Payroll Protection Program *2.0*

Who Qualifies and How To Apply

VERMONT
Agency of Commerce & Community Development

https://accd.vermont.gov/

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SOME HIGHLIGHTS

- $284bn in additional PPP funding authorized under the Consolidated Appropriations Act of 2021 / Economic Aid Act (signed 12/27/2020).
- Created a "Second Draw" PPP loan for businesses who can document a 25% decline in revenue in any quarter of 2020 compared to the same quarter in 2019.
- Clarified that forgiven PPP loans are ***not income*** and expenses paid with PPP loan proceeds are ***fully deductible***.
- Expanded PPP eligibility to include 501(c)(6) not for profit organizations (business leagues, et al…).
- Dedicated $15bn to live venues, independent movie theaters and cultural institutions.
- Dedicated $20bn to EIDL Program.
- Simplified Forgiveness for PPP Loans of $150,000.00 or Less

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SOME HIGHLIGHTS

- One BIG change, businesses with a North American Industry Classification System (NAICS) Code beginning with **72** are eligible for a Second Draw PPP loan equal to ***3.5 times their average monthly payroll and expenses*** (versus the 2.5 times the received in the First Draw). Generally, this will apply to restaurants and lodging establishments.

- To find your NAICS code, either search "NAICS Code _____" or look it up on the NAICS Website here: https://www.census.gov/eos/www/naics/

For example, if you search "**NAICS Code Restaurant**", it will return:

NAICS Code 722511 – Full-Service Restaurants
Definition of **NAICS Code 722511**: This U.S. industry comprises establishments primarily engaged in providing food services to patrons who order and are served while seated (i.e., waiter/waitress service) and pay after eating.

If you're an eligible NAICS Code 72 business who received a $120,000 forgivable PPP First Draw loan, and you use the same payroll and expense base in your application, you will receive a $168,000.00 Second Draw loan (a 40% increase).

All other businesses remain at the First Round 2.5 times formula.

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SOME HIGHLIGHTS

- Maximum loan amount for Second Draw is reduced from $10,000,000 to $2,000,000. First Draw remains at $10,000,000.
- Some entities and individuals (the President, Vice President, Members of Congress, Chinese based businesses and directors, lobbyists and others) are specifically ineligible. See Page 25 of the IFR.
- First Draw Borrowers and Second Draw Borrowers may use either *2019* payroll and expenses, *2020* payroll and expenses or a *precise one year period* (i.e. 1/15/2020 to 1/14/2021) of payroll and expenses immediately preceding their application date in computing their First Draw loan.
- Entities receiving a SBA Shuttered Venue Grant cannot receive 2nd Draw PPP.
- The ***AFFILIATE RULES APPLY***. We'll talk about this in a bit.

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Guidance (To Date….)

- An 82-page interim final rule (IFR) called "Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act," which consolidates eight months of rules released for PPP forgivable loans for first-time borrowers and incorporates changes made by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, P.L. 116-260.82
https://home.treasury.gov/system/files/136/PPP-IFR-Paycheck-Protection-Program-as-Amended-by-Economic-Aid-Act.pdf

- A 42-page IFR called "Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans," which establishes guidelines for new PPP loans to businesses that previously received a PPP loan.
https://home.treasury.gov/system/files/136/PPP-IFR-Second-Draw-Loans.pdf

- A three-page document called "Guidance on Accessing Capital for Minority, Underserved, Veteran and Women-Owned Business Concerns," which includes a commitment from the SBA to make at least the first two days of the PPP application window open exclusively to applications from community financial institutions.
https://www.sba.gov/sites/default/files/2021-01/Guidance%20on%20Accessing%20Capital%20for%20Minority%20Underserved%20Veteran%20and%20Women%20Owned%20Business%20Concerns%20.pdf

- **Affiliation Rules** applicable to U.S. Small Business Administration Paycheck Protection Program.
https://www.sba.gov/sites/default/files/2020-04/Affiliation%20rules%20overview%20%28for%20public%29%20v2.pdf

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TERMS, CONDITIONS AND REQUIREMENTS

Second Draw PPP Loans are generally subject to the same terms, conditions and requirements as First Draw PPP Loans.

- The guarantee percentage is 100 percent.
- No collateral will be required.
- No personal guarantees will be required.
- The interest rate will be 100 basis points or one percent, calculated on a non-compounding, non-adjustable basis.
- The maturity is five years.
- All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower to determine the borrower's eligibility and use of loan proceeds

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WHO QUALIFIES?

