

## Update: SBA Announces Launch Date For First and Second Draw PPP Loan for Borrowers with Community Lenders

### Eligibility, Payroll Cost Calculation and Documentation Requirements for First and Second Draw of PPP Loan Applications

**Update:** Starting **Monday, Jan. 11, 2021**, the SBA will begin to accept First Draw PPP Loan applications only from community financial institutions. Starting Wednesday, **Jan. 13, 2021**, the SBA will begin to accept Second Draw PPP Loans and similarly only from community financial institutions. Community financial institutions are typically smaller and local banks, such as credit unions, community development financial institutions, or minority depository institutions. We recommend discussing with your lender to determine whether it is a community financial institution. The SBA indicated that First and Second Draw PPP will be open to all participating lenders “shortly thereafter.”

On Jan. 6, 2021, the Small Business Administration (SBA) issued guidance regarding the stimulus package’s Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (previously reported [here](#)), which continued the Paycheck Protection Program (PPP). First and second time eligible borrowers may apply for either a First Draw or Second Draw PPP Loan until March 31, 2021. *The SBA has yet to confirm when both programs will become effective and when lenders may start accepting applications.*

As detailed in this Information Memo, many basic aspects of the PPP remain the same. However, there are important distinguishing factors for both First and Second Draws.

#### **I. Second Draw PPP Loans**

**New Application Form.** The SBA has issued a new application for Second Draw PPP Loans, available [here](#). The application form is largely the same format as the original PPP application, except it reflects the updated eligibility requirements as well as the additional permissible uses of the monies.

**Eligible Entities.** A borrower is eligible for a Second Draw PPP Loan if it meets all of the following criteria:

1. 300 or fewer employees. This requirement appears to be a firm requirement (without any exceptions, except as noted below). Notably, borrowers that previously relied on the alternative size standards for the original PPP may not rely on that size metric for the Second Draw. For businesses with a NAICS code beginning with 72 (generally hotels and restaurants), this size limit applies to the physical locations of businesses, rather than to the business as a whole.
2. Experienced revenue reduction in 2020 relative to 2019. A borrower may satisfy this in one of two ways. First, a borrower may compare its quarterly gross receipts for one quarter in 2020 with its gross receipts for the corresponding quarter of 2019. Alternatively, borrowers that experienced a reduction in *annual* receipts of 25% or greater in 2020 compared to 2019 may submit copies annual tax forms substantiating the revenue decline (versus submitting documentation for a single quarter). The SBA has defined gross receipts to include revenue from all sources, including from the sales of products or services, interest, dividends, rents, royalties, fees or commissions reduced by returns and allowances. Importantly, PPP monies received in 2020 are excluded from a borrower’s gross receipts.

3. Has received a First Draw PPP Loan. Unlike Second Draw borrowers, first-time borrowers are subject to the First Draw PPP Loan rules noted below, which are largely similar to the original PPP terms.
4. Has used, or will use, the full amount of the First Draw PPP Loan on or before the expected date on which the Second Draw PPP Loan is disbursed to the borrower. However, for borrowers that returned unused First Draw monies, it is unclear whether those entities would be eligible for a Second Draw.

**Ineligible Entities.** Generally, an entity that is ineligible to receive a First Draw PPP Loan under largely the original rules is also ineligible for a Second Draw PPP Loan. The new legislation prohibits several additional categories of borrowers from receiving a Second Draw, including:

- Entities primarily engaged in political activities or lobbying activities, including any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or that describes itself as a think tank in any public documents;
- Certain entities organized under the laws of, or associated with, China and/or Hong Kong;
- Any person required to register under the Foreign Agents Registration Act;
- Any person or entity that receives a grant for shuttered venue operations (addressed [here](#));
- 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; or
- A publicly traded company.

**Payroll Cost Calculation.** Generally, the maximum amount of a Second Draw PPP Loan is equal to the lesser of 2.5 months of the borrower's average monthly payroll cost, or \$2 million. The guidance states that, at the election of the borrower, the relevant time periods for calculating a borrower's payroll costs for a Second Draw are:

1. Calendar Year 2019;
2. Calendar Year 2020; or
3. The 12-month period prior to when the loan is made.

**For new businesses without 12 months of payroll costs but that were in operation on February 15, 2020, average monthly payroll may be calculated based on the number of months in which payroll costs were incurred.**

The guidance further states that businesses that are part of a single corporate group may not receive more than \$4 million of Second Draw PPP monies, in the aggregate.

#### **Documentation Requirements.**

1. Payroll cost. Documents to substantiate an applicant's payroll cost calculations are generally the same as the documentation required under the original PPP (e.g., payroll processor records or payroll tax filings). There is one notable exception: a borrower that used calendar year 2019 figures to determine its original PPP loan amount is not required to submit additional documentation if the borrower relies on the same calendar year 2019 for determining the Second Draw loan amount *and* the borrower uses the same lender.

2. Revenue reduction. For loans greater than \$150,000, the applicant must submit documentation with its application to establish that it experienced a reduction of 25% or greater in 2020 relative to 2019. Such documentation may include relevant tax forms, quarterly financial statements or bank statements. For loans less than \$150,000, this documentation is not required to be submitted at the time of the application, but rather, must be submitted on or before the date the borrower applies for loan forgiveness.

**Issues with Unresolved First Draw Loans.** The guidance specifically states that if a borrower's first PPP loan is under review and/or information in the SBA's possession indicates that the borrower may have been ineligible for the loan, the applicant will not receive an SBA loan number until the issue related to the unresolved loan is resolved.

## II. First Draw PPP Loans

The rules for first-time borrowers are largely the same of the original program. The SBA issued a comprehensive, single piece of guidance mainly restating existing regulatory provisions to provide lenders and new PPP borrowers a streamlined regulation to consult on borrower eligibility, loan application and origination requirements, and forgiveness, as well as new provisions of the PPP including loan increases. Eligible first-time borrowers may apply for a First Draw PPP Loan until March 31, 2021.

Significantly, most of the original rules of the PPP apply to First Draw borrowers, including the original size standards metrics (e.g., 500 or fewer employees, alternative revenue-based size standards, etc.). The maximum amount of a First Draw is \$10 million, which is same as the original PPP. A technical change in the program is, when calculating the loan amount, First Draw borrowers may use the payroll costs of 2019, 2020, or the 1-year period before the date on which the loan is made.

The original PPP Loan application has been revised to reflect the changes in the program. The updated First Draw PPP Loan application is available [here](#).

The attorneys at Bond, Schoeneck and King can help you determine whether your business is eligible for a First or Second Draw of PPP funds and assist you in the application process. Please contact [Jeffrey B. Scheer](#) or the attorney at the firm with whom you are regularly in contact.



Bond has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences. For information about our firm, practice areas and attorneys, visit our website, [www.bsk.com](http://www.bsk.com). • Attorney Advertising • © 2020 Bond, Schoeneck & King PLLC

CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC

FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM