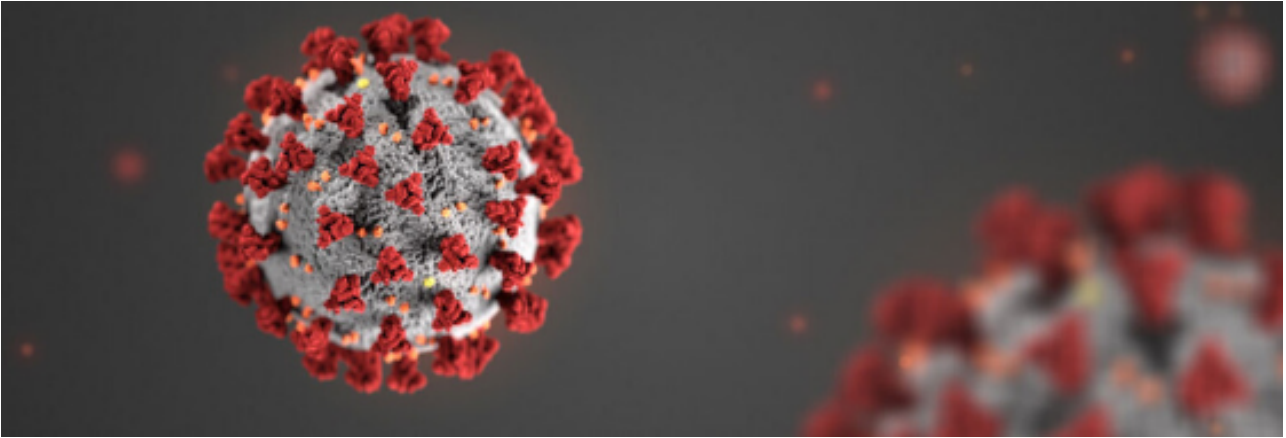


SBA Releases PPP2 Interim Final Rules

Mark Heimendinger & Ferran Arimon

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By: Mark Heimendinger & Ferran Arimon

This week, the U.S. Small Business Administration (SBA) and Treasury will launch the revamped Paycheck Protection Program (PPP2). PPP2 will reopen today for first-time borrowers and on Wednesday, January 13 for second-draw borrowers. The guidance released last week included two interim final rules (IFRs).

The first IFR - "Business Loan Program Temporary Changes; a Paycheck Protection Program as Amended" consolidates the PPP rules for first-time borrowers and additionally outlines changes made by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, P.L. 116-260 (the "Act"). The application form for first-time borrowers can be found [here](#).

As discussed in a previous article, PPP2 provides that certain borrowers are eligible to apply for a second PPP loan. The second IFR released by the SBA and Treasury - "Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans" sets forth the guidelines for second-time borrowers. The application for second-draw borrowers can be found [here](#).

In addition to the two IFRs above, the SBA released "Guidance on Accessing Capital for Minority, Underserved, Veteran and Women-Owned Business Concerns." This guidance provides that the SBA is committed to making at least the first two days of the PPP2 application window open exclusively to applicants from community financial institutions that serve minority and women-owned businesses.

First-draw Loans

Unlike the original PPP, publicly traded companies and businesses controlled, whether directly or indirectly, by certain members of the executive branch, and members of Congress (including their spouses) will not be eligible for PPP2 loans.

The Act requires that applicants were in operation prior to February 15, 2020, and fall into one of the following categories:

- Business concerns with 500 or fewer employees (in accordance with eligibility standards for other SBA 7(a) loans);
- Not-for-profits (including churches);
- Business concerns with NAICS codes beginning with 72 (Accommodation and Food Services) with less than 500 employees at each location;
- Not-for-profit public broadcasting entities with NAICS code 511110 or 5151 with fewer than 500 employees per location;
- News organizations controlled or majority-owned by a business concern with NAICS code 511110 or 5151 with fewer than 500 employees per location;
- Business leagues falling under IRC Section 501(c)(6) and Destination Marketing Organizations provided: (i) it has 300 or fewer employees; (ii) it does not receive more than 15% of receipts from lobbying; (iii) lobbying does not constitute more than 15% of the organizations activities and did not exceed a cost of \$1 million in the most recent tax year ended prior to February 15, 2020.

Second-draw Loans

PPP2 provides that borrowers who have previously received a PPP loan will be eligible for a PPP2 loan provided they:

- Have used (or will use) the full proceeds of their first PPP loan on eligible expenses prior to the disbursement date for PPP2 proceeds;
- Have experienced a 25% or greater revenue reduction in any quarter of 2020 as compared with the same quarter in 2019 - the IFR further clarifies that any applicant in business for all four quarters of 2019 may alternatively show a 25% reduction in annual receipts for the entire year 2020 as compared to 2020;
- Employ 300 or fewer employees.

Second-draw applicants who have not used the full amount of their first-draw PPP loans at the time of application should have a plan in place regarding expenditure of their remaining first-draw proceeds prior to the expected date on which the second-draw PPP loan is disbursed to borrower. Second-draw applicants should also keep in mind that first-draw proceeds must have been used on eligible expenses.

The IFR provides that for purposes of calculating revenue reduction, gross receipt shall include all revenue in whatever form received or accrued (dependent on applicants accounting methods) from whatever source, including without limitation: product and/or service sales; dividends; royalties; rents; interest; fees; and commissions.

Maximum Loan Amounts

Like the first round of PPP loans, first-time and second-time borrowers may receive a PPP2 loan in an amount equal to 2.5x their average monthly payroll costs (capped at \$100k annualized per employee).

The maximum loan amount for first-time borrowers is capped at \$10 million while the maximum loan amount for second-time borrowers is capped at \$2 million.

Second-time borrowers with NAICS codes beginning with 72 may receive up to 3.5x their average monthly payroll on second-draw loans. This favorable change will be particularly impactful for smaller borrowers given second-draw loans are now capped at \$2 million.

Applicants will be required to provide their quarterly federal tax returns as well as state quarterly wage unemployment insurance tax reporting forms from each quarter of the year used to calculate the maximum loan amount and any evidence of health insurance and retirement contributions.

Simplified Forgiveness Application

The Act provides for a simplified forgiveness process for borrowers that receive a PPP loan equal to \$150,000 or less. Such borrowers shall receive forgiveness provided that they sign and submit to the lender a 1-page certification including: the number of employees the borrower was able to retain due to PPP loan proceeds, the estimated amount spent on payroll costs, and the total loan amount.

The form is not permitted to require additional information unless it is required to corroborate any revenue loss criteria or satisfy any legal requirements. The SBA is required to publish this simplified application form no later than January 20.

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