FIRST TIME BORROWERS:

- ***Generally***, Borrowers who qualified for a "First Draw" PPP loan, but did not take or receive the loan, would apply exactly as they would have six months ago, using SBA Form 2483

https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf

- A First Draw Borrower who did not take the full amount of the First Draw loan approved may receive the additional loan amount (up to the amount was approved).

Once an eligible entity receives a First Draw (or a First Draw increase), that entity is eligible to apply for a Second Draw loan. However, before the Second Draw loan is disbursed, the Borrower must have used the First Draw loan funds for eligible expenses. ***This applies to ALL Second Draw Borrowers, but if you've accurately applied for and been granted forgiveness, it shouldn't concern you.***

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WHO QUALIFIES?

SECOND DRAW BORROWERS:

In general, the Economic Aid Act made the eligibility requirements for Second Draw PPP Loans narrower than the eligibility requirements for First Draw PPP Loans.

- generally, the Economic Aid Act provides that a borrower is eligible for a Second Draw PPP Loan only if it;
  - ***has 300 or fewer employees and***
  - ***experienced a 25% revenue reduction in a 2020 quarter relative to 2019.***

- In addition, the Act provides that a Second Draw PPP Loan may only be made to an eligible borrower that (i) has received a First Draw PPP Loan, and (ii) has 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.

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WHO QUALIFIES?

SECOND DRAW BORROWERS, 25% REDUCTION IN REVENUE:

A SIMPLE EXAMPLE					
	REVENUE			%	
	2020	**2019**	**Change**	**Change**	
Q1	150,000	140,000	10,000	7.14%	
Q2	82,000	160,000	(78,000)	**-48.75%**	More than -25.00%
Q3	120,000	180,000	(60,000)	**-33.33%**	More than -25.00%
Q4	125,000	150,000	(25,000)	-16.67%	
	477,000	630,000	(153,000)	-24.29%	

- You only need to demonstrate one quarter with a 25% decrease.

- PPP Forgiveness Funds are not considered revenue. Based upon the guidance, we believe Vermont Economic Recovery Grants are (we've requested additional clarification).

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MORE ON "WHAT IS REVENUE"

Directly from the IFR

"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."

The rule further elaborates:
"Generally, receipts are considered "total income" (or in the case of a sole proprietorship, independent contractor, or self-employed individual "gross income") plus "cost of goods sold," and ***excludes net capital gains or losses*** *as these terms are defined and reported on IRS tax return forms."*

Finally, the rule explains what doesn't count:
"Gross receipts do not include the following: taxes collected for and remitted to a taxing authority if included in gross or total income (such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees); proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, investment income, and employee-based costs such as payroll taxes, may not be excluded from gross receipts."

"gross receipts to include all revenue in whatever form received or accrued (in accordance with the entity's accounting method)"
In other words, if you file your taxes using the cash method, then revenue is recognized using the cash method. If you file your taxes using the accrual method, then revenue is recognized using the accrual method.

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THE AFFILIATE RULES – PAY ATTENTION!

- *Generally*, "Affiliates" are majority owned or controlled businesses. For example, if you own 51% of a plumbing company and 51% of a property management company, those businesses are considered affiliates by the SBA and would be subject to the Affiliate Rules for purposes of calculating a Second Draw PPP loan. Link to Rules: https://www.sba.gov/sites/default/files/2020-04/Affiliation%20rules%20overview%20%28for%20public%29%20v2.pdf

- In PPP 1.0, the Affiliate Rules were in effect. However, the only thing we had to consider in PPP 1.0 was whether a Borrower's total number of employees exceeded 500 (counting the employees of all Affiliates). In 99.99% of the cases (especially in Vermont) that answer was no, so we didn't talk about the Affiliate Rules much.

- **The Affiliate Rules remain in effect under PPP 2.0 (IFR Page 10)**.

- Under PPP Second Draw, Borrower's have to consider the income of Affiliates for purposes of meeting the "25% reduction" test. If you only own or control one business and have under 300 employees, this section will not apply to you.

