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BUSINESS, NON-PROFITS, AND VENUSE ACT

SMALL BUSINESS ADMINISTRATION

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PAYCHECK PROTECTION PROGRAM SECOND LOAN DRAW GUIDANCE

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PAYCHECK PROTECTION PROGRAM

The U.S. Small Business Administration, in consultation with the Treasury Department, announced on January 8, that the Paycheck Protection Program (PPP) will re-open the week of January 11 for new borrowers and certain existing PPP borrowers. To promote access to capital, 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. Updated PPP guidance outlining Program changes to enhance its effectiveness and accessibility was released on January 6 in accordance with the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act.

This round of the PPP continues to prioritize millions of Americans employed by small businesses by authorizing up to \$284 billion toward job retention and certain other expenses through March 31, 2021, and by allowing certain existing PPP borrowers to apply for a Second Draw PPP Loan.

The IFR on the PPP Second Draw Loans emphasizes that second draw loans are generally subject to the same terms and conditions of the PPP except as otherwise provided. This IFR highlights the key differences in the loan terms, eligibility requirements, and application between first and second draw loans. This IFR provides the following guidance that builds on the details already spelled out in the Economic Aid Act:

- With respect to the requirement that applicants use their PPP First Draw loan, the IFR states that applicants must have 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. (This includes the amount of any increase received on a First Draw PPP Loan.) And, all First Draw PPP Loan proceeds must have been used only for eligible expenses.
- With respect to the revenue reduction requirement, the IFR defines gross receipts consistent with the definition of receipts in SBA's size regulations, at 13 C.F.R. § 121.104. 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. The IFR also provides guidance on how to calculate receipts of affiliates, former affiliates, and affiliates acquired during 2020.
- With respect to ineligibility, in addition to categories of ineligibility defined in the Economic Aid Act, the IFR makes clear that any entity ineligible to receive a First Draw PPP Loan under the CARES Act or the Consolidated First Draw PPP IFR is also ineligible for a Second Draw PPP Loan. The IFR prohibits permanently closed businesses from receiving a Second Draw PPP Loan but specifies that a borrower that is temporarily closed or suspended remains eligible.
- With respect to calculating borrowers' payroll costs, the IFR allows applicants to use calendar year 2019 or 2020 (as opposed to the twelve-month period prior to when the loan is made).
- The IFR provides that borrowers are limited to receipt of one Second Draw PPP Loan, no greater than \$2 million.



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- This IFR imposes a limit of \$4 million in the aggregate that a single corporate group may receive of Second Draw PPP loans.
- With respect to documentation to substantiate an applicant's payroll cost calculations, the IFR notes that this is generally the same as documentation required for First Draw PPP Loans and lists the different types of documentation to be provided depending on the circumstances. No additional documentation is required if an applicant is using the same lender for its Second Draw PPP Loan as its First Draw PPP Loan and will have relied on its calendar year 2019 figures to determine both its First and Second Draw PPP Loans. As provided for in the Economic Aid Act, for loans with a principal amount of \$150,000 or less, no documentation is required at the time of application and can instead be provided with the forgiveness application or, if forgiveness is not sought, upon SBA's request.
- With respect to a borrower with First Draw PPP Loan under review by SBA, the IFR explains that SBA will not issue a SBA loan number for Second Draw PPP Loan until any issues related to the First Draw PPP Loan is resolved. SBA commits to resolving such issues "expeditiously" and will set aside available appropriations to fund loans to such unresolved borrowers in the event that they are approved.
- PPP borrowers can set their PPP loan's covered period to be any length between 8 and 24 weeks to best meet their business needs.
- PPP loans will cover additional expenses, including operations expenditures, property damage costs, supplier costs, and worker protection expenditures.
- 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.
- Certain existing PPP borrowers are now eligible to apply for a Second Draw PPP Loan.

A Borrower is Generally Eligible for a Second Draw PPP Loan if the Borrower:

- Previously received a First Draw PPP Loan and will or has used the full amount only for authorized uses.
- Has no more than 300 employees.
- Can demonstrate at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.

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PPP Loan Terms:

- 2nd draw loans are subject to same terms, conditions and requirements of 1st draw loans.
 - These include:
 - The loans are 100% guaranteed.
 - No personal guarantees required.
 - No collateral required.
 - The interest rate will be 1%.
 - Loans have 5-year maturity.
 - All loans will be processed by lenders under delegated authority relying on certifications made by the borrower to determine eligibility.

