
Below is guidance released by the Small Business Administration (SBA)

Background

The CARES Act established the Paycheck Protection Program which permitted the SBA to provide loans to qualified businesses impacted by the coronavirus (COVID-19) pandemic. The 100% federally guaranteed loans must be used for payroll and certain non-payroll costs. The Consolidated Appropriations Act 2021 (CAA, 2021) was signed into law on December 27, 2020. The CAA 2021, included the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the Economic Aid Act) that authorizes \$284 billion towards the Paycheck Protection Program and extends the PPP until March 31, 2021. The CAA, 2021 permits certain smaller businesses who received a PPP loan and experienced a 25% reduction in gross receipts to take a Second Draw PPP Loan of up to \$2 million.

Prior PPP borrowers must meet the following conditions to be eligible for the second draw loans:

- Employ no more than 300 employees per physical location;
- Have used or will use the full amount of their first PPP loan; and
- Demonstrate at least a 25% reduction in gross receipts in the first, second, or third quarter of 2020 relative to the same 2019 quarter. Applications submitted on or after January 1, 2021 are eligible to utilize the gross receipts from the fourth quarter of 2020.

Eligible entities include for-profit businesses, certain non-profit organizations, housing cooperatives, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives.

New Guidance

The guidance is divided into two sections: Revenue Reduction and Maximum Second Draw PPP Loan Amounts.

Revenue Reduction

- Definition of "gross receipts." For a for-profit business, gross receipts include all revenue in whatever form received or accrued (in accordance with the entity's accounting method, i.e., accrual or cash) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances but excluding net capital gains and losses. For an eligible non-profit organization, gross receipts include gross amounts received by the organization during its annual accounting period from all sources without reduction for any costs or expenses including, for example, cost of goods or assets sold, cost of operations, or expenses of earning, raising, or collecting such amounts. Thus "gross receipts" includes, but is not limited to: (i) the gross amount received as contributions, gifts, grants, and similar amounts without reduction for the expenses of raising and collecting such amounts, (ii) the gross amount received as dues or assessments from members or affiliated organizations without reduction for expenses attributable to the receipt of such amounts, (iii) gross sales or receipts from business activities (including business activities unrelated to the purpose for which the organization qualifies for exemption, the net income or loss from which may be required to be reported on Form 990-T), (iv) the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and (v) the gross amount received as investment income, such as interest, dividends, rents, and royalties.

- Amounts forgiven from a First Draw PPP loan and EIDL advances are not included in the determination of gross receipts.
- Gross receipts reference period. The reference period for gross receipts is based on how long the applicant has been in operation. Applicants must demonstrate that gross receipts in any calendar quarter of 2020 were at least 25% lower than the same quarter of 2019. Alternative reference periods are provided for entities not in operation all year round in 2019, or not in operation in 2019 but in operation on February 15, 2020.
- Documentation of gross receipt reduction. The guidance notes that the following documents may be provided to substantiate a reduction in gross receipts: (1) quarterly financial statements; (2) quarterly or monthly bank statements showing deposits for relevant quarters; and (3) annual IRS income tax filings.

Maximum Second Draw PPP Loan Amounts

The guidance notes that while payroll costs use the 2019 calendar year as the reference period for determining payroll costs used to calculate loan amounts, borrowers are permitted to use payroll costs from either calendar year 2019 or calendar year 2020 for their Second Draw PPP Loan amount calculation. Documentation, including IRS forms, must be provided for the selected reference period. A borrower is not required to submit additional documentation for the Second Draw PPP Loan if they have submitted documentation for the First Draw PPP Loan and they are using the same lender and same payroll time frame. This section also includes calculation methods for determining the maximum loan amount for various applicants in different scenarios.

The guidance clarifies that borrowers are not permitted to use payroll costs from the prior precise 12-month period used to compute the First Draw PPP Loan amount to compute the Second Draw PPP Loan amount. Any borrower that used payroll costs from the prior 12 months when computing its First Draw PPP Loan amount can calculate the amount for its Second Draw PPP Loan amount using calendar year 2019 or calendar year 2020 payroll costs.

The maximum amount of a Second Draw PPP Loan of businesses that are part of the same corporate group is \$4 million. Businesses are part of a single corporate group if they are majority-owned, directly or indirectly, by a common parent.