
New law to show who qualifies for a PPP loan

By Wagner Law Group Tue, Jan 12, 2021

This article, provided by the Wagner Law Group, explains the modifications made to the Paycheck Protection Program (PPP) by the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, a part of the Consolidated Appropriations Act of 2021.

The Payroll Protection Program (PPP), a component of last year's CARES (Coronavirus Aid, Relief, and Economic Security) Act, provided relief for struggling small businesses affected by the pandemic. But as of August 8, 2020, loans under the PPP ceased, with approximately \$130 billion in unused funds.

Now we have PPP2, or the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, a part of Consolidated Appropriations Act of 2021. The lending program has reopened, and an additional \$284 billion has been made available. (The act's modifications to the PPP are described below.)

Under PPP2, only community financial institutions will initially be able to make first-draw PPP loans on January 11 and second-draw PPP loans (described below) on January 13. The PPP will open to all participating lenders shortly thereafter, although a precise date has not been specified.

Loan application forms were released on January 8: Form 2483, Payroll Protection Program Borrower Application Form, and Form 2483-SD, PPP Second Draw Borrower Application Form, a new form for second-draw loans. The IRS also issued an 82-page interim final regulation, reflecting existing guidance under the PPP as well as guidance on the newly enacted provisions.

(Please see Wagner's [law alert](#) dated January 1, 2021, for in-depth coverage of the CAA provisions impacting employer-sponsored benefit plans.)

Significantly, the PPP now permits businesses that have already received one PPP loan to receive a second loan, referred to as a second-draw loan. To be eligible for this second-draw loan, a business must have 300 or fewer employees, including domestic and international affiliates, with special rules for businesses in the hotel and food industry.

In addition, the business must have used or will use the full amount of its prior PPP loan on eligible expenses and demonstrate at least a 25% reduction in gross receipts for any quarter in 2020 compared to the same quarter in 2019. 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 at least 25% in 2020 compared with 2019.

The maximum loan amount for second-draw loans is the lesser of 250% (350% for businesses in the food and hotel industries) of the applicant's monthly payroll costs in the one-year period prior to the loan, with a cap per employee of \$100,000 annualized, or \$2 million, a ceiling substantially lower than the \$10 million cap on first-time PPP loans.

The business must also have been in existence on February 15, 2020, and the application for the second-draw loan must be submitted by March 31, 2021. The loan funds must be used during a covered period. Under the CARES Act, the covered period was either eight weeks or 24 weeks, but the CAA permits the borrower to select any period between eight weeks and 24 weeks as the covered period.

Certain businesses are not permitted to receive a second PPP loan, including:

- Publicly held organizations
- A business with ties to the Peoples Republic of China
- Banks
- Life insurance companies
- Businesses that derive more than one-third of their annual gross revenue from gambling activities
- Entities engaged in political or lobbying activities
- Advocacy organizations and think tanks
- Persons required to register as a foreign agent

However, the Act has expanded coverage to Code Section 501(c)(6) organizations, such as business leagues; housing cooperatives; destination marketing organization; and certain news organizations.

The CCA requires that at least 60% of the PPP loan be used on payroll expenses. Additionally, both new borrowers and those borrowers that have not yet applied for forgiveness may use the PPP loans for four new categories of expenses:

- Covered operation expenditures, which includes payments for any business software or cloud computing software that facilitates business operations;
- Covered property damage, which includes costs related to property damage and vandalism or looting due to public disturbances during 2020 that was not covered by insurance or other compensation;
- Covered supplier costs; and

- Covered worker protection, including personal protective equipment; a combined air or air pressure ventilation or filtration system; and onsite or offsite screening capabilities.

Further, businesses that returned funds, possibly because they were unsure if they satisfied SBA conditions, or did not accept the full amount possible, may be eligible for increased PPP loan amounts equal to the difference between the maximum amount available and the amount retained.

Other changes under the CCA include:

- Simplified forgiveness applications for recipients of loans of \$150,000 or less reversing the IRS's position
- Clarification that organizations receiving PPP loans will be able to deduct expenses paid for by funds received under the loan
- Greater flexibility for seasonal employees
- repeal of the Cares Act provision requiring PPP borrowers to deduct the amount of their Economic Injury Disaster Loan advance from their PPP forgiveness amount
- Permitting PPP borrowers to use the employee retention tax credit.

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