gov\)](#)] and a copy of the application for a second draw PPP loan may be found here [[PPP Second Draw Borrower Application Form \(sba.gov\)](#)].

BACKGROUND

The Economic Aid to Hard-Hit Small Business, Nonprofits, and Venues Act (Pub. L. 116-260) (Economic Aid Act) (enacted as part of the 2021 Consolidated Appropriations Act), which became law December 27, 2020, extends the authority of the Small Business Authority (SBA) to guarantee PPP loans through March 31, 2021, and revises certain requirements of the program. The Economic Aid Act authorizes \$284 billion in additional funding for the "round two" PPP loan program.

The SBA and the Department of the Treasury have issued two interim final rules (IFRs) with respect to the round two PPP loan program. The first IFR, "Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by the Economic Aid Act" ("[Consolidated First Draw PPP IFR](#)"), incorporates changes to PPP requirements made by the Economic Aid Act and consolidates and restates 19 IFRs issued by the SBA and Department Treasury with respect to the round one PPP loan program. The second IFR, "Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans" ("[Second Draw PPP IFR](#)"), implements the "second draw" PPP loans

authorized under the Economic Aid Act. The Consolidated First Draw PPP IFR and the Second Draw PPP IFR became effective as of January 12, 2021. The Consolidated First Draw PPP IFR indicates that the SBA intends to issue an additional consolidated IFR covering PPP loan forgiveness and the PPP loan review process.

SUMMARY OF FIRST DRAW PPP LOANS

A first draw PPP loan is available only to first-time eligible borrowers (those not having received a PPP loan in the round one PPP program). The eligibility requirements for a first draw PPP loan are the same as in the round one PPP program in many respects but there are several changes:

- The applicant must make the certifications and representations and warranties as set forth in the application form including that "[c]urrent economic uncertainty makes this loan request necessary to support ongoing operations of the [a]pplicant."
- The applicant must have been in operation on Feb. 15, 2020, and must have had employees or independent contractor on that date or be an eligible self-employed individual, independent contractor or some proprietor with no employees.
- The applicant must either meet (a) applicable employee-based size tests (generally no more than the greater of 500 employees or the employee-based size standard for the applicant's NAISC code (taking into account employees of the applicant and all domestic and foreign affiliates, subject to waiver of the affiliation rules as to certain businesses including eligible franchises) and exceptions applicable to certain newly added eligible borrowers including housing cooperatives (300 employees) and newspaper publishing companies, radio and television broadcasting companies and nonprofit public broadcasting companies (500 employees per location), or (b) applicable revenue-based size standard for the applicant's NAISC code or an SBA alternative size standard.
- Added as eligible borrowers are housing cooperatives; newspaper publishing companies, radio and television broadcasting companies and nonprofit public broadcasting companies; tax-exempt 501(c)(3) hospitals owned by a state or local government (if the hospital receives less than 50% of funding from state or local governmental sources exclusive of Medicaid tax); exempt electric and telephone cooperatives; tax exempt destination marketing organizations; and tax exempt 501(d)(6) organizations that meet other eligibility requirements.
- Ineligible for PPP loans are public companies, hedge funds, private equity firms, companies in bankruptcy at time of the application or before the pp loan is disbursed, and permanently closed companies.
- The maximum amount of a first draw PPP loan is the lesser of (a) 2-1/2 times the average monthly payroll costs of the borrower (calculated in accordance with the first draw PPP rules which now permit the borrower to select either 2019 or 2020 as the base period) or (b) \$10,000,000. Members of a single corporate group may not receive first draw PPP loans greater than a total \$20 million for all members of the group regardless of any waiver of affiliation rules.
- The permitted uses of PPP loan proceeds are expanded to include covered operations expenditures (software and cloud computing services to facilitate business operations); covered property damage costs (for property damage, vandalism or looting due to public

disturbances during 2020 not covered by insurance or other compensation); covered supplier costs (for essential goods subject to certain conditions); and covered worker protection expenditures (operating and capital expenditures to comply with COVID guidance including for employee personal protection equipment).

- The borrower is permitted to select the length of the forgiveness period between 8 weeks and 24 weeks after the loan disbursement date (previously borrowers were required to select 8 or 24 weeks). At least 60% of the PPP loan proceeds must be used for eligible payroll costs for the full amount of the loan to be potentially forgivable. The forgiveness deduction of any EIDL advance amount received by the borrower was also removed.
- A borrower may only apply for and receive one first draw PPP loan although certain borrowers may reapply or request an increase of an existing first draw PPP loan (including partnerships to include general partners in the calculation of the loan amount, seasonal employers to increase loan amount using the revised calculation in accordance with the Economic Aid Act, and if the borrower returned or did not accept all or part of the previously approved PPP loan amount).

SUMMARY OF SECOND DRAW PPP LOANS

A "second draw" PPP loan is available only to eligible borrowers that previously received a first draw PPP loan and have used or will use the full amount of the proceeds (including any increased amount as described above) on or before the expected date of the disbursement of the second draw PPP loan. The principal differences in the eligibility requirements for a second draw PPP loan compared to the requirements for a first draw PPP loan include:

- The employee-based size requirement has been reduced to 300 employees (applying the affiliation rules).
- The applicant must have experienced a reduction in revenues (gross receipts) of at least 25% in at least one quarter of 2020 as compared to the corresponding quarter in 2019.
- The following additional entities are not eligible for a second draw PPP loan:
 - Companies engaged in lobbying activities, including public policy or political strategy research or advocacy ("think tank").
 - Any entity (i) for which an entity organized under the laws of China or Hong Kong or has significant operations in China or Hong Kong owns or controls 20% or more of the economic interest of the entity (including equity shares or capital or profit interests in a LLC or partnership) or (ii) has a member of the board of directors that is a resident of China.
 - Any person or entity required to register under Foreign Agents Registration Act.
- The maximum loan amount of a second draw PPP loan has been reduced to the lesser of (a) 2-1/2 times (or 3-1/2 times in the case of hotels and restaurants) the average monthly payroll costs of the borrower or (b) \$2,000,000. Members of a single corporate group may not receive second draw PPP loans greater than a total \$4 million for all members of the group regardless

of any waiver of affiliation rules.

- A borrower may only apply and receive one second draw PPP loan.

The information in this alert is based on the Economic Aid Act, the Consolidated First Draw PPP IFR, and the Second Draw IFR and is subject to change as additional guidance is issued by the SBA and the Department of Treasury as to PPP loan forgiveness, review of PPP loans and other matters.

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