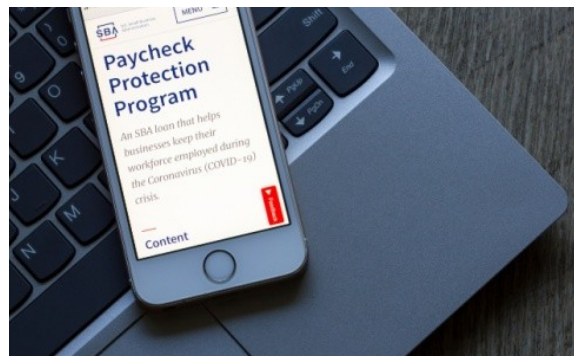


Alert: The Paycheck Protection Program Is Now Accepting First Draw and Second Draw Applications

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This blog post may contain information that was accurate at the time of publication but could become outdated over time. We strive to provide relevant and timely content, but circumstances, facts, and data can change. Users are encouraged to verify the current status of any information presented and seek updated guidance where necessary.

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The Small Business Administration ("SBA") reopened the Paycheck Protection Program ("PPP") for First Draw PPP loans and is now also accepting applications for Second Draw PPP loans. The PPP now allows certain eligible borrowers that previously received a PPP loan to apply for a Second Draw PPP loan with the same general loan terms as their First Draw PPP loan. Second Draw PPP loans can be used for payroll costs and benefits. Loan proceeds can also be used to pay for mortgage interest, rent, utilities, worker protection costs related to COVID-19, uninsured property damage costs caused by looting or vandalism during 2020, and certain supplier costs and expenses for operations.

Loan Amount.

For most borrowers, the maximum loan amount of a Second Draw PPP loan is 2.5 multiplied by the average monthly payroll costs up to \$2 million. Loan amounts may be based on payroll costs for the calendar year 2019, the calendar year 2020, or the actual trailing 12-month period before the application.

Qualification Requirements.

To qualify for a Second Draw PPP loan, the borrower must have:

1. Previously received a First Draw PPP Loan and will or has used the full amount only for authorized uses;
2. Have no more than 300 employees; and
3. Demonstrate a decline in gross receipts of 25 percent in any quarter of 2020 over the corresponding quarter or submit tax returns showing a 25 percent decline in 2020 revenue over 2019. Gross receipts include all revenue in whatever form received in accordance with the borrower's accounting method.

Eligible Entities.

Eligible Second Draw PPP entities include businesses, certain non-profit organizations, housing cooperatives, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives.

Expansion of Allowable and Forgivable Uses.

The Second Draw PPP expands the scope of payroll costs to include group insurance benefit payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures. By way of further explanation, Second Draw PPP funds may be used for the following allowable and forgivable uses:

1. Covered operations expenditures include payment for any software, cloud computing, and other human resources and accounting needs.
2. Covered property damage costs include expenses related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance.
3. Covered supplier costs include expenditures to a supplier pursuant to a contract, purchase order, or order for goods in effect prior to taking out the loan that is essential to the recipient's operations at the time at which the expenditure was made. Supplier costs of perishable goods can be made before or during the life of the loan.
4. Covered worker protection expenditures include personal protective equipment and adaptive investments to help a loan recipient comply with federal health and safety guidelines or any equivalent State and local guidance related to COVID-19 during the period between March 1, 2020, and the end of the national emergency declaration.

Forgiveness Covered Period.

A Second Draw PPP borrower can elect a forgiveness covered period of any duration from eight to 24 weeks.

Additional Loan Terms and Qualifications.

1. Seasonal employers may calculate their maximum loan amount based on a 12-week period beginning February 15, 2019, through February 15, 2020.
2. Entities in industries assigned to NAICS code 72 (Accommodation and Food Services) may receive loans of up to 3.5X average monthly payroll costs.
3. Certain businesses with multiple locations that are eligible entities under the initial PPP requirements may employ not more than 300 employees per physical location.
4. An eligible borrower may only receive one PPP second draw loan.
5. Fees are waived for both borrowers and lenders to encourage participation.
6. For loans of not more than \$150,000, the borrower may submit a certification attesting that the borrower meets the revenue loss requirements on or before the date the borrower submits their loan forgiveness application, and non-profit and veterans organizations may utilize gross receipts to calculate their revenue loss standard.

Tax Deductible Expenses.

With the reopening of PPP, the SBA, in conjunction with the Treasury, also reversed prior guidance, and now there is an income tax deduction available for expenses paid with PPP loan proceeds. For most borrowers, this will result in substantial extra cash (not including PPP loan proceeds) available for business operations, to pay down loans, or to even make distributions to business owners.

This article is not intended to provide legal advice as the SBA continually updates, modifies, reverses and changes its PPP loan program guidance. Moreover, all borrowers have different concerns and face different qualification issues for a PPP First Draw and/or Second Draw Loan.

If you have questions or concerns regarding a PPP loan or need legal guidance, please contact the author of this article – Charles “Max” McCauley at cmccauley@offitkurman.com or 484-531-1712.