



THE PAYCHECK PROTECTION PROGRAM: BACK, BUT WITH CHANGES

The largest lending program in the 70-year history of the Small Business Administration (SBA) is back for a return engagement. Known as the Paycheck Protection Program (PPP), the program is part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act -- a key part of the Consolidated Appropriations Act, 2021 (CAA) and has changes to the PPP that could make a difference for borrowers.

For many small and mid-sized enterprises, the initial PPP program, launched in April of 2020 and providing forgivable loans, was desperately needed financial support in response to the economic devastation caused by the COVID-19 pandemic. Ten months later, with the pandemic reaching new, undreamed-of levels, a second round of PPP funds has been authorized. It's targeted at borrowers who are both first timers, known as first-draw applicants, and repeat, second-draw borrowers. Beginning the week of January 6, the SBA has begun accepting applications.

Both first- and second-draw loans made via the 2021 PPP program can be forgiven if the funds are used on eligible costs. Many of these costs are the same as in the first round of the PPP, including:

- Payroll, including:
 - Salaries, wages, tips & commissions, up to \$100,000 per year per employee. Remember, at least 60% of your PPP funds must be used to cover your payroll – that's the basic goal of the program, after all.
 - Taxes on compensation, including state and local taxes
 - Employee benefits **including** retirement plans, group health insurance, separation or dismissal, vacation time, sick and medical leave, and parental and family leave.
- Rent, for commercial or office space
- Mortgage interest
- Utilities, including electricity, gas, water, transportation, telephone or internet access

In addition, the following costs have been added to the list for the new program:

- 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 caused by 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.
- Software, which means 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.

And one more time -- 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.

Broadly speaking, first-draw loans are available to borrowers meeting the following criteria:

- 500 or fewer employees and eligible for other SBA 7(a) loans.
- Sole proprietors, independent contractors, and self-employed individuals.
- Not-for-profits, including churches.
- Accommodation and food services operations 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.
- Some news organizations and not-for-profit public broadcasters with no more than 500 employees per location.

For borrowers who have used, or will use, all of a first-draw loan, and would like to borrow again, some key requirements have been added to the eligibility criteria for second-draw loans. First, and very generally speaking, the program is available to businesses with a maximum of 300 employees, as opposed to the 500-employee limit of the first program. Additionally, second-draw borrowers must have experienced a twenty-five percent (25%) or greater reduction in gross revenue in any quarter in 2020 compared to the same quarter in 2019. This requirement is also satisfied if a borrower experiences a twenty-five percent (25%) or greater reduction in annual gross from 2019 to 2020.

As far as the amount that can be borrowed, both first- and second-draw PPP borrowers can borrow up to 2.5 times their average monthly payroll costs for any of the last three years with a per-employee annual limit of \$100,000. Hotels and restaurants can receive up to 3.5 times their average monthly payroll costs on second-draw loans. The maximum amount available for any one borrower, identical to the original PPP programs, is \$10 million.

The speed with which borrowers will receive funds will also be slightly slower. In the first PPP program, the SBA approved loan applications instantaneously. As a result, borrowers sometimes received their funds within hours of applying. In response to concerns about fraud, the agency is taking an extra data-verification step before approving applications, meaning approvals will usually take at least a day.

As always, of course, the devil is in the details. If you're thinking about tapping into the second PPP program, consulting with legal counsel is a must – depending on your specific situation, there can be additional opportunities, and additional restrictions. But as the pandemic grinds on, a second round of financial help may be necessary to keep your business afloat. And now it's available.

Since Covid restrictions were first imposed in 2020, we at Coleman & Horowitz have strived to provide you with information on programs that can aid your business and have assisted businesses navigate PPP programs. If you have any questions regarding this new program, please feel free to call Darryl J. Horowitz or Gregory J. Norys at (559) 248-4820.

About the Firm:

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