
SUMMARY OF PAYCHECK PROTECTION PROGRAM INTERIM FINAL RULE

Second-draw PPP loans (This applies to clients who obtained a PPP loan in 2020).

One of the biggest changes with the new PPP is that Congress made funding available to businesses that had previously received a PPP loan. Borrowers are eligible for a second-draw PPP loan of up to \$2 million, provided they have:

- 300 or fewer employees
- Used or will use the full amount of their first PPP loan on or before the expected date for the second PPP loan to be disbursed to the borrower.
- The IFR also clarifies that the borrower must have spent the full amount of the first PPP loan on eligible expenses. Experienced a revenue reduction of 25% or more in all or part of 2020 compared with all or part of 2019. This is calculated by comparing gross receipts in any 2020 quarter with an applicable quarter in 2019, or, in a provision added in the IFR, a borrower that was in operation for all four quarters of 2019 can submit copies of its annual tax forms that show a reduction in annual receipts of 25% or greater in 2020 compared with 2019.

The IFR defines gross receipts to include all revenue in whatever form received or accrued (in accordance with the entity's accounting method) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Forgiven first-draw PPP loans are not included in the 2020 gross receipts.

First-draw PPP loans (Those who were not able to obtain a PPP in the first round)

The Economic Aid Act makes first-draw PPP loans available to borrowers that were in operation on Feb. 15, 2020, and come from one of the following groups:

- Businesses with 500 or fewer employees that are eligible for other SBA 7(a) loans.
- 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.
- 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.

In a change from the original PPP, publicly traded companies and businesses controlled, either directly or indirectly, by the president, vice president, head of executive departments, and members of Congress (or their spouses as defined by applicable common law) are not eligible for PPP loans.

PPP applicants must submit documentation sufficient to establish eligibility and to demonstrate the qualifying payroll amount, which may include, as applicable, payroll records; payroll tax filings; Form 1099-MISC, Miscellaneous Income; Form 1040, Schedule C, Profit or Loss From Business, or Schedule F, Profit or Loss From Farming; income and expenses from a sole proprietorship; or bank records.

PPP loan maximum amounts

In general, first- and second-time PPP borrowers may receive a loan amount of up to 2.5 times their average monthly payroll costs (with a cap per employee of \$100,000 annualized) in the year prior to the loan or the calendar year. PPP borrowers with NAICS codes starting with 72 (hotels and restaurants) can receive up to 3.5 times their average monthly payroll costs on second-draw loans.

The maximum for a first-draw PPP loan is \$10 million, the same as in the original PPP. Applicants must provide a Form 941, Employer's Quarterly Federal Tax Return, (or other forms with similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever is used to calculate the loan amount), or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions.

Eligible costs

PPP borrowers can have their first- and second-draw loans forgiven if the funds are used on eligible costs. As with the first round of the PPP, the costs eligible for loan forgiveness in the revised PPP include payroll, rent, covered mortgage interest, and utilities. In addition, the following costs are now eligible:

- Covered worker protection and facility modification expenditures, including personal protective equipment, to comply with COVID-19 federal health and safety guidelines.
- Covered property damage costs related to property damage and vandalism or looting due to public disturbances in 2020 that were not covered by insurance or other compensation.
- Expenditures to suppliers that are essential at the time of purchase to the recipient's current operations.
- Covered operating expenditures, which refer to payments for any business software or cloud computing service that facilitates business operations; product or service delivery; the processing, payment, or tracking of payroll expenses; human resources; sales and billing functions; or accounting or tracking of supplies, inventory, records, and expenses.

To be eligible for full loan forgiveness, PPP borrowers will have to spend no less than 60% of the funds on payroll over a covered period between eight or 24 weeks.