



Revised 1/8/21

PPP Loan Second Draw – SBA IFR.

Note: This is a summary of the SBA Interim Final Rule related to the PPP Loan Second Draw.

SMALL BUSINESS ADMINISTRATION
13 CFR Parts 120 and 121
Docket No. SBA-2021-0002
RIN 3245-AH63

NOTE: This white paper covers Second Draw Loans. It should be noted that the SBA is also re-opening the ability for qualifying businesses to First Draw Loans. Initially only community financial institutions will be able to make First Draw PPP Loans on Monday, January 11, and Second Draw PPP Loans on Wednesday, January 13. The PPP will open to all participating lenders shortly thereafter.

Interim Final Rule (IFR)

Business Loan Program Temporary Changes. Paycheck Protection Program Second Draw Loans.

The last day to apply for and receive a PPP loan is March 31, 2021.

Second Draw PPP Loans are generally subject to the same terms, conditions and requirements as First Draw PPP Loans. These include, but are not limited to the following terms:

- The guarantee percentage is 100 percent.
- No collateral will be required.
- No personal guarantees will be required.
- The interest rate will be one percent, calculated on a non-compounding, non-adjustable basis. (Sec 339 of the Economic Aid Act)
- The maturity is five years.

- All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower to determine the borrower's eligibility and use of loan proceeds.

Eligibility Requirements

- Second Draw PPP Loan may only be made to an eligible borrower that:
 - i. has received a First Draw PPP Loan, and
 - ii. has used, or will use, the full amount of the First Draw PPP Loan on or before the expected date on which the Second Draw PPP Loan is disbursed to the borrower. (Small Business Act 7(a)(37)(O))
- 300 or fewer employees
- Experienced a revenue reduction of 25% or greater in 2020 relative to 2019. (Paragraph 7(a)(37)(A)(iv) of the Small Business Act)
- Revenue reduction is determined by comparing the borrower's quarterly gross receipts for one quarter in 2020 with the borrower's gross receipts for the corresponding quarter of 2019.

For example, a borrower with gross receipts of \$50,000 in the second quarter of 2019 and gross receipts of \$30,000 in the second quarter of 2020 has experienced a revenue reduction of 40 percent between the quarters and is therefore eligible for a Second Draw PPP loan (assuming all other eligibility criteria are met).

A borrower that was in operation in all four quarters of 2019 is deemed to have experienced the required revenue reduction if it experienced a reduction in annual receipts of 25 percent or greater in 2020 compared to 2019 and the borrower submits copies of its annual tax forms substantiating the revenue decline. (IFR Subsection (c)(1)(iv)(B))

- Any forgiveness amount of a First Draw PPP Loan that a borrower received in calendar year 2020 is **excluded** from a borrower's gross receipts when determining if there's a 25% revenue reduction.

Business Concerns with More than One Physical Location

For Second Draw PPP Loans the limit on employees per physical location is reduced to 300. See PPP FAQ #24 (posted April 13, 2020), available at <https://www.sba.gov/sites/default/files/2020-12/Final%20PPP%20FAQs%20%28December%209%202020%29-508.pdf>.

Affiliation Rules

As with First Draw PPP Loans, in most cases, a borrower is considered together with its affiliates to determine eligibility for the PPP. (Paragraph 7(a)(36)(D)(iv) of the Small Business Act)

Waiver: Business concerns with a NAICS code beginning with 72 qualify for the affiliation waiver for Second Draw PPP Loans if they employ 300 or fewer employees. The waiver may also apply to eligible news organizations with a NAICS code beginning with 511110 or 5151

Excluded Entities

- A borrower that received a First Draw PPP Loan despite being ineligible to receive the loan is not eligible to receive a Second Draw PPP Loan.
- Entity primarily engaged in political activities or lobbying.
- Certain entities organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong, or with other specified ties to the People's Republic of China or the Special Administrative Region of Hong Kong.
- Any person required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938.
- A person or entity that receives a grant for shuttered venue operators under section 324 of the Economic Aid Act.
- Entities in which the President, Vice President, head of an Executive department, or a Member of Congress, or the spouse of such person who owns, controls, or holds at least 20 percent of any class of equity; or
- A publicly traded company, defined as an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934.

Payroll Cost Calculation

The maximum loan amount for a Second Draw PPP Loan is equal to the lesser of 2½ (3½ in the case of a business with a NAICS Code 72 – restaurant and accommodation) months of the borrower's average monthly payroll costs or \$2 million.

Payroll costs for a Second Draw PPP Loan is either:

- The twelve-month period prior to when the loan is made, or as an option, borrowers are allowed to use calendar 2020, or
- Calendar year 2019.

