

# Dentons Quick Guide

## First Draw and Second Draw PPP Loans

As of January 11, 2021

If you seek a Paycheck Protection Program (PPP) loan, whether a so-called First Draw PPP Loan or a so-called Second Draw PPP Loan, reach out to your bank and check with their procedures and documentary requirements. Generally speaking, you need to check you meet the eligibility requirements, consider if you can use the funds for forgivable purposes, and consider the certifications required by the loan application. The application form for the First Draw PPP Loans can be found on the website of the SBA and also on our information portal.

### 1 Eligibility

**First Draw PPP Loans:** Generally, First Draw PPP Loans are available to (i) companies with 500 employees or less (more if permitted based on the NAICS codes) and (ii) housing cooperatives, eligible section 501(c)(6) organizations and eligible destination marketing organizations with 300 employees or less.

Self-employed individuals, independent contractors and sole proprietorships are also eligible. While certain affiliated companies need to aggregate their employee count, there are exceptions including for accommodations and food services business concerns with no more than 500 employees per location.

**Second Draw PPP Loans:** Second Draw PPP Loans are available to borrowers of First Draw PPP Loans with 300 employees or less. Borrower needs to have experienced a revenue reduction of 25% or greater in 2020 relative to 2019. You must have used, or will use, the entire First Draw PPP Loan by the time you will receive the Second Draw PPP Loan.

### 2 Loan Amount

**First Draw PPP Loans:** The maximum First Draw PPP Loan amount is equal to the lesser of (a) \$10 million or (b) 2.5 times the average monthly payroll costs, plus the value of certain existing EIDL loans. To calculate the average monthly payroll amount for a First Draw PPP Loan, use calendar year 2019, 2020 or the 1-year before the date of such loan.

**Second Draw PPP Loans:** The maximum Second Draw PPP Loan amount is equal to the lesser of (a) \$2 million or (b) 2.5 times the average monthly payroll costs. Borrowers with NAICS code beginning with 72 may calculate 3.5 times average monthly “payroll costs”. Borrowers must use the calendar year 2019 or calendar year 2020 to calculate the average monthly payroll.

When calculating your gross receipts you may include all revenue in whatever form received or accrued (in accordance with the accounting method you use) 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” (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.

### 3 Payroll Costs

For all PPP loans, payroll costs include payments with respect to employees that are classified as salary, wage, commission, or similar compensation; cash tips or equivalent, payment for vacation, parental, family, medical or sick leave; allowance for dismissal or separation; group health care benefits, including insurance premiums; payment of retirement benefits; and state or local tax assessments on employee compensation.

For sole proprietors and independent contractors determining payroll costs, payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation is also included.

For any category (a) income in excess of \$100,000 per employee annually and (b) compensation of employees located outside the U.S. are excluded, as are taxes imposed or withheld under US federal tax law.

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### 4 Use of Proceeds

PPP proceeds can be used during 8 weeks to 24 weeks after the PPP is disbursed. Borrower may use proceeds to pay (a) payroll, (b) group health care benefits, (c) mortgages or other debt obligations, (d) rent payments, (e) interest payment, (f) utilities, (g) certain operations expenditures, (h) covered supplier costs, (i) covered property damage cost and (j) covered worker protection expenditures.

### 5 Loan Terms

Any amounts not used for forgivable purposes will be treated like a loan. As in the past, there is no need for a personal guarantee or collateral for PPP loans. This loan bears an interest rate of 1% and repayment commences within 10 months after the end of the chosen loan forgiveness covered period. There are no prepayment penalties.

### 6 Loan Forgiveness

Once a PPP is originated and funded, the borrower will be eligible for loan forgiveness on a tax-free basis if certain conditions are met. 60% of any PPP loan needs to be used for payroll costs to achieve full forgiveness.

If, during the 8-week to 24 week period after the PPP is originated and funded, the borrower incurs expenses for payroll costs, mortgage interest, rent and utilities equal to or greater than the balance of the PPP, then 100% of the PPP will be forgiven tax-free. Note that the borrowers can chose any time period between 8 weeks and 24 weeks.

First Draw PPP Loan borrowers can lose eligibility for some portion of loan forgiveness proportionally if there is a reduction in FTEs or a reduction the total salary or wages of any employee during the covered period by an amount that is in excess of 25%. The forgiveness application contains various safe harbors allowing you to have the entirety of the PPP forgiven, even if you have laid off employees or reduced wages. Detailed rules apply.

Second Draw PPP Loans are eligible for loan forgiveness on the same terms and conditions as First Draw PPP Loans, except that Second Draw PPP Loan borrowers with a principal amount of \$150,000 or less are required to provide documentation of revenue reduction if such documentation was not provided at the time of the loan application. The forgiveness applications are available on the website of the SBA and vary depending on the size of the loan.