



# FIRST-TIME PPP BORROWER FACT SHEET



**February 2021**

On Dec. 27, 2020, the COVID-19 relief bill known as the Consolidated Appropriations Act revived the popular Paycheck Protection Program (PPP), allocating \$284 billion is allocated for additional PPP loans.

The Act addresses First Draw PPP loans and Second Draw PPP loans. The term “First Draw PPP loan” relates to borrowers who have not previously borrowed from the PPP loan program. Below is some additional information for First Draw PPP Loans, which because of changes to program subsequent to its initial creation in the Coronavirus, Aid, Relief, and Economic Security (CARES) Act is sometimes referred to as the PPP2. Applications for PPP2 borrowers are available starting January 8, 2021 and ending on March 31, 2021.

## **ELIGIBLE FIRST-TIME PPP BORROWERS**

First-time PPP2 borrowers must meet the following rules:

- Businesses with 500 or fewer employees that are eligible for other SBA 7(a) loans.
- A small business concern as per revenue based or alternative size standards established by the SBA (described more below).
- Sole proprietors, independent contractors, and eligible self-employed individuals.
- Not-for-profits, including churches.
- Accommodation and food services operations (those with North American Industry Classification System (NAICS) codes starting with 72) with fewer than 500 employees per physical location.
- 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 not eligible.
- A housing cooperative, an eligible section 501(c)(6) organization, or an eligible destination marketing organization<sup>6</sup>, that employs no more than 300 employees;
- 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.

- Must have been in operation on February 15, 2020.
- Seasonal businesses will be considered to have been open in operation at Feb. 15, 2020, if they were in operation for any 12-week period between Feb. 15, 2019, and Feb. 15, 2020.

### Alternative Size Standard

Companies with more than 500 employees may also be eligible for a PPP2 loan if as of March 27, 2002 they met the following tests:

1. Their maximum tangible net worth of the business is not more than \$15 million; and Their average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

### LOAN AMOUNT

PPP2 borrowers may receive a loan amount of up to 2.5 times their average monthly payroll costs in either the calendar year 2020 or 2019. Payroll costs include employer contributions to group health, life, disability, vision and dental insurance, state and local taxes such as unemployment tax and employer paid retirement costs. Individual employee compensation costs for purposes of the PP2 are limited to \$100,000 per year.

Borrowers who are not self-employed (including sole proprietorships and independent contractors) are also permitted to use the precise one-year period before the date on which the loan is made to calculate payroll costs if they choose not to use calendar year 2019 or 2020 to calculate payroll costs. For self-employed persons the calculation is based on the relevant year's Schedule C, also capped at \$100,000. Partnerships would use similar relevant forms such as K-1 schedules.

The maximum loan amount remains at \$10 million for first time borrowers with a maximum \$20 million limit for affiliated corporate entities receiving separate PPP loans.

### Exceptions & Special Considerations

Several types of businesses have unique PPP2 opportunities:

- PPP borrowers with NAICS codes starting with 72 (hotels and restaurants) can get up to 3.5 times their average monthly payroll costs subject to the \$10 million loan maximum. Seasonal business have separate time period computation rules.
- There are special rules for how farmers and ranchers calculate payroll costs and loan amount.

### Additional Guidance

Guidance published by the SBA on Jan. 17, 2021, provides that original guidance describes payroll costs using calendar year 2019 as the reference period for payroll costs used to calculate loan amounts. However, borrowers are permitted to use payroll costs from either calendar year 2019 or calendar year 2020 for their PPP2 Loan amount calculation. The borrower is allowed to choose the higher amount. This guidance went on to explain how to calculate loan amount and what documentation is required based on the following businesses tax structures:

- Self-employed with no employees
- Self-employed with employees

- Self-employed farmers and ranchers
- Partnerships (Individual partners may not apply on their own)
- S corporations and C corporations
- Not-for-profits
- Not-for-profit religious institutions, veterans organizations, and tribal businesses

