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Paycheck Protection Program second draw loans

Frequently Asked Questions | January 2021





The Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (the Act), which provides \$900 billion in new COVID-19 relief funding, was signed into law on December 27, 2020. The Act, among other things, provides for a second round of Paycheck Protection Program (PPP) loans for certain borrowers; reauthorizes lending under the PPP through March 31, 2021; revises certain PPP provisions; expands the types of expenses eligible for loan forgiveness; provides for a second round of loans for certain borrowers; and establishes the Shuttered Venue Operators Grant program.

On January 6, 2021, the U.S. Small Business Administration (SBA) and the Department of the Treasury issued the following interim final rules:

“Business Loan Program Temporary Changes; Paycheck Protection Program as Amended,” which incorporates Act amendments, consolidates interim final rules and important PPP guidance issued to date, and provides general rules relating to loan increases and loan forgiveness (the Consolidated First Draw PPP IFR). The Consolidated First Draw PPP IFR can be found [here](#).¹

“Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans,” which incorporates Act amendments, consolidates interim final rules and important PPP guidance issued to date, and provides general rules relating to Second Draw PPP Loans (the Second Draw IFR). The Second Draw IFR can be found [here](#).²

This series of frequently asked questions is intended to address questions most commonly raised as a result of this newly issued guidance impacting Second Draw Loans.

1. What are the eligibility requirements for Second Draw Loans?

In order to be eligible for a Second Draw Loan, a borrower must:

- ▶ Employ not more than 300 employees

Note: Employees of all affiliates (domestic and foreign) are counted for this purpose.

Note: Borrowers with an NAICS Code beginning with 72 and news organizations are eligible, provided they have no more than 300 employees at any one physical location.

- ▶ Demonstrate a 25% or greater reduction in gross receipts in any quarter of 2020 when compared to the same quarter in 2019 or a 25% or greater reduction in total revenue for the year 2020 compared to 2019 as demonstrated by the borrower’s annual tax forms
- ▶ Have received a First Draw PPP Loan
- ▶ Have either used, or will use, the full amount of the First Draw PPP Loan on eligible expenses on or before the expected disbursement date of the Second Draw Loan

2. How do employees of affiliates impact eligibility?

Employees of all affiliates, both domestic and foreign, are included for the purposes of the 300- employee limit. The same affiliation rules that apply to First Draw Loans apply to Second Draw Loans. The existing waiver of the affiliations rules has been expanded to include news organizations.

1 <https://home.treasury.gov/system/files/136/PPP-IFR-Paycheck-Protection-Program-as-Amended-by-Economic-Aid-Act.pdf>

2 <https://home.treasury.gov/system/files/136/PPP-IFR-Second-Draw-Loans.pdf>



3. How is the reduction in gross receipts calculated?

A borrower must calculate this reduction by comparing the borrower's quarterly gross receipts for any 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% between the quarters and is therefore eligible for a Second Draw PPP loan (assuming all other eligibility criteria are met).
- ▶ Subsection (c)(1)(iv)(B) of the IFR provides that 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% or greater in 2020 compared to 2019 and the borrower submits copies of its annual tax forms substantiating the revenue decline.

Note: The Act does not define gross receipts. The Second Draw IFR adopts a gross receipts definition that is consistent with the definition of "receipts" in the SBA's size regulations.

4. Are any entities ineligible for Second Draw Loans?

An applicant is not eligible for a Second Draw Loan if the applicant is:

- ▶ Excluded from eligibility under the Consolidated First Draw PPP IFR
- ▶ A business concern or entity primarily engaged in political activities or lobbying activities, as defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602), including any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents
- ▶ Any business concern or entity that either:
 - a. For which an entity created in or organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong, or that has significant operations in the People's Republic of China or the Special Administrative Region of Hong Kong, owns or holds, directly or indirectly, not less than 20% of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership
 - b. Retains, as a member of the board of directors of the business concern, a person who is a resident of the People's Republic of China
- ▶ Any person required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 612)
- ▶ Any person or entity that receives a Shuttered Venue Operator Grant
- ▶ Any entity in which the president, the vice president, the head of an executive department, or a member of Congress, or the spouse of such person as determined under applicable common law, directly or indirectly holds a controlling interest in the entity
- ▶ Any 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 (15 U.S.C. 78f), where the terms "exchange," "issuer" and "security" have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (except SBA will not consider whether a news organization that is eligible under subsection (c)(4) is affiliated with an entity, including any entity that owns or controls such news organization, that is an issuer)
- ▶ An entity that has previously received a Second Draw Loan
- ▶ An entity that has permanently closed

Note: Businesses that are owned or controlled by publicly traded companies may still be eligible.



5. How has the calculation of the maximum loan amount changed?

In general, the maximum loan amount for a Second Draw Loan is equal to the lesser of (A) \$2 million or (B) 2.5x the borrower's average monthly payroll costs.

