

Paycheck Protection Program (PPP) Update: SBA and Treasury Set Date for PPP2 Launch; New Guidance for PPP2 Released

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PPP2 Opens This Week

The US Small Business Administration (SBA), with the help of the US Treasury Department, will reopen a replenished PPP this week for both new borrowers and certain existing borrowers. The SBA announced in a news release on January 8th that community financial institutions, such as community development financial institutions, minority depository institutions, and microloan intermediaries, will get the first crack at underwriting PPP2 loans with other lenders gaining access to the SBA portal soon thereafter. The SBA is providing this exclusive period to these institutions in order to promote access to capital for minority-owned and women-owned businesses, and to encourage small lenders who sat out PPP1 to participate.

Community financial institutions became eligible to begin submitting PPP2 loans for first-time borrowers in the SBA portal as of Monday, January 11th at 9:00am EST and became eligible to begin submitting PPP2 loans for second-time borrowers in the SBA portal as of Wednesday, January 13th. The SBA said it will open the program to lenders with \$1 billion or less in assets on Friday, January 15th. The general application submission window for all other lenders is expected to open on Tuesday, January 19th.

With the launch of PPP2 comes a new quirk that borrowers should keep in mind when they are submitting their application. Upon submission of an application by a borrower for either a first draw or second draw PPP loan under PPP2, the application will now go through a series of automated checks before a loan number is issued to the borrower. The SBA expects this may slow the total processing time of each individual application by approximately one day, but the SBA's goal is to reduce confusion created by the PPP generally and to minimize potential fraud, which soured some of the success of PPP1.

SBA and Treasury Issue New PPP Guidance

On January 6th, the SBA and Treasury issued new guidance for PPP2 in the form of two new interim final rules (IFRs). The first new IFR, titled *Business Loan Program Temporary Change; Paycheck Protection Program as Amended by Economic Aid Act*, incorporates the amendments to the PPP made by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) as well as consolidates all of the IFRs issued to date dealing with borrower eligibility, lender eligibility, the PPP application requirements, and loan forgiveness. The second new IFR, titled *Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans*, implements the key provisions of section 311 of the Economic Aid Act which adds a second temporary program to the PPP allowing some eligible borrowers who received a PPP1 loan to apply for and receive a second PPP loan under PPP2.

PPP2 Loan Terms and Conditions

PPP2 loans are generally subject to the same terms and conditions as PPP1, including:

- no collateral or personal guarantees are required;
- 100% guaranteed by the federal government;
- interest rate of 1%, calculated on a non-compounding, non-adjustable basis;
- 5-year loan term;
- neither the federal government nor the borrower's lender will charge any fees; and
- loan payments will be deferred for borrowers who apply for loan forgiveness until the SBA remits the borrower's loan forgiveness amount to the borrower's lender.

In a small, but beneficial change from PPP1, eligible borrowers for either first draw or second draw PPP2 loans may now set their loan's covered period to any length of time between eight and twenty-four weeks rather than having to choose either eight or twenty-four weeks. In addition, borrowers may now choose either calendar year 2019 or 2020 as the base period for purposes of calculating their PPP2 loan. These new developments should provide businesses with much needed flexibility in choosing whether to participate in PPP2.

Eligibility for First Draw and Second Draw PPP2 Loans

The Economic Aid Act generally tracks the original rules applicable to PPP1 and makes available PPP2 loans to borrowers that were in operation as of February 15, 2020 (subject to the exception for seasonal employers) and meet one of the following criteria:

PAYCHECK PROTECTION PROGRAM (PPP) UPDATE: SBA AND TREASURY SET DATE FOR PPP2 LAUNCH; NEW GUIDANCE FOR PPP2 RELEASED

- a small business concern, a tax-exempt nonprofit organization described in IRC 501(c)(3) or 501(c)(19), or a Tribal business described in section 31(b)(2)(C) of the Small Business Act, and employs no more than 500 employees (or the applicable NAICS size standard for the industry);
- an independent contractor, eligible self-employed individual, or sole proprietor;
- a housing cooperative, an eligible IRC 501(c)(6) organization (excludes professional sports leagues and political campaigns), or an eligible destination marketing organization, that employs no more than 300 employees (note the difference from 500 which typically applies to first draw PPP loans);
- a news organization that is majority owned or controlled by a NAICS code 511110 or 5151 business or a nonprofit public broadcasting entity with a trade or business under NAICS 511110 or 5151 that employs no more than 500 employees (or the applicable NAICS size standard for the industry); or
- an entity, including but not limited to a not-for-profit entity, that is otherwise ineligible for SBA 7(a) loans but is specifically deemed eligible by the rules applicable to the PPP (includes churches, businesses with legal gambling revenue, etc.).

