

# PPP 2 LOANS – A Second Opportunity for Eligible Businesses to Obtain Forgivable Loans

January 11, 2021

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This advisory summarizes the terms, eligibility and application requirements of the new Payment Protection Program loan (PPP 2 Loans) under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, which President Trump signed into law in December 2020.

On December 27, 2020, President Trump signed into law the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116-260) (Economic Aid Act). Critically, the Economic Aid Act creates a new Paycheck Protection Program (PPP) loan (PPP 2 Loans)<sup>1</sup> available to certain eligible entities that received PPP loans pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that was signed into law on March 27, 2020 (such earlier loan, a PPP 1 Loan). PPP 2 Loans are available through participating lenders until March 31, unless appropriated funds are depleted sooner.

The Small Business Administration (SBA) and US Treasury issued interim rules implementing the PPP 2 Loan program on January 6 (Interim Rules).<sup>2</sup> Set forth below is a high-level summary of the PPP 2 Loan program as implemented by the Interim Rules.<sup>3</sup>

**Terms** – Terms for the PPP 2 Loans are generally the same as the terms applicable to PPP 1 Loans. Those terms include the following: (1) 100 percent SBA guarantee; (2) no collateral is required; (3) no personal guarantees are required; (4) one percent interest rate; (5) five year maturity; and (6) lenders may make such loans under delegated authority from the SBA and rely on borrower's certifications regarding eligibility.

## Eligibility:

**Operations** – a PPP 2 applicant must (1) have been in business on February 15, 2020, (2) have had a PPP 1 Loan where the full amount of such loan was utilized or will be utilized prior to disbursement of the PPP 2 Loan,<sup>4</sup> and (3) have used the proceeds of its PPP 1 Loan only for eligible expenses under the existing PPP program rules.

**Employees** – Maximum of 300. PPP borrowers that were eligible for PPP 1 Loans based on a “per location” analysis (single business entities operating with NAICS Code 72 – Accommodations and Food Services) may employ no more than 300 employees per physical location for purposes of a PPP 2 Loan.

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<sup>1</sup> Approximately \$284B is appropriated for PPP loans (both PPP1 and PPP2 Loans). Note that PPP 1 Loans are again available according to the terms set forth in the CARES Act (i.e., up to 500 employees; maximum loan amount up to \$10M).

<sup>2</sup> See *Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans*, published on January 6, 2021, at <https://home.treasury.gov/system/files/136/PPP-IFR-Second-Draw-Loans.pdf>.

<sup>3</sup> This summary assumes that the PPP borrower is a business (and not a sole proprietor or independent contractor) and eligible for a PPP 2 loan in an amount greater than \$150,000.

<sup>4</sup> SBA rules require that PPP proceeds be disbursed within 10 calendar days of approval.

**Gross Receipts**<sup>5</sup> — To qualify, a PPP borrower must show at least a 25 percent reduction in gross receipts in Q1, Q2, Q3, or Q4 of 2020, as compared to the same quarter in 2019.<sup>6</sup> The Interim Rules also provide that a PPP borrower that was in operation for all four quarters of 2019 is deemed to satisfy this revenue reduction requirement if it experienced a reduction in annual receipts of 25 percent or greater in 2020 compared to 2019, and the borrower submits annual tax forms substantiating such revenue decline. Forgiveness amounts received pursuant to PPP 1 Loans are excluded from a borrower’s gross receipts calculation.

**Business Lines** — Ineligible entities continue to be those set forth at 13 CFR § 120.110 with the exception of non-profits and religious institutions. Businesses engaged in political activities and lobbying and publicly traded companies are also excluded from participation.<sup>7</sup>

**Affiliation Rules** — Affiliation rules that applied to PPP 1 Loans generally apply to PPP 2 Loans. PPP 1 affiliation rules related to businesses with an NAICS code beginning with 72 (Accommodations and Food Services) are adjusted to the 300 employee maximum.<sup>8</sup>

**Maximum PPP 2 Loan Amount** — Calculation is based on 2.5x of monthly payroll expenses in the year prior to the PPP loan origination, calendar year 2020, or calendar year 2019 (or 3.5x of monthly payroll expenses for PPP borrowers with an NAICS Code of 72 – Accommodations and Food Services).<sup>9</sup> Maximum PPP 2 Loan amount: \$2 million.<sup>10</sup>

