

SBA Releases Interim Final Rules for PPP Loans

The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the Economic Aid Act) is contained in the Consolidated Appropriations Act, 2021 (Consolidated Appropriations Act), a \$900 billion, nearly 5,600-page bill passed by the House and Senate and signed by the President on December 27, 2020. In our [previous client alert](#), we announced that Congress passed the Consolidated Appropriations Act that extended the Paycheck Protection Program (PPP) that was originally passed as part of the CARES Act, and had appropriated \$284.5 billion to the PPP, including \$35 billion for first-time loans ([See Below](#)). The PPP is a loan program that enables [SBA lenders](#) to lend money to businesses at low interest rates for certain uses and provides that loans may be forgiven if they meet certain criteria. Many of our clients took advantage of the first round of PPP loans and will now look to take advantage of the second round of loans. The new legislation also provides that businesses that did not take advantage of the first round of loans can still take advantage of this round of loans.

When Can I Apply?

Many people noticed that the first round of PPP loans was exhausted very quickly and required an additional appropriation from Congress in order to provide the resources that many needed. To ensure that these new loans are available for the businesses with the greatest need, Congress and the SBA have taken the following steps:

- During at least the first two days that the PPP loan portal is reopened, it will only accept applications from community financial institutions that serve [minority- and women-owned businesses](#); and
- It set up a [direct lender match](#) that links borrowers to lenders that serve traditionally underserved communities, including Certified Development Companies (CDC), Farm Credit System lenders, microloan intermediaries and traditional small asset size lenders.

The SBA will accept loan applications through March 31, 2020. The application for first time borrowers may be found [here](#), and the application for second time borrowers may be found [here](#).

What Is Needed to Apply?

Applications where a banking relationship already exists from applying for the first PPP loan may not need any additional documentation. If the applicant used calendar year 2019 figures to calculate payroll costs and intend on using them again, such figures do not need to be resubmitted, as the bank will already have those on file.

Additionally, if the amount being borrowed for the second round PPP loan is less than \$150,000, proof of the reduction in business will be supplied when an applicant applies for forgiveness rather than as part of the application for the loan. The lender will provide additional information about what documentation is needed to secure the loan or forgiveness.

First Time Borrowers

Businesses that meet one of the following criteria and did not previously take a PPP loan may do so now, provided that they were in operation on February 15, 2020:

- Businesses with 500 or fewer employees that are eligible for other SBA 7(a) loans.
- Sole proprietors, independent contractors, and eligible self-employed individuals.
- Not-for-profits, including churches.
- Sec. 501(c)(6) business leagues, such as chambers of commerce, visitors' bureaus, etc., and "destination marketing organizations" that have 300 or fewer employees and do not receive more than 15% of receipts from lobbying. The lobbying activities must comprise no more than 15% of the organization's total activities and have cost no more than \$1 million during the most recent tax year that ended prior to Feb. 15, 2020. Sports leagues are specifically not eligible.
- Accommodation and food services operations (those with NAICS codes starting with 72) with fewer than 500 employees per physical location.
- News organizations that are majority-owned or controlled by an NAICS code 511110 or 5151 business or not-for-profit public broadcasting entities with a trade or business under NAICS code 511110 or 5151. The size limit for this category is no more than 500 employees per location.

Second Round Borrowers

There are five requirements to take a second loan:

- (a) The borrower must be a business, independent contractor, eligible self-employed individual, sole proprietor, nonprofit organization, eligible for a First Draw PPP Loan, veteran's organization, Tribal business concern, housing cooperative, small agricultural cooperative, eligible 501(c)(6) organization or eligible nonprofit news organization;
- (b) The borrower must either (only one of the following):
 - a. have fewer than 300 employees;
 - b. be in the food service or accommodation sectors (NAICS Code beginning with 72) with fewer than 300 employees per location; or
 - c. be a news organization that meets the criteria in the previous section with fewer than 300 employees per location;
- (c) The borrower must have received a first draw PPP loan;
- (d) The borrower must have used the full amount of the first PPP loan prior to disbursement of the second draw; and
- (e) The borrower must be able to demonstrate a 25% reduction in gross revenue between comparable quarters in 2019 and 2020.

