

# Paycheck Protection Program Round Two – What You Need to Know

## Thoughtware Alert

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The *2021 Consolidated Appropriations Act* (CAA) was signed into law on December 27, 2020. The bipartisan legislation includes another round of COVID-19 stimulus funding and further relief for taxpayers affected by the pandemic. The CAA included \$284 billion in funding to reopen the Paycheck Protection Program (PPP) to new qualifying borrowers of "First Draw" PPP loans, provide

opportunities for certain borrowers of existing PPP loans to increase their First Draw loan, and create an opportunity for certain businesses to obtain a "Second Draw" PPP loan (PPP 2 Loan).

This article will focus specifically on the PPP 2 Loans and the **interim final rule** (IFR) issued by the U.S. Small Business Administration (SBA) and U.S. Department of the Treasury on January 6, 2021 (PPP 2 IFR). However, see this previous **BKD Thoughtware® article** and **webinar** for guidance on other changes made for First Draw PPP loans and the PPP loan forgiveness rules. You also can listen in to this recent **"Simply Tax" podcast episode** to learn more about the PPP changes.

The PPP 2 IFR provided initial guidance surrounding eligibility, amount, forgiveness, and the application process for the PPP 2 Loans. On January 8, 2021, the SBA issued a **press release** stating applications for First Draw PPP loans will begin to be accepted on Monday, January 11, but only by community financial institutions (CFI). PPP 2 Loans will begin to be accepted on Wednesday, January 13, but again, only CFIs will be accepting applications for the first two days. After the CFI preference period expires, all approved lenders will be allowed to make First Draw and PPP 2 Loans. The SBA also released an **IFR** on First Draw PPP loans, an updated version of the **Form 2483** PPP borrower application form, and the new **Form 2483-SD**, which is the application form for PPP 2 Loans.

## **PPP 2 Loan Eligibility Requirements**

In general, a borrower is eligible for a PPP 2 Loan if it has 300 or fewer employees and experienced a revenue reduction of 25 percent or greater in 2020 relative to 2019. The PPP 2 IFR made additional clarifications around the eligibility requirements, including:

- ▼ The borrower must have received a First Draw PPP loan and have used or will use the full amount of the First Draw PPP loan on authorized uses to be eligible for a PPP 2 Loan. The guidance doesn't specifically state that First Draw funds must be spent within the covered period of the PPP 1 loan, only that they be spent on eligible expenditures prior to the receipt of the PPP 2 Loan proceeds. The borrower must make this certification on the PPP 2 Loan application.

- ▼ If a borrower received a First Draw PPP loan but was later determined to not be eligible to receive a loan, the borrower isn't eligible for a PPP 2 Loan.
- ▼ The NAICS code 72 (generally hotels and restaurants) and SBIC financing carveouts apply just as they did with First Draw PPP loans with the exception that the 500-employee limit per physical location is a 300-employee limit for PPP 2 Loans. For example, a company that operates multiple restaurants each in a separate legal entity and employs fewer than 300 employees at each location would be eligible for a PPP 2 Loan for each legal entity, assuming other requirements are met.
- ▼ The 300-employee limit is based on average headcount per pay period for the most recent calendar year, so this will now be based on 2020 average headcount (includes both full- and part-time employees) for each 2020 payroll period.
- ▼ If a PPP 2 Loan borrower was in business for all four quarters in 2019 and experienced a 25 percent or greater reduction in **annual** receipts in 2020 compared to 2019, the borrower may submit copies of income tax returns for both years to support the 25 percent or more decline.
- ▼ Gross receipts include all revenue in whatever form received or accrued in accordance with the borrower's method of accounting. Gross revenue isn't reduced by cost of sales but is reduced by returns and allowances. The term also excludes capital gains and losses, receipts from affiliates, and items generally construed as deposits held for others. Importantly, any First Draw PPP loan that's forgiven in 2020 is **not** included in 2020 gross receipts. However, the CAA and current SBA guidance doesn't include other *Coronavirus Aid, Relief, and Economic Security Act* relief funds in this exclusion, e.g., Provider Relief Funds.
- ▼ If a borrower acquires an affiliate, the affiliate's gross receipts are included in the calculation for all periods, not just the period after the acquisition. If a borrower acquires a "segregable division" of another entity, the gross receipts of the division are only included for the period subsequent to the purchase. While the SBA doesn't specifically define "segregable division," a likely example would be a borrower that has an asset acquisition of a trade or business in 2020. Under current guidance, the gross receipts of this new "segregable division" generated after acquisition in 2020 are included in the 2020 gross receipts for purposes of the 25 percent reduction test, but a borrower can't include the gross receipts of the acquired division prior to the

acquisition. This could make it difficult for a borrower to qualify for a PPP 2 Loan depending on the size of the acquisition.