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A SIMPLE AFFILIATE EXAMPLE

AFFILIATE A - PLUMBING COMPANY (10 EMPLOYEES)
JOE PLUMBER OWNS 51%

	REVENUE			%	
	2020	**2019**	**Change**	**Change**	
Q1	250,000	240,000	10,000	4.17%	
Q2	150,000	260,000	(110,000)	**-42.31%**	More than -25.00%
Q3	270,000	280,000	(10,000)	-3.57%	
Q4	255,000	250,000	5,000	2.00%	
	925,000	1,030,000	(105,000)	-10.19%	

AFFILIATE B - PROPERTY MANAGEMENT COMPANY (20 EMPLOYEES)
JOE PLUMBER OWNS 51%

	REVENUE			%	
	2020	**2019**	**Change**	**Change**	
Q1	385,000	380,000	5,000	1.32%	
Q2	340,000	380,000	(40,000)	-10.53%	
Q3	280,000	380,000	(100,000)	**-26.32%**	More than -25.00%
Q4	255,000	380,000	(125,000)	-32.89%	
	1,260,000	1,520,000	(260,000)	-17.11%	

TOTAL OF BOTH COMPANIES

	REVENUE			%	
	2020	**2019**	**Change**	**Change**	
Q1	635,000	620,000	15,000	2.42%	Not more than 25%
Q2	490,000	640,000	(150,000)	-23.44%	Not more than 25%
Q3	550,000	660,000	(110,000)	-16.67%	Not more than 25%
Q4	510,000	630,000	(120,000)	-19.05%	Not more than 25%
	2,185,000	2,550,000	(365,000)	-14.31%	

BECAUSE THE TOTAL OF BOTH BUSINESSES DID NOT SHOW A 25% REDUCTION, NEITHER BUSINESS QUALIFIES

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- Affiliate **Relief** For Restaurants and Hospitality and News Organizations (IFR, Page 10):

"The CARES Act waived the affiliation rules for certain categories of borrowers. The Small Business Act, as amended by the Economic Aid Act, applies the same waivers to Second Draw PPP Loans, adds a waiver for certain eligible news organizations, and makes adjustments to reflect the reduced size requirement for Second Draw PPP Loans. ***Specifically, business concerns with a NAICS code beginning with 72 qualify for the affiliation waiver for Second Draw PPP Loans if they employ 300 or fewer employees****. Eligible news organizations with a NAICS code beginning with 511110 or 5151 (or majority-owned or controlled by a business concern with those NAICS codes) may qualify for the affiliation waiver for Second Draw PPP Loans only if they employ 300 or fewer employees per physical location."*

- So in the previous example, if one of those businesses was a restaurant or hotel, that business would qualify. If both businesses were a restaurant or hotel, both would qualify. Generally, the only thing multiple, commonly owned restaurants or hotels need to worry about is the number of employees (300).

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LET'S COMPLETE A 2483-SD The link is here:

https://www.sba.gov/sites/default/files/2021-01/PPP%20Second%20Draw%20Borrower%20Application%20Form%20%281.8.2021%29.pdf

You'll need the following:

- Form 2483-SD
- The Year Your Business Was Established.
- A Copy Of Your First Draw PPP Application
- Your SBA (not The Lender's) Loan Number
- Your Gross Receipts Numbers For The Quarters in 2020 and 2019 You Are Comparing For Loans Over $150,000.00, You'll Need The Documentation Substantiating Your Quarters' Numbers (A Quickbooks® (or other) Comparative Profit & Loss Statement For The Quarter works well). We advise to submit this information even if there is no requirement.
- If You Are Using Your 2019 Payroll and Expenses, You Simply Need The Numbers From Your Original Application And <u>Will Provide No Payroll Or Expense Documentation If Using The Same Lender</u>. If You Are Using 2020 Or A Precise One Year Period, You Will Need To Provide The Same Documentation As Provided In Your First Draw. (If 2020 Payroll Is Higher Than 2019, Consider 2020).

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2483-SD EXAMPLE HERE

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THANK YOU VERY MUCH!

Thank you to Jessica Vintinner for her help in putting this presentation together.

Thank you to our Governor, his Administration, our Legislative Partners, Secretary Kurrle, Deputy Secretary Brady, Commissioner Goldstein and the entire ACCD staff for their extraordinary work and tireless support of our small businesses during these past ten months. None of us chose this journey, but there's no one else I'd rather travel with (in a social distancing sense…).

Last, but certainly not least, thank you to our small business owners. These last ten months have perhaps been the most difficult of your lives. Throughout this pandemic, there have been many dark moments. But there have also been many moments of inspiration and hope. I speak with many of you (whom I've only seen through a computer screen) weekly. In spite of the incredible pressure, you show kindness, patience and gratitude during every call. Your grace under pressure is noticed, appreciated and inspiring. Thank you very much.