The maximum amount of these loans is 2.5 times the average monthly payroll costs of the business (maximum of \$2 million) or 3.5 times average monthly payroll costs for businesses in the Accommodation and Food Service sectors. Note that, in calculating this amount, employees who made more than \$100,000 (i.e., \$8,333.33 per month) will be counted as having made \$100,000 for the purposes of this calculation. In determining the average monthly payroll costs for the amount of the loan, borrowers may use either their 2019 or 2020 payroll costs. Additionally, businesses other than sole proprietorships and independent contractors may use the one-year period prior to the date that the loan is made.

For item (e) above, the SBA defines **gross receipts** as "all revenue in whatever form received or accrued (in accordance with the entity's accounting method) from whatever source, including from

the sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns or allowances.” The **notable exception** to amounts included on gross receipts is any amount forgiven from the first draw of PPP loans; these amounts are not included in gross receipts. To calculate whether a borrower qualifies under this rule, it may either compare the same quarters for both years (e.g. 2019 Quarter 1 Receipts of \$50,000 and 2020 Quarter 1 receipts of \$30,000 would be a 40% reduction of receipts and qualify) **OR** calculate the reduction based on the annual receipts from 2019 and 2020 **provided** that the borrower was in business for all four quarters of both years.

Forgiveness

In order to receive forgiveness for both a first time and a second draw PPP loan (including existing PPP loans not already forgiven), the borrower must spend 60% or more of the loan proceeds on payroll costs and the remaining amounts on permitted expenses. Permitted expenses have been expanded (including existing PPP loans not already forgiven) to include the following:

- rent or mortgage expenses;
- utilities;
- covered worker protection and facility modification expenditures, including personal protective equipment, to comply with COVID-19 federal health and safety guidelines;
- covered property damage costs related to property damage and vandalism or looting due to public disturbances in 2020 that were not covered by insurance or other compensation;
- expenditures to suppliers that are essential at the time of purchase to the recipient's current operations; and
- covered operating expenditures, which refer to payments for:
 - a. any business software or cloud computing service that facilitates business operations;
 - b. product or service delivery;
 - c. the processing, payment, or tracking of payroll expenses;
 - d. human resources;
 - e. sales and billing functions; or
 - f. accounting or tracking of supplies, inventory, records, and expenses.

Note that these business expenses are fully deductible for tax purposes even if the balance of the PPP loan was or is forgiven.

Borrowers who received under \$150,000 in loan proceeds will again be eligible to apply for forgiveness using a one-page attestation and, if it was not required at the time of applying for the loan, proof of the 25% reduction in gross revenue.

Minority, underserved, veteran, and women-owned businesses

In the SBA's recent [interim final rule](#) announcing the implementation of section 311 of the Economic Aid Act, it specifically provided set-asides for new and smaller borrowers, for borrowers in low- and moderate-income communities, and for community and smaller lenders. The set-asides include, among others, the following:

- \$15 billion across first- and second-draw PPP loans for lending by community financial institutions;
- \$15 billion across first- and second-draw PPP loans for lending by insured depository institutions, credit unions, and Farm Credit System institutions with consolidated assets of less than \$10 billion;
- \$35 billion for new first-draw PPP borrowers; and
- \$15 billion and \$25 billion for first-draw and second-draw PPP loans, respectively, for borrowers with a maximum of 10 employees or for loans of less than \$250,000 to borrowers in low- or moderate-income neighborhoods.

Is the PPP the only loan or funding option under the Consolidated Appropriations Act?

No, both the Consolidated Appropriations Act and the Economic Aid Act have allocated money to a number of different loan and grant programs outside of PPP. If the applicant does not qualify for PPP, there are other options to access capital. Additional capital has been injected into the following programs:

- SBA Economic Injury Disaster Loans - [EIDL](#)
- Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs Microloans)

- Grants for venues and theaters
- **[SBA 7\(a\) loans](#)**

All of the foregoing presents an opportunity for our clients to obtain additional relief during the COVID-19 pandemic. We are happy to advise our clients in obtaining these loans and on any other matter concerning these relief efforts and resources.

For additional information, please contact any of the following with any questions or more specific situations:

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*Special thanks is given to our paralegal professional, Adam Gluntz

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