- ▼ If a borrower disposes of an affiliate in 2020, no receipts of the affiliate are included for any time during the 25 percent revenue reduction measurement period. If a borrower sold a “segregable division” during 2020, its gross receipts are included for all periods prior to the sale.

## Maximum PPP 2 Loan Amount

In general, the maximum PPP 2 Loan amount is the lesser of 1) 2.5 times the borrower's average monthly payroll costs or 2) \$2 million. Payroll costs are defined the same as for First Draw PPP loans. However, the PPP 2 IFR allows a PPP 2 Loan borrower the option to use either its calendar 2020 or 2019 payroll for purposes of the average monthly payroll calculation.

Regardless of the period used, the same \$100,000 annual compensation limit applies. Other notable items include:

- ▼ Borrowers that fall under NAICS code 72 (generally hotels and restaurants) can calculate their PPP 2 Loan based on 3.5 times average monthly payroll (subject to the same \$2 million cap).
- ▼ For self-employed farmers and ranchers who file Schedule F, the loan calculation was changed by the CAA. These borrowers may now base both First Draw and PPP 2 Loans on gross income, not net profit, reported on the 2019 or 2020 Schedule F, but still limited to 2.5 months with a \$100,000 annual gross income cap ([see this BKD Thoughtware article for more details](#)). The PPP 2 IFR clarifies that if the farmer or rancher has employees, the gross income shown on the Schedule F must be reduced by the payroll costs.
- ▼ Corporate groups that were subject to the \$20 million limit on total First Draw PPP loans have a \$4 million limit on PPP 2 Loans. Businesses are in a single corporate group when they're majority owned, directly or indirectly, by a common parent.

## Application & Required Documentation

- ▼ Borrowers can apply for a PPP 2 Loan until March 31, 2021, using **Form 2843-SD**.
- ▼ If a PPP 2 Loan borrower uses the same lender as its First Draw PPP loan and is using the 2019 payroll information for both loans, the borrower isn't required to submit any payroll information with the application, as the lender already has this information.
- ▼ If the PPP 2 Loan borrower uses a different lender or won't be using the same payroll for calculating its PPP 2 Loan, the borrower is required to submit similar payroll documentation that was provided for its First Draw PPP loan. A detailed list of the required documentation is on page 33 of the **PPP 2 IFR**.
- ▼ If the PPP 2 Loan is greater than \$150,000, the borrower must submit documentation of the 25 percent or greater decline in gross receipts at the time of application.
- ▼ If the PPP 2 Loan is \$150,000 or less, the gross receipts documentation isn't due until the forgiveness application is filed (or upon SBA request). However, the borrower must still certify it meets the gross receipts decline test at the time of the loan disbursement.
- ▼ Similar to First Draw PPP loans, borrowers of PPP 2 Loans also must make a good faith certification of need on the loan application, *i.e.*, current economic uncertainty makes this loan request necessary to support the ongoing operations of the borrower.
- ▼ If a borrower's First Draw PPP loan is under SBA review (\$2 million threshold for need certification would be one situation) or if the SBA has information that indicates the borrower may not have been eligible for a First Draw PPP loan, the borrower won't receive an SBA loan number for the PPP 2 Loan until the First Draw PPP loan is resolved. The SBA stated these loans will be resolved expeditiously and will set aside available appropriations to fund PPP 2 Loans applied for by borrowers with unresolved First Draw PPP loans in the event they're later approved.

The PPP 2 IFR indicates the forgiveness and loan review process for PPP 2 Loans generally will be done under similar terms and conditions as First Draw PPP loans. However, we expect the SBA will issue further guidance on the PPP 2 Loan

forgiveness and SBA loan review process in the form of additional interim final rules and frequently asked questions.

While the ability for certain businesses to obtain a second round of PPP funding is positive, businesses should be aware of the other stimulus funding available. For example, the CAA included an expansion of the Employee Retention Credit (ERC) to now allow PPP borrowers to take advantage of the ERC in 2020 and also extended the ERC to apply through June 30, 2021, with several favorable taxpayer changes. However, the ERC can only be claimed on qualified wages that weren't used to receive PPP loan forgiveness, so it will be important for borrowers to take this into account when filing for forgiveness of the First Draw PPP loan and when evaluating whether to apply for a PPP 2 Loan. See this **BKD Thoughtware article** for additional information on the ERC. Certain businesses also may qualify for the **new grants made available** under the CAA for certain live venue operators or promoters. However, grant recipients may not also take a PPP 2 Loan, so businesses that are eligible for both will need to carefully review their situation to determine which relief funding to pursue. The SBA hasn't yet issued guidance on when the live venue grant program will open and what the application process will look like.

With PPP reopening soon, now is the time to review your situation and start preparing for the application process. BKD will continue to follow this developing situation. If you have questions or need assistance, contact your **BKD Trusted Advisor**<sup>TM</sup> or submit the **Contact Us** form below.