

## **Frequently Asked Questions: Paycheck Protection Program Round 2 First Draw Borrowers**

### **1. What is the Paycheck Protection Program Round 2?**

On December 27, 2020, the Consolidated Appropriations Act (Act) was signed into law to provide financial relief to small businesses suffering from the impact of the COVID-19 pandemic. The Act amends the Paycheck Protection Program (PPP) that was established earlier this year under the CARES Act. As before, the PPP loans will be low-interest, forgivable loans for specified purposes, designed to encourage businesses to keep employees on the payroll during the pandemic.

### **2. Who is eligible to apply?**

All borrowers applying for a PPP loan need to meet the Small Business Administration's (SBA) certification of need requirement, attesting that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."

Borrowers applying for their first PPP loan, including nonprofits, veterans' organizations, Tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors, must:

1. have 500 or fewer employees;
2. have been in operation on or before February 15, 2020; and
3. unless a nonprofit or religious organization, not be listed under 13 C.F.R. 120.110.

### **3. Who is ineligible to apply?**

The following entities are ineligible to receive PPP loans:

1. entities other than nonprofits and religious organizations listed under 13 C.F.R. 120.110;
2. entities primarily engaged in political and lobbying activities including entities that are organized for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public document;
1. entities affiliated with entities in the People's Republic of China or Hong Kong;
2. registrants under the Foreign Agents Registration Act;
3. entities in which certain public officials or members of their spouse own or control at least 20 percent of any class of equity;
4. publicly traded companies;
5. entities which have permanently closed; and
6. entities who receive a grant under the Shuttered Venue Operator Grant program.

### **4. What is the maximum loan amount I can apply for?**

Generally, the maximum loan amount for first-time borrowers is the lessor of:

1. 2.5x the borrower's monthly payroll costs; or
2. \$10,000,000.

The maximum loan amount applicable to farmers and ranchers who are sole proprietors, independent contractors, or self-employed individuals, is limited to the lesser of:

1. 2.5x the borrower's monthly payroll costs; or
2. \$2,000,000.

## 5. How do I calculate payroll costs?

To calculate their maximum loan amount, borrowers must calculate their payroll costs for either calendar year 2019, calendar year 2020, or the 12-month period prior to the date the loan is made (whichever the borrower chooses), and multiply that amount by 2.5. The term "payroll costs" includes:

- the salary, wages, commissions, or similar compensation of employees whose principal residence in the United States;
- cash tips or the equivalent;
- payment for vacation, paternal, family, medical, or sick leave;
- allowance for separation or dismissal;
- payment for the provision of employee benefits consisting of group health care or group life, disability, vision, or dental insurance, including insurance premiums and retirement;
- payment of state and local taxes assessed on compensation of employees; and
- for independent contractors or sole proprietors, wages, commissions, income, or net earnings from self-employment, or similar compensation.

The term "payroll costs" does not include:

- compensation for employees whose principal place of residence is outside of the United States;
- compensation of individual employees in excess of \$100,000 on an annualized basis;
- federal employment taxes imposed or withheld during the applicable period; and
- qualified sick and family leave wages for which a credit is allowed under Sections 7001 and 7003 of the Families First Coronavirus Response Act.

## 6. How can I use my PPP Round 2 Loan Proceeds?

### Eligible Payroll Costs

- Cash Compensation. Defined as paid or incurred gross salary, gross wages, gross tips, gross commissions, paid leave (vacation, family, medical or sick leave, but not including Families First Coronavirus Response Act leave), and allowances for dismissal or separation. Includes pay to furloughed employees and extra "hazardous" pay. Does not apply to compensation above \$100,000.
- Health Care Benefits. These are payments by a borrower for employee health insurance, including employer contributions to a self-insured, employer sponsored group health plan, but excluding any pre-tax or after-tax contributions by employees. This includes group insurance payments made on group life, disability, vision and dental insurance.
- Retirement Benefits. Include the total amount paid by a borrower for employer contributions to employee retirement plans but excluding any pre-tax or after-tax contributions by employees.

- Payroll Taxes. State and local payroll taxes include the total amount paid by a borrower for employer state and local taxes assessed on employee compensation (e.g., state unemployment insurance tax), but not including any taxes withheld from employee earnings.
- Covered Supplier Cost Expenditures. Expenditures made (a) to a supplier of goods for goods that are essential to the borrower's operations at the time the expenditure is made and (b) pursuant to a contract, order or purchase order in effect at any time before the PPP loan is disbursed, provided that for perishable goods such expenditure need not be tied to a contract or purchase order that existed prior to the PPP loan.
- Covered Worker Protection Expenditure. Certain operating or capital expenditures required to meet worker or customer safety requirements or guidance related to COVID-19 issued by the Department of Health and Human Services, the Centers for Disease Control, the Occupational Safety and Health Administration, or any equivalent state or local requirements implemented between March 1, 2020 and the date the COVID-19 national emergency is lifted, for example, the purchase or renovation of drive-through windows, ventilation or filtration systems, or the expansion of physical space. Expenditures on real estate and other intangible property are not covered under this category.
- Covered Operations Expenditure. Expenditures 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.
- Covered Property Damage Cost. Expenditures related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation.

## 7. Eligible Non-Payroll Costs

- Rent. Includes amounts due on equipment leases and other leases of personal property. Rent paid to a related real estate entity owned by the borrower is only forgivable to the extent it corresponds to a mortgage or lease paid to a third party by the related real estate entity. Applies only to a leasing agreement in force before February 15, 2020.
- Utilities. Payments for the distribution of electricity, gas, water, transportation, telephone, and internet access. Forgivable transportation costs are limited to transportation utility fees assessed by state or local government. Applies only to utilities for which service began before February 15, 2020.
- Interest. Excludes any pre-paid interest. Payments of interest on business mortgages on real or personal property (such as an auto loan) are eligible for loan forgiveness. Interest on unsecured credit is not eligible for loan forgiveness because the loan is not secured by real or personal property. Payments made on recently renewed leases or interest payments on refinanced mortgage loans are eligible for loan forgiveness if the original lease or mortgage existed prior to February 15, 2020. Applies only to interest on mortgages on real estate or personal property originated before February 15, 2020.

## 8. How do I receive forgiveness on my loan?

A borrower must pick a "covered period" ending at any time between 8-weeks and 24-weeks after loan origination. Regardless of the covered period a borrower picks, each borrower must use the full amount of the PPP loan proceeds on eligible expenses during the selected covered period to

be eligible for full loan forgiveness.

### **9. How much of my loan will be forgiven?**

100 percent of the PPP loan is forgivable as long as the following requirements are met:

1. the loan proceeds are spent, or the qualifying costs incurred, within the covered period following funding of the loan;
2. the funds are used for payroll costs and the other forgivable loan uses; and
3. at least 60 percent of the loan amount has been used for payroll costs such as maintaining staffing and pay levels.

While borrowers are still required to spend at least 60 percent of their PPP loan proceeds on eligible payroll costs to be eligible for full forgiveness, the recent update expands the permissible use of PPP loan proceeds to include the following:

1. payroll costs (except some qualified wages under the CARES Act and Taxpayer Certainty and Disaster Relief Act of 2020);
2. interest payments on covered mortgage obligations;
3. covered rent and utility payments;
4. covered operations expenditures;
5. covered property damage costs;
6. covered supplier costs; and
7. covered worker protection expenditures.

The forgiven portion of a PPP loan can be excluded from gross income. Borrowers have 10 months from the end of their covered period to apply for forgiveness before they would need to start paying back any portion of their loan. Lenders have 60 days to decide on loan forgiveness.

### **10. What is the simplified forgiveness process for loans under \$150,000?**

The Act provides for a simplified loan forgiveness process for PPP loans of up to \$150,000. Specifically, applicable borrowers will be eligible for loan forgiveness if the borrower signs and submits a one-page certification to the lender (a) describing the number of employees the borrower was able to retain because of the PPP loan, the estimated amount spent on eligible payroll costs and total PPP loan value and (b) attesting that it accurately provided the required certification and complied with applicable PPP requirements. The form of the above described certification is expected to be available by January 20, 2021.

### **11. What are the time constraints to apply?**

Initially only community financial institutions will be able to make First Draw PPP Loans on Monday, January 11, 2021. Borrowers have until March 31, 2021, to apply for a PPP loan.