**Eligible Expenses** — Includes those applicable to PPP 1 Loans (payroll costs, mortgage payments, rental payments, utility payments) plus the following:

- (1) **covered operations expenditures** — includes payments for business software or cloud computing;
- (2) **covered supplier costs** — includes goods that were essential to the business at the time the expenditure was made and such expenditures were made pursuant to a contract;
- (3) **covered worker protection expenditures** — includes expenses required to comply with governmental requirements (including sneeze guards, ventilation systems, and the expansion of outdoor space) and personal protective equipment costs (these costs can be incurred any time after March 2020); and
- (4) **covered property damage costs** — includes costs related to looting or vandalism in 2020 that were not covered by insurance or other compensation.<sup>11</sup>

**Number of Loans** — Only one PPP 2 Loan may be obtained by a borrower.

**Covered Period** — No less than eight weeks after origination and no more than 24 weeks after origination.

**Economic Necessity Certification** — Borrower must make the same certification made in connection with a PPP 1 Loan (current economic conditions make the loan request necessary).

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<sup>5</sup> The Interim Rules generally define “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. Generally, receipts are considered “total income” plus “cost of goods sold.”

<sup>6</sup> Different rules apply for businesses that were not operational in the relevant periods in 2019.

<sup>7</sup> The Interim Rules provide that businesses that have permanently closed are not eligible for a PPP 2 Loan. Businesses that are “temporarily closed” or that have “temporarily suspended” operations are, however, eligible for such loans.

<sup>8</sup> See *Affiliation Rules Applicable to U.S. Small Business Administration Paycheck Protection Program*, April 3, 2020, available at the following link: <https://home.treasury.gov/system/files/136/Affiliation%20rules%20overview%20%28for%20public%29.pdf>.

<sup>9</sup> Specific rules apply to calculations for seasonal businesses.

<sup>10</sup> Businesses that are part of a single corporate group may not receive more than \$4M in PPP 2 Loans in the aggregate.

<sup>11</sup> PPP borrowers that have *not* had their PPP 1 Loan forgiven may include the newly eligible expenses in the calculation of their use of PPP funds for permitted purposes.

**Forgiveness** — All “eligible expenses” (defined above) incurred during the covered period are eligible for forgiveness; however, the 60 percent/40 percent ratio for payroll costs, as compared to other eligible expenses that applied to PPP 1 Loan forgiveness calculations, applies to PPP 2 Loan forgiveness calculations.

**Application Requirements** — Each PPP 2 lender must use either the SBA’s application form or create a form that is substantially similar. Pursuant to the Interim Rules, PPP 2 applicants must also provide documentation to support the 25 percent revenue reduction requirement. This documentation may consist of relevant tax forms, quarterly financial statements or bank statements. PPP lenders are required to perform a “good faith review, in reasonable time” of a PPP 2 Loan applicant’s calculations and supporting documentation.

**PPP 1 Borrowers with Loans Under Review by SBA** — Where the SBA has information that a PPP 1 borrower may not have been eligible for such loan, the lender will receive a notice from the SBA when it submits the PPP 2 Loan application, and no SBA loan number will be provided until an eligibility determination has been made. The Interim Rule states that the SBA will “resolve issues related to unresolved borrowers expeditiously.”

As of the date of this client alert, it cannot be determined when PPP lenders will receive PPP 2 applications or when the SBA will begin to accept such applications for processing. Moreover, it cannot be determined whether all lenders that participated in PPP 1 Loans will participate in the PPP 2 Loan program. It is likely, however, that PPP lenders participating in the PPP 2 program will need to adjust internal resources to account for the demand the program will generate given the program’s limited duration and funding. This potential shift in the use of lenders’ internal resources may result in a delay in processing forgiveness applications for PPP 1 loans.

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## CONTACTS

For more information, please contact Katten’s [Corporate](#) practice or the following attorney:



**[Christina J. Grigorian](#)**

+1.202.625.3541

[christina.grigorian@katten.com](mailto:christina.grigorian@katten.com)

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