

# Paycheck Protection Program (PPP) Revived and Expanded Under Recent Stimulus Legislation and SBA Guidance

Signed into law on December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the Act) aims to address the continuing challenges posed by the coronavirus pandemic for small businesses. The Act aims to achieve this in part by extending the Paycheck Protection Program (PPP), allocating more than \$284 billion for new PPP loans.

The Act (along with recent SBA guidance) revives traditional PPP loans (now referred to as PPP "first draw" loans) (PPP1) and creates a new variety of PPP loans (referred to as PPP "second draw" loans) (PPP2). PPP1 loans are available to qualified first-time PPP borrowers and PPP2 loans are available to qualified borrowers who already received and used all funds under a PPP loan. Both PPP1 and PPP2 loans will be available until March 31, 2021 or until available funds are exhausted.

## Changes to PPP1

### Reapplication for PPP1 Loans and Increases in PPP1 Loan Amounts

PPP borrowers who returned all or part of their PPP1 loan will be allowed to reapply for a PPP1 loan. The amount of this PPP1 loan is capped at the difference between the amount kept by the borrower (if any) and the maximum amount available under the returned loan. Likewise, PPP borrowers who took PPP1 loans of less than the maximum they qualified for may request a modification of their PPP1 loan to the maximum amount. Further rulemaking by the SBA is expected on this topic.

### Allowable and Forgivable Uses for PPP Funds

The Act expands permitted and forgivable uses of PPP loan funds for both PPP1 and PPP2 loans.

In addition to payroll costs and other permitted PPP expenses, PPP loans may now also be used for:

- Expenses for certain business software or cloud computing services ("Covered operations expenditures");

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- Expenses related to property damage and vandalism or looting from public disturbances in 2020 not covered by insurance or other compensation ("Covered property damage costs");
- Expenses for essential goods for the business, subject to certain limits based on when the goods were purchased (generally before February 15, 2020) ("Covered supplier costs"); and
- Certain operating or capital expenditures (not including residential real property or intangible property) to adapt business activities to comply with federal, state or local health requirements related to COVID-19 ("Covered worker protection expenditures").

These expenses may now also be counted for PPP forgiveness, to the extent these expenses are paid or incurred during the forgiveness covered period. This change applies retroactively, except with respect to PPP loans which were forgiven before December 27, 2020. Further rulemaking on this topic is expected.

## **Simplified Forgiveness Application for Smaller Loans**

For PPP loans of \$150,000 or less, PPP borrowers will now be able to use a simplified forgiveness application which will require fewer details and less documentation than the standard forgiveness application. As of this writing, this simplified forgiveness application is not yet available from the SBA.

## **EIDL Advances No Longer Offset PPP Loan Forgiveness**

The Act retroactively removes the requirement that the amount of PPP loan forgiveness be reduced by the amount of an Economic Injury Disaster Loan (EIDL) advance. Borrowers who already applied for PPP loan forgiveness may be able to amend their forgiveness applications and receive deducted amounts back (up to \$10,000). Further rulemaking on this topic is expected.

## **Details of PPP2**

### **General**

PPP2 loans generally have the same basic terms as PPP1 loans (e.g. a maturity of five years, one percent interest on a non-compounding, non-adjustable basis). Like PPP1 loans, PPP2 loans require no personal guarantees, are unsecured and may be obtained directly from approved PPP lenders (banks and other financial institutions). PPP2 loans will also be 100% guaranteed by the SBA.



## **Eligibility**

PPP2 loans are only available to borrowers who (1) received a PPP1 loan and (2) have spent all of the PPP 1 funds. Additionally, PPP1 borrowers who apply for a PPP2 loan must:

- Be a business, 501(c)(3) nonprofit, housing cooperative, 501(c) (19) veterans organization, tribal business concern, self-employed individual, sole proprietor, independent contractor or small agricultural cooperative;
- Employ 300 or fewer individuals; and
- Have gross receipts (revenue as calculated under GAAP) in Q1, Q2, Q3, or Q4 of 2020 reflecting a reduction of 25% or more as compared to the same quarter in 2019.

Like with PPP1, additional limitations on eligibility apply.

## **Certifications**

PPP2 borrowers are still required to certify that the uncertainty of current economic conditions makes the loan request necessary to support the ongoing operations. Like with PPP1 loans, PPP2 borrowers will also be required to guarantee that PPP2 funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments.

## **Corporate Groups**

Businesses which are part of a single corporate group may only receive a total of \$4 million (two times maximum loan amount of \$2 million) of PPP2 funds in the aggregate. This tracks with a similar \$20 million limitation (two times the maximum loan amount of \$10 million) for corporate groups for PPP1 funds.

## **Review of PPP1 Loans**

PPP1 borrowers whose PPP1 loan are under SBA review may be blocked from receiving a PPP2 loan, at least until the SBA confirms that the borrower was in fact eligible for a PPP1 loan. The SBA will notify the PPP lender that the SBA is reviewing the PPP1 loan and/or that information indicates that the borrower may have been ineligible for the PPP1 loan or for the amount of the PPP1 loan.

## **Loan Amounts and Loan Forgiveness**

Like with PPP1 loans, the maximum amount of PPP2 loans are based on monthly payroll, with a cap that applies to all eligible entities. Most qualified PPP2 applicants may borrow 2.5 times their average total monthly payroll, up to a



maximum \$2 million. Certain borrowers in the hospitality industry such as hotels and restaurants (NAICS codes beginning with 72) are eligible to borrow up to 3.5 times their average monthly payroll but are still subject to the \$2 million cap.

Loan forgiveness rules and calculations for PPP2 loans are generally the same as PPP1 loans. Like with PPP1 loans, 60% of a PPP2 loan must be spent on payroll costs to be eligible for full forgiveness. If a borrower spends less than 60% of their PPP2 loan on payroll costs, they can still receive forgiveness, but their forgiveness amount will be capped at the amount of their payroll costs divided by .6%.

## **Other Small Business Assistance in the Act**

### **PPP-Funded Expenses Now Deductible**

The Act allows for the deduction of expenses paid for with PPP loan proceeds for federal income tax purposes, regardless of whether a PPP loan is forgiven.

### **EIDLs**

The Act expands on the Economic Injury Disaster Loan (EIDL) program, offering new loans and more favorable forgiveness and tax treatment for this second round. The Act sets aside \$20 billion for EIDL advances and offers grants and low-interest loans to particularly hard-hit businesses.

### **Shuttered Venue Operator Grants**

The Act also appropriates \$15 billion in aid for "Shuttered Venue Operator Grants" to live venues, museums, movie theatres, and talent representatives. Like EIDLs and PPP loans, these grants will be administered through the SBA. Shuttered Venue Operator Grant recipients are not eligible for PPP1 or PPP2 loans.

## **What's Next?**

The SBA will begin accepting applications for PPP1 applications on January 11, 2021, and PPP2 applications on January 13, 2021. Initially the SBA will only accept PPP applications for PPP loans through community financial institutions.

Reinhart will continue to monitor developments in this area and provide periodic updates. If you have questions regarding how the Act impacts your business or how to take advantage of the opportunities it may offer, please contact your Reinhart attorney.

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