

# PPP – New Year; New Rules

*Phil Feigen and Sara Ainsworth*

# Introduction



## **Phil Feigen, Office Managing Partner**

Phil Feigen is a shareholder in Polsinelli's Business Department, chair of the Financial Institutions Practice Group and managing partner of the firm's Washington, DC office. With over 25 years of experience, Mr. Feigen brings a unique perspective to providing general corporate advice, as well as complex business counsel to clients in ever-changing regulatory environments. His practice focuses on representing Small Business Investment Companies, other private investment funds, federal and state banks and other financial services related companies. Mr. Feigen has represented clients in formation of investment funds, raising