Eligibility Requirements:

- Loans will be made to businesses with no more than 300 employees.
- Loans may only be made to an eligible borrower that:
 - Received a 1st draw PPP loan.
 - Used, or will use, the full amount of the 1st draw PPP loan on or before the expected date on which the 2nd draw PPP loan is disbursed to the borrower.
 - All 1st draw loan amounts must have been spent on eligible expenses under PPP rules to be eligible for 2nd draw PPP loan.

Revenue Reduction Requirements:

- Borrower must have experienced a revenue reduction of 25% or greater in 2020 relative to 2019.
- Borrower must calculate this revenue reduction 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.
 - Example: Borrowers gross receipts of \$50,000 in the second quarter in 2019 and gross receipts of \$30,000 in second quarter of 2020 has experienced a revenue reduction of 40% between quarters and eligible for 2nd draw.
- A borrower in operation in all four quarters in 2019 is deemed to have experienced the required revenue reduction if it experienced a reduction in annual receipts of 25% or greater in 2020 compared to 2019 and the borrower submits copies of its annual tax forms substantiating the revenue decline.
- The Economic Aid Act does not include a general definition of gross receipts for purposes of determining a borrower's revenue reduction.

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- The IRF defines gross receipts consistent with the definition of receipts of SBA's size regulations because this definition appropriately captures the type of income that is typically in a small businesses gross receipts.
- First draw PPP loans received in calendar year 2020 is excluded from a borrower's gross receipts.
 - Section 7A(i) of the Small Business Act expressly excludes PPP forgiveness amounts from being taxed as income.

Businesses With More Than One Location:

- Under CARES Act, any single business entity that is assigned a NAICS code beginning with 72 (including hotels and restaurants) that employ no more than 500 employees per physical location is eligible to receive a 1st draw PPP loan
- Under 1st draw PPP loans, SBA's affiliation rules do not apply to any business assigned a NAICS code beginning with 72 and does not employ more than 500 employees.
- If each hotel or restaurant owned by a parent business is a separate legal entity and employs no more than 500 employees, each hotel and restaurant location are permitted to apply for separate PPP loans provided it uses its unique EIN.
- 2nd draw PPP loans are limited to those businesses with 300 or less employees per each physical location.

Affiliation Rules:

- Same affiliation rules apply from 1st draw PPP loans.

Payroll Cost Calculation:

- 2nd draw PP loan is equal to the lesser of 2.5 months of the borrower's average monthly payroll costs or \$2 million.
- Relevant time period for calculating a borrower's payroll costs for 2nd draw PPP loan is either 12-month period prior to when the loan is made or calendar year 2019.
- IFR uses calendar year 2020 to refer to the 12-month period prior to when the loan was made.

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- Calculating payroll costs based on calendar year 2020 rather than the 12-months preceding the date the loan is made will simplify the calculations and documentation required.
- 2nd draw PPP loan borrowers who are not self-employed (including sole proprietorships and independent contractors) are 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 payroll costs.
- Business part of a single corporate group shall in no event receive more than \$4 million of a 2nd draw PPP loan.

Second Draw PPP Loan Application & Documentation Requirements:

- Same documentation from 1st PPP loan draw will apply to 2nd round.
- No additional documentation to substantiate payroll costs will be required if:
 - Applicant used 2019 figures to determine its 1st draw PPP loan.
 - Applicant used 2019 calendar year figures to determine its 2nd draw PPP loan amount.
 - Lender for applicant's 2nd round draw PPP loan is the same lender that made the applicant's 1st draw PPP loan.
 - Loans greater than \$150,000 will be required to submit documentation adequate to establish that the applicant experienced a revenue reduction of 25% or greater in 2020 relative to 2019.
 - Loans less than \$150,000 additional documentation will not be required.

Loans to Borrowers with Unresolved First Draw PPP loans:

- If borrower's 1st draw PPP loan is under review by SBA or SBA indicates that the borrower may have been ineligible for 1st draw PPP loan will be ineligible for 2nd draw PPP loan until such time their case is resolved.
- Funds will be set-aside for 2nd draw PPP loans for unresolved borrowers in the event they are eventually approved.