Not surprisingly, the SBA has removed publicly traded companies and businesses in which the President, the Vice President, the head of an Executive Department, or a Member of Congress, or the spouse of such person, directly or indirectly holds a controlling interest, from the list of eligible borrowers. This development was anticipated given the immense amount of backlash that was received during PPP1 due to the eligibility of these businesses.

In addition to meeting the rules set forth above, eligible borrowers that previously received a PPP1 loan will be able to receive a second draw PPP2 loan if the borrower:

- will use or has used the full amount of its PPP1 loan only for authorized uses as set forth in the CARES Act on or before the expected date the borrower's PPP2 loan will be disbursed;
- has no more than 300 employees; and
- can show a year-over-year decline in gross receipts of at least 25% between comparable quarters in 2019 and 2020.

Eligible Loan Amounts for First Draw and Second Draw PPP2 Loans

Similar to PPP1, eligible borrowers for first draw or second draw PPP2 loans may generally receive a loan in the amount of 2.5 times the borrower's average 2019 or 2020 monthly payroll costs (\$100,000 annualized cap per employee). For eligible borrowers that are hotels or restaurants with NAICS codes starting with "72", that amount is generally 3.5 times the borrower's average 2019 or 2020 monthly payroll costs (\$100,000 annualized cap per employee).

PAYCHECK PROTECTION PROGRAM (PPP) UPDATE: SBA AND TREASURY SET DATE FOR PPP2 LAUNCH; NEW GUIDANCE FOR PPP2 RELEASED

Eligible borrowers receiving first draw PPP2 loans will be capped at \$10 million, the same amount as in PPP1. On the other hand, eligible borrowers receiving second draw PPP2 loans will be capped at \$2 million.

Forgiveness of First Draw and Second Draw PPP2 Loans

Both first draw and second draw PPP2 loans will be eligible for full loan forgiveness if during the covered period chosen by the Borrower:

- employee and compensation levels are maintained in the same manner as required for PPP1 loans;
- the PPP2 loan proceeds are spent appropriately on payroll costs and other eligible expenses; and
- at least 60% of the borrower's PPP2 loan proceeds are spent on eligible payroll costs.

The SBA has expanded the list of eligible expenses from PPP1, which included expenses such as rent, utilities, mortgages, and interest on existing debt, to include essential supplier costs, personal protection equipment, operational expenses (i.e., software, accounting, cloud storage, etc.).

In another positive development, borrowers of PPP2 loans in an amount not more than \$150,000 can now simply provide their lender with a signed certification of not more than one page that describes the number of employees the borrower was able to retain due to receipt of the loan, the estimated total amount of the loan spent on eligible payroll costs, and the total loan amount received. This new, simplified forgiveness process for PPP2 loans equal to or less than \$150,000 (nearly 90% of all PPP1 loans were for \$150,000 or less) will make the forgiveness process much simpler and much less burdensome on the SBA. With this development will come a new simplified loan forgiveness application, which the SBA must release by no later than January 20, 2021.

New PPP Application Forms Released

Late afternoon on Friday, January 8th, the SBA and Treasury released an updated first draw borrower loan application form and a new second draw borrower loan application form for the launch of PPP2. The new forms are Form 2483 (PPP Borrower Application Form) and Form 2483-SD (PPP Second Draw Borrower Application Form).

Bailey Glasser stands ready to assist you with any questions or concerns you may have regarding your current PPP1 loan or applying for a first draw or second draw PPP2 loan, as well as any questions or concerns you may have regarding access to a community financial institution or the new PPP forms released by the SBA. We will continue to monitor the PPP and will provide updates accordingly. Please contact Bailey Glasser directly here.

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