

CLIENT ALERT

SBA Begins Rolling Out Guidance for New PPP and PPP Second Draw Loans

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On January 7, 2021, the Small Business Administration (SBA) released two Interim Final Rules (IFRs) regarding amendments to the Paycheck Protection Program (PPP) by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act).

The [Consolidated First Draw PPP IFR](#) helpfully restates regulatory provisions and guidance to provide lenders and new PPP borrowers a single regulation to consult on borrower eligibility, lender eligibility, and loan application and origination requirement issues for new First Draw PPP loans, as well as general rules relating to First Draw PPP Loan increases, permissible loan uses, and loan forgiveness. SBA adds that an additional IFR on loan forgiveness as well as new FAQs are forthcoming.

The [IFR on the PPP Second Draw Loans](#) emphasizes that second draw loans are generally subject to the same terms and conditions of the PPP (including the Consolidated First Draw PPP Interim Final Rule, discussed above, as well as the SBA's FAQs) except as otherwise provided. This IFR highlights the key differences in the loan terms, eligibility requirements, and application between first and second draw loans. This IFR provides the following guidance that builds on the details already spelled out in the Economic Aid Act:

- With respect to the requirement that applicants use their PPP First Draw loan, the IFR states that applicants must have 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. (This includes the amount of any increase received on a First Draw PPP Loan.) And, all First Draw PPP Loan proceeds must have been used only for eligible expenses.
- With respect to the revenue reduction requirement, the IFR defines gross receipts consistent with the definition of receipts in SBA's size regulations, at 13 C.F.R. § 121.104. Any forgiveness amount of a First Draw PPP Loan that a borrower received in calendar year 2020 is excluded from a borrower's gross receipts. The IFR also provides guidance on how to calculate receipts of affiliates, former affiliates, and affiliates acquired during 2020.
- With respect to ineligibility, in addition to categories of ineligibility defined in the Economic Aid Act, the IFR makes clear that any entity ineligible to receive a First Draw PPP Loan under the CARES Act or the Consolidated First Draw PPP IFR is also ineligible for a Second Draw PPP Loan. The IFR prohibits permanently closed businesses from receiving a Second Draw PPP Loan but specifies that a borrower that is temporarily closed or suspended remains eligible.
- With respect to calculating borrowers' payroll costs, the IFR allows applicants to use calendar year 2019 or 2020 (as opposed to the twelve-month period prior to when the loan is made).
- The IFR provides that borrowers are limited to receipt of one Second Draw PPP Loan, no greater than \$2 million.
- This IFR imposes a limit of \$4 million in the aggregate that a single corporate group may receive of Second Draw PPP loans.
- With respect to documentation to substantiate an applicant's payroll cost calculations, the IFR notes that this is generally the same as documentation required for First Draw PPP Loans and lists the different types of documentation

to be provided depending on the circumstances. No additional documentation is required if an applicant is using the same lender for its Second Draw PPP Loan as its First Draw PPP Loan and will have relied on its calendar year 2019 figures to determine both its First and Second Draw PPP Loans. As provided for in the Economic Aid Act, for loans with a principal amount of \$150,000 or less, no documentation is required at the time of application and can instead be provided with the forgiveness application or, if forgiveness is not sought, upon SBA's request.

- With respect to a borrower with First Draw PPP Loan under review by SBA, the IFR explains that SBA will not issue a SBA loan number for Second Draw PPP Loan until any issues related to the First Draw PPP Loan is resolved. SBA commits to resolving such issues "expeditiously" and will set aside available appropriations to fund loans to such unresolved borrowers in the event that they are approved.

Crowell & Moring LLP stands by ready to assist as PPP applicants on new First Draw PPP Loans and Second Draw PPP Loans and will provide prompt updates as the SBA releases more information about the new PPP and PPP Second Draw Loans, as well as information on related forgiveness requirements.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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