## RESTRICTED BORROWER CATEGORIES

In general, the same businesses that were restricted from taking out an original PPP loan are still precluded from borrowing under the PPP2. In addition, the following businesses have also been restricted from taking out a PPP2 loan:

- Publicly traded companies
- Lobbying organizations
- An owner of 20% or more is presently incarcerated or under indictment for felony charges
- A business owned or controlled by an owner that is currently delinquent or has defaulted on the last seven years on a guaranteed SBA loan or a loan from any other federal agency
- Companies organized in or with significant operations in China or Hong Kong, and companies with board members who are residents of China
- Any person required to submit a registration statement under Section 2 of the Foreign Agents Registration Act of 1938
- A person or entity that receives a grant for shuttered venue operators under Section 324 of the Economic Aid Act
- Entities in which the President, the Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person owns, controls, or holds at least 20% of any class of equity
- Is not presently in bankruptcy
- Is not a hedge fund or private equity firm (note that for employee count purposes private equity affiliation rules based on common ownership are applied)

## LOAN TERMS

The PPP2 loans are generally subject to the same terms, conditions and requirements as the first round of PPP loans. These include, but are not limited to the following terms:

- The loan is forgivable if certain requirements are met.
- No collateral will be required.
- No personal guarantees will be required.
- The interest rate will be 100 basis points or 1%, calculated on a noncompounding, non-adjustable basis.
- The maturity is five years.
- Borrowers may pursue forgiveness up until 10 months following the end of the relevant covered period.
- Loans accrue interest with no cash payment requirements until 10 months after the end of the relevant covered period.

## ADDITIONAL ELIGIBLE EXPENSES

Eligible expenses for the PPP2 are the same as for the first round of PPP, including the requirement that at least 60% of the loan proceeds shall be used for payroll costs, with the following additional eligible expenses included:

- Covered worker protection and facility modification expenditures, including personal protective equipment, to comply with COVID-19 federal health and safety guidelines
- Expenditures to suppliers that are essential at the time of purchase to the recipient's current operations
- Covered operating costs such as software and cloud computing services and accounting needs, and
- Covered property damage costs (costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation).

The Act also clarifies that borrowers can include group benefit insurance (dental, vision, life, disability) as payroll costs in their calculations. Importantly, these expanded expense categories are valid for both existing and new PPP loans.

## LOAN APPLICATION AND DOCUMENTATION REQUIREMENTS

The applicant must submit **Paycheck Protection Program Borrower Application Form** (SBA Form 2483), or lender's equivalent form, and payroll documentation.

## LOAN FORGIVENESS

The same loan forgiveness rules apply to a PPP2 loan. To be eligible for full loan forgiveness, PPP2 borrowers will have to spend no less than 60% of the funds on payroll over a covered period. Borrowers will now be permitted to choose the length of their Covered Period provided it is not less than 8 weeks and no more than 24 weeks.

Borrowers that receive a PPP2 loan of \$150,000 or less shall receive forgiveness if the borrower signs and submits to the lender a certification that is not more than one page in length, includes a description of the number of employees the borrower was able to retain because of the loan, the estimated total amount of the loan spent on payroll costs, and the total loan amount. The SBA has yet to publish this loan forgiveness form.

While not directly referred to in the regulations, these first time loans will also require filing the loan necessity SBA Form 3509 and similar to the present rules. PPP2 borrowers with loans of less than \$2 million are deemed to have made the required certification and thus not required to submit Form 3509 at the time of submitting for forgiveness.

## TAX IMPLICATIONS

The amount of PPP loan forgiven is not taxable. The expenses paid with PPP loan funds are deductible for tax purposes.

## PLEASE KNOW THAT WE ARE HERE FOR YOU

If you have any questions about the PPP2 application and forgiveness process, please contact a member of our **COVID-19 capital assistance team**.

