

# Paycheck Protection Program Second Draw Opens Today for Small Businesses, Hotels, & Restaurants

By Donna Hartl & Mark Peasley

Signed into law on December 27, 2020, The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act creates a second opportunity for businesses that have utilized the full amount of their First Draw Paycheck Protection Program (“PPP”) loans. The rules and application process for Second Draw PPP loans generally mirror the rules for the First Draw PPP loans, with several key differences relating to loan amounts, loan eligibility, and forgivable uses. Similar to First Draw PPP loans, hotels, restaurants, and other entities with NAICS codes beginning with “72” are granted special dispensation due to the severe impact of the COVID-19 pandemic on those industries. In furtherance of the SBA’s focus on small businesses and self-employed individuals, the Second Draw PPP loans include set-asides for certain small businesses, sole proprietors, and independent contractors, more streamlined application requirements, and the option to apply with information already provided or information as calculated by existing payroll mechanisms.

## Loan Amount

Hospitals and restaurants can receive the lesser of 3 ½ months’ average monthly payroll costs or \$2,000,000, while other borrowers can receive the lesser of 2 ½ months’ average monthly payroll costs or \$2,000,000. Businesses in a corporate group can receive up to \$4,000,000 in total.

## Eligibility

The Second Draw PPP loan targets a narrower scope of borrowers. Eligible hotel and restaurant borrowers are generally those that satisfy all of the following:

- Have received a First Draw PPP loan (if your business has not received a First Draw PPP loan, it can apply for a First Draw PPP loan through March 31, 2020).
- Have used or will use the full First Draw PPP loan on eligible expenses before the Second Draw PPP loan is disbursed to the borrower – an application for First Draw PPP loan forgiveness need not be filed to request a Second Draw PPP loan.
- Employ 500 or fewer total employees for hotels or restaurants, with no more than 300 employees per physical location. The SBA’s affiliation rules do not apply to any business entity that is assigned an NAICS code beginning with 72 and that employs no more than 300 employees in total, meaning affiliated hotels or restaurants can receive a Second Draw PPP loan for each EIN, so long as eligibility requirements are met for each EIN. Other businesses must employ 300 or fewer employees.
- Are not public companies.
- Experienced a 25% reduction in quarterly gross receipts in 2020 when compared against the same quarter of 2019 or if in operation for all of 2019, experienced a 25% reduction in annual receipts in 2020 when compared to 2019. The SBA has provided special definitional rules for what is included within “gross receipts” and for how to calculate gross receipts for businesses involved in a purchase or sale of a

business. Forgiven First Draw PPP loans will not be included in 2020 gross receipts. This requirement should serve to reduce the monopolization of PPP funds by large entities that were better able to weather the COVID-19 pandemic, helping to ensure that funds remain available for small businesses affected most by the pandemic.

Businesses that are temporarily closed or temporarily suspended are eligible to apply for a Second Draw PPP loan, as are borrowers whose First Draw PPP loan is under review by the SBA.

### **Streamlined Applications**

To apply for the loan, a borrower must submit SBA Form 2483-SD, which was recently released by the SBA and is available on the [SBA's website](#). If the borrower is relying on the same documentation submitted to the lender for the borrower's First Draw PPP loan and is seeking a Second Draw PPP loan from the same lender, it will not need to supply the same documentation again.

Entities or individuals that would be eligible for Second Draw PPP loans less than \$150,000 are not required to provide documentation evidencing a revenue reduction at the time of application and may wait until applying for loan forgiveness; however, they will need to certify that they meet the revenue reduction requirement at the time of application. This can help very small businesses, sole proprietors, individual service providers, and others complete and submit the application in a timely manner, allowing them to compete with the rush to apply experienced for First Draw PPP loans.

Please note that the Second Draw PPP loan application will require similar certifications to those made in the borrower's application for the First Draw PPP loan, including the certification "that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing obligations" of the borrower. The SBA previously required recipients of loans \$2 million or greater to complete a necessity questionnaire in relation to this certification; it is unknown whether the addition of the revenue reduction requirement will prevent the SBA from seeking more information from borrowers regarding economic necessity in the future.

### **Forgivable Uses**

Like First Draw PPP loans, Second Draw PPP loans are entirely forgivable so long as the funds are utilized for eligible expenses, with at least sixty percent of loan proceeds spent on payroll costs, which now includes certain employee benefits. New for the Second Draw PPP loans and for borrowers seeking a First Draw PPP loan, eligible expenses now also include certain operations expenditures, costs for property damage due to 2020 public disturbances that were not covered by insurance, essential supplier costs pursuant to a contract in effect before applying for the loan, and expenses for personal protective equipment and other expenses to comply with COVID-19 guidelines. The allowance for use on operations expenses will be of significant import to many small businesses and service providers, as eligible costs include computing services, product or service delivery, costs of payroll expenses, human resources, sales, accounting, and inventory management.

### **Timing**

The Small Business Administration was scheduled to open Second Draw PPP loans on January 13, 2021, with the SBA accepting PPP loan applications only from community financial institutions for at least the first two days after the PPP loan portal opens. The first round of PPP funding, comprising \$349 billion, was spoken for within the first weeks of the program, and there is no evidence that this

second round of \$284 billion will remain available for long. The application window will close March 31, 2021.

Those interested in applying for a Second Draw PPP loan are encouraged to address any questions or concerns they may have with a Roetzel & Andress attorney. Roetzel & Andress attorneys are up to speed on PPP legislation and relevant guidance documents, and we are happy to assist with any questions or concerns you may have.

**Jason Dodson**

330.849.6631 | [jdodson@ralaw.com](mailto:jdodson@ralaw.com)

**Sarah Grieb**

239.649.2727 | [sgrieb@ralaw.com](mailto:sgrieb@ralaw.com)

**Donna F. Hartl**

312.580.1250 | [dhartl@ralaw.com](mailto:dhartl@ralaw.com)

**James Inendino**

312.582.1689 | [jinendino@ralaw.com](mailto:jinendino@ralaw.com)

**Lori L. Moore**

239.338.4248 | [lmoore@ralaw.com](mailto:lmoore@ralaw.com)

**Nathan Pangrace**

216.615.4825 | [npangrace@ralaw.com](mailto:npangrace@ralaw.com)

**Mark Peasley**

330.849.6679 | [mpeasley@ralaw.com](mailto:mpeasley@ralaw.com)

**Albert N. Salvatore**

216.615.4845 | [asalvatore@ralaw.com](mailto:asalvatore@ralaw.com)

**Mark Sarlson**

216.615.4855 | [msarlson@ralaw.com](mailto:msarlson@ralaw.com)

**Michael Yashko**

239.338.4249 | [myashko@ralaw.com](mailto:myashko@ralaw.com)