Borrowers who are not self-employed are also permitted to use the precise 1-year period before the date on which the loan is made to calculate payroll costs if they choose not to use 2019 or 2020 to calculate payroll costs.

Farmers - The same general calculation for farmers and ranchers applicable to First Draw PPP Loans applies to Second Draw PPP Loans, with adjustments that:

- (i) eliminate the provision for refinancing of an Economic Injury Disaster Loan (EIDL), which does not apply to Second Draw PPP Loans, and
- (ii) apply the choice of time period for calculating a farmer's or rancher's payroll costs for Second Draw PPP Loans, consistent with other Second

Draw PPP Loans. This IFR also specifies that, in calculating a farmer's or rancher's maximum loan amount, any employee payroll costs should be subtracted from the farmer's or rancher's gross income to avoid double-counting amounts that represent pay to the employees of the farmer or rancher.

Self-employed Individuals and Partnerships

Use the same methodologies that were used for First Draw PPP Loans.

Single Corporate Group

A single corporate group shall in no event receive more than \$4,000,000 of Second Draw PPP Loans in the aggregate.

Other Issues

- The Program's eligibility is expanded to include 501(c)(6)s, housing cooperatives, destination marketing organizations, among other types of organizations.
- The PPP provides greater flexibility for seasonal employees.
- Certain existing PPP borrowers can request to modify their First Draw PPP Loan amount.

Second Draw PPP Loan Application and Documentation Requirements

The documentation required to substantiate an applicant's payroll cost calculations is generally the same as documentation required for First Draw PPP Loans.

However, no additional documentation to substantiate payroll costs will be required if the applicant

- (i) used calendar year 2019 figures to determine its First Draw PPP Loan amount,
- (ii) used calendar year 2019 figures to determine its Second Draw PPP Loan amount (instead of calendar year 2020), and
- (iii) the lender for the applicant's Second Draw PPP Loan is the same as the lender that made the applicant's First Draw PPP Loan.

In such cases, additional documentation is not required because the lender already has the relevant documentation supporting the borrower's payroll costs. The lender may request additional documentation, however, if it would help in the lender's review of the borrower's loan amount calculation.

For loans with a principal amount greater than \$150,000, the applicant must also submit documentation adequate to establish that the applicant experienced a revenue reduction of 25% or greater in 2020 relative to 2019. Such documentation may include relevant tax forms, including annual tax forms, or, if relevant tax forms are not available, quarterly financial statements or bank statements.

For loans with a principal amount of \$150,000 or less, such documentation is not required at the time the borrower submits its application for a loan but must be submitted on or before the date the borrower applies for loan forgiveness.

If a borrower does not submit an application for loan forgiveness, such documentation must be provided upon SBA's request.

The Following Was Not Included in the IFR (but is part of COVIDTRA)

Forgivable Expenses

The forgivable expenses include those in the First Draw PPP Loan and expanded to include (COVIDTRA Sec 304):

- Additional group insurance payments, including vision, dental, disability and life insurance included in payroll costs.
- Operational Costs
- Property Damage Costs
- Supplier costs on existing contracts and purchase orders, including the cost for perishable goods at any time.
- Investments in facility modifications and personal protective equipment needed to operate safely and technology operations expenditures.

The term 'covered supplier cost' - Means an expenditure made by an entity to a supplier of goods for the supply of goods that (Sec 304(b)(7)(A) —

- Are essential to the operations of the entity at the time at which the expenditure is made; and
- Is made pursuant to a contract, order, or purchase order—
 - In effect at any time before the covered period or
 - With respect to perishable goods.

The term 'covered worker protection expenditure'— Means an operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by Federal, State and local governments during the period beginning on March 1, 2020 and ending the date on which, the national emergency related to COVID-19 declared by the President expires (Sec 304(b)(7)(B)).

NOTE: The legislation includes a long list of examples of what does and does not apply.

The term 'covered operations expenditure' - Means a payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses.

The term 'covered property damage cost' - means a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation.

Loan Forgiveness – Full loan forgiveness is available if the borrower spends at least 60% of the second draw on payroll costs.

Covered Period - Borrowers can set their PPP loan's covered period to be any length between 8 and 24 weeks after origination of the loan to best meet their business needs. (SBA Announcement 1/8/21; COVIDTRA, Sec. 306)

California Preparers – Way back when, before COVIDTRA, California adopted the IRS position that expenses paid with forgiven loan funds are don't



For California purposes the expenses paid with forgiven loan proceeds are not deductible as business expense. CA adopted the IRS position before Congress rebuffed the IRS position and allowed the expenses to be deducted on a federal return.

To date, CA has not changed its position and the expenses paid for with forgiven PPP loan proceeds are not deductible.

We will have wait and see if CA changes their position to coincide with the Federal.