- ▶ For borrowers assigned a NAICS code beginning with 72, the maximum loan amount is equal to the lesser of (A) 3.5x the borrower's average monthly payroll costs or (B) \$2 million.
- ▶ "Payroll costs" has the same meaning as in the revised First Draw Loan program (see the Consolidated First Draw PPP IFR) and is calculated in the same manner.
- ▶ Borrowers that are part of a single corporate group may not receive more than \$4 million of Second Draw Loans in the aggregate.

6. What is the reference period that should be used in the calculation?

A borrower's average monthly payroll costs may be based on 2019 calendar year, the 2020 calendar year, or the 12-month period prior to when the loan is made. For seasonal employers, borrowers may elect any 12-week period between February 15, 2019 and February 15, 2020.

7. What form should be used to apply?

SBA issued a Second Draw Borrower Application Form, which can be found [here](#).³ This form, or the lender's equivalent, should be submitted along with the required supporting documentation, outlined below.

8. What supporting documentation needs to be submitted with the application?

Along with the Second Draw Borrower Application Form or the lender equivalent, borrowers should submit:

- ▶ The borrower's Form 941 (or other tax forms containing similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever was used to calculate payroll), as applicable, or equivalent payroll processor records, along with evidence of any retirement and employee group health, life, disability, vision and dental insurance contributions, must be provided. A partnership must also include its IRS Form 1065 K-1s.
- ▶ For loans with a principal amount greater than \$150,000, documentation sufficient to establish that the applicant experienced a reduction in revenue, must be provided at the time of application. Such documentation may include relevant tax forms, including annual tax forms, or, if relevant tax forms are not available, a copy of the applicant's quarterly income statements or bank statements.
- ▶ For loans with a principal amount of \$150,000 or less, the applicant must submit documentation sufficient to establish that the applicant experienced a reduction in revenue at the time of application, on or before the date the borrower submits an application for loan forgiveness, or, if the borrower does not apply for loan forgiveness, at SBA's request. Such documentation may include relevant tax forms, including annual tax forms, or, if relevant tax forms are not available, a copy of the applicant's quarterly income statements or bank statements.

Note: Borrowers will not have to submit additional documentation to substantiate payroll costs if the borrower's 2019 payroll costs were used to determine its First Draw PPP Loan amount, the borrower's 2019 payroll costs (rather than 2020) are used to determine its Second Draw Loan amount, and the same lender is used for the Second Draw Loan as was used for the First Draw Loan.

³ <https://home.treasury.gov/system/files/136/PPP-Second-Draw-Borrower-Application-Form.pdf>



9. What certifications must be made by the borrower?

Borrowers must make the following certifications:

- ▶ The borrower has realized a reduction in gross receipts in excess of 25% relative to the relevant comparison time period. For loans greater than \$150,000, borrower has provided documentation to the lender substantiating the decline in gross receipts. For loans of \$150,000 or less, borrower will provide documentation substantiating the decline in gross receipts upon or before seeking loan forgiveness for the Second Draw Loan or upon SBA request.
- ▶ The borrower received a First Draw Loan and, before the Second Draw Loan is disbursed, will have used the full loan amount (including any increase) of the First Draw Loan only for eligible expenses.
- ▶ Current economic uncertainty makes the loan necessary to support the ongoing operations of the borrower.
- ▶ The borrower is not a business concern or entity (A) for which an entity created in or organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong, or that has significant operations in the People's Republic of China or the Special Administrative Region of Hong Kong, owns or holds, directly or indirectly, not less than 20% of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership, or (B) that retains, as a member of the board of directors of the business concern, a person who is a resident of the People's Republic of China.
- ▶ The borrower is not required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 612).
- ▶ The borrower is not a business concern or entity primarily engaged in political or lobbying activities, including any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents.

10. Will Second Draw Loan applications be impacted if there are unresolved issues regarding the applicant's First Draw Loan?

If a First Draw Loan is under review pursuant to PPP rules and/or information in SBA's possession indicates that the borrower may have been ineligible for the First Draw Loan it received or for the loan amount received by the borrower, the lender will receive notification from SBA when the lender submits an application for guaranty of a Second Draw Loan (unresolved borrower). If the lender receives notification that the borrower for a Second Draw Loan is an unresolved borrower, the lender will not receive an SBA loan number for the requested Second Draw Loan. SBA will resolve the issue related to the unresolved borrower expeditiously and will notify the lender of the process to obtain an SBA loan number for the Second Draw Loan, if appropriate.

11. How has the loan forgiveness process changed compared to First Draw Loans?

A borrower is eligible for forgiveness of indebtedness under a Second Draw Loan in the same manner as an eligible recipient with respect to a First Draw Loan. Second Draw Loan borrowers with a principal amount of \$150,000 or less are required to provide documentation of revenue reduction if such documentation was not provided at the time of the loan application.

Note: Borrowers are still required to spend at least 60% of their PPP loan proceeds on eligible "payroll costs" to be eligible for full forgiveness.

12. Have safe harbor dates been extended for Second Draw Loans?

The time frame for restoring FTE headcount has been extended until the last day of the applicable covered period of a Second Draw Loan.

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