



NEW PPP GUIDANCE ISSUED BY SBA, TREASURY

From the Journal of Accountancy by Jeff Drew

The U.S. Small Business Administration (SBA) and Treasury issued guidance Wednesday night, January 6, for the reconstituted Paycheck Protection Program (PPP).

The guidance included two interim final rules (IFRs).

- The [82-page IFR](#) “Business Loan Program Temporary Changes; Paycheck Protection Program as Amended” consolidates the rules for PPP forgivable loans for first-time borrowers and outlines changes made by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, P.L. 116-260.
- The [42-page IFR](#) “Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans” lays out the guidelines for new PPP loans to businesses that previously received a PPP loan.

In addition, the SBA released a [three-page](#) “Guidance on Accessing Capital for Minority, Underserved, Veteran and Women-Owned Business Concerns.” That guidance includes a commitment from the SBA to make at least the first two days of the PPP application window open exclusively to applications from community financial institutions that serve minority- and women-owned businesses. The SBA did not set a date for restarting the PPP, but the program is authorized through March 31.

Erik Asgeirsson, CEO of the AICPA’s business subsidiary, CPA.com, said Wednesday afternoon, January 6, in an AICPA Town Hall that new forms for PPP are expected to be released this week and that the SBA could start receiving applications as early as Monday.

Congress revived the PPP as part of the \$900 billion [COVID-19 relief bill](#) that was signed into law on Dec. 27. The original PPP provided [\\$525 billion in forgivable loans](#) over five months before it stopped accepting applications in August. The Economic Aid Act rebooted the PPP with many of the same parameters as the first program but also several important differences from the original PPP. The new PPP is authorized to operate through March 31. New PPP application forms have not yet been released but are expected in the next few days. The SBA has not yet announced when it will start accepting new PPP applications.

Second-draw PPP loans

One of the biggest changes with the new PPP is that Congress made funding available to businesses that had previously received a PPP loan. Borrowers are eligible for a second-draw PPP loan of up to \$2 million, provided they have:

- 300 or fewer employees.
- Used or will use the full amount of their first PPP loan on or before the expected date for the second PPP loan to be disbursed to the borrower. The IFR also clarifies that the borrower must have spent the full amount of the first PPP loan on eligible expenses.



- Experienced a revenue reduction of 25% or more in all or part of 2020 compared with all or part of 2019. This is calculated by comparing gross receipts in any 2020 quarter with an applicable quarter in 2019, or, in a provision added in the IFR, 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 25% or greater in 2020 compared with 2019.

The Economic Aid Act did not provide a general definition of gross receipts for determining a borrower's revenue reduction, so the new guidance makes the definition consistent with the definition of receipts in 13 C.F.R. Section 121.104 of SBA's size regulations. Specifically, the IFR defines gross receipts to include all revenue in whatever form received or accrued (in accordance with the entity's accounting method) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Forgiven first-draw PPP loans are not included in the 2020 gross receipts.

First-draw PPP loans

The Economic Aid Act makes first-draw PPP loans available to borrowers that were in operation on Feb. 15, 2020, and come from one of the following groups:

- Businesses with 500 or fewer employees that are eligible for other SBA 7(a) loans.
- Sole proprietors, independent contractors, and eligible self-employed individuals.
- Not-for-profits, including churches.
- Accommodation and food services operations (those with North American Industry Classification System (NAICS) codes starting with 72) with fewer than 500 employees per physical location.
- Sec. 501(c)(6) business leagues, such as chambers of commerce, visitors' bureaus, etc., and "destination marketing organizations" that have 300 or fewer employees and do not receive more than 15% of receipts from lobbying. The lobbying activities must comprise no more than 15% of the organization's total activities and have cost no more than \$1 million during the most recent tax year that ended prior to Feb. 15, 2020. Sports leagues are not eligible.
- News organizations that are majority-owned or controlled by an NAICS code 511110 or 5151 business or not-for-profit public broadcasting entities with a trade or business under NAICS code 511110 or 5151. The size limit for this category is no more than 500 employees per location.

In a change from the original PPP, publicly traded companies and businesses controlled, either directly or indirectly, by the president, vice president, head of executive departments, and members of Congress (or their spouses as defined by applicable common law) are not eligible for PPP loans.

PPP applicants must submit documentation sufficient to establish eligibility and to demonstrate the qualifying payroll amount, which may include, as applicable, payroll records; payroll tax filings; Form 1099-MISC, *Miscellaneous Income*; Form 1040, Schedule C, *Profit or Loss From Business*,



or Schedule F, *Profit or Loss From Farming*; income and expenses from a sole proprietorship; or bank records.

PPP loan maximum amounts

In general, first-time PPP borrowers may receive a loan amount of up to 2.5 times their average monthly payroll costs (not counting employees who make more than \$100,000 annualized) in the year prior to the loan or the calendar year. PPP borrowers with NAICS codes starting with 72 (hotels and restaurants) can receive up to 3.5 times their average monthly payroll costs.

The maximum for a first-draw PPP loan is \$10 million, the same as in the original PPP. Applicants must provide a Form 941, *Employer's Quarterly Federal Tax Return*, (or other forms with similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever is used to calculate the loan amount), or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions.

Eligible costs

PPP borrowers can have their first- and second-draw loans forgiven if the funds are used on eligible costs. As with the first round of the PPP, the costs eligible for loan forgiveness in the revised PPP include payroll, rent, covered mortgage interest, and utilities. In addition, the following costs are now eligible:

- Covered worker protection and facility modification expenditures, including personal protective equipment, to comply with COVID-19 federal health and safety guidelines.
- Covered property damage costs related to property damage and vandalism or looting due to public disturbances in 2020 that were not covered by insurance or other compensation.
- Expenditures to suppliers that are essential at the time of purchase to the recipient's current operations.
- Covered operating expenditures, which refer to payments 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.

To be eligible for full loan forgiveness, PPP borrowers will have to spend no less than 60% of the funds on payroll over a covered period between eight or 24 weeks.

Simplified forgiveness

Borrowers that receive a PPP loan of \$150,000 or less shall receive forgiveness if the borrower signs and submits to the lender a certification that is not more than one page in length, includes a description of the number of employees the borrower was able to retain because of the loan, the estimated total amount of the loan spent on payroll costs, and the total loan amount. The SBA



has yet to create the simplified application form but must do so by Jan. 20. The form may not require additional materials unless necessary to substantiate revenue loss requirements or satisfy relevant statutory or regulatory requirements. Borrowers are required to retain relevant records related to employment for four years and other records for three years, as the SBA may review and audit these loans to check for fraud.

Minority, underserved, veteran, and women-owned businesses

The Economic Aid Act provided set-asides for new and smaller borrowers, for borrowers in low- and moderate-income communities, and for community and smaller lenders. The set-asides include:

- \$15 billion across first- and second-draw PPP loans for lending by community financial institutions;
- \$15 billion across first- and second-draw PPP loans for lending by insured depository institutions, credit unions, and Farm Credit System institutions with consolidated assets of less than \$10 billion;
- \$35 billion for new first-draw PPP borrowers; and
- \$15 billion and \$25 billion for first-draw and second-draw PPP loans, respectively, for borrowers with a maximum of 10 employees or for loans of less than \$250,000 to borrowers in low- or moderate-income neighborhoods. The SBA has determined that at least 25% of each of those set-asides will go to each one of the groups: loans to borrowers with a maximum of 10 employees and loans of less than \$250,000 to borrowers in low- or moderate-income neighborhoods.

The SBA announced in its three-page guidance that it would take a number of steps to ensure increased access to the PPP for minority, underserved, veteran, and women-owned business concerns. Most notably, the SBA said it will accept PPP loan applications only from community financial institutions for at least the first two days when the PPP loan portal reopens. In addition, the SBA said it would:

- Direct Lender Match borrower inquiries to small lenders that can aid traditionally underserved communities;
- Match small businesses through Lender Match with Certified Development Companies (CDCs), Farm Credit System lenders, microloan intermediaries, and traditional smaller asset size lenders;
- Continue setting aside dedicated hours to process and assist the smallest PPP lenders with their PPP loans;
- Continue to strongly encourage community development financial institutions and minority-, women-, veteran-, and military-owned lenders to apply to become PPP lenders. SBA said it would give full and prompt consideration to these applications to become PPP lenders consistent with program guidelines, including in cases where the lender does not meet all of the requirements listed on the updated SBA Form 3507;

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- Continue to work with the Board of Governors of the Federal Reserve System on the PPP Liquidity Facility to enable PPP lenders, including nonbank lenders, to pledge PPP loans to the Federal Reserve as collateral for Federal Reserve borrowings to enhance lender liquidity and enable PPP lenders to expand their lending capacity;
- Promote awareness of these policies and procedures via traditional media methods, SBA social media accounts, and guidance to lenders before the formal opening of the SBA's loan systems;
- Continue to work with federal partners, including the Department of Agriculture, the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Farm Credit Administration, and the National Credit Union Administration, to share the guidance with PPP lenders, borrowers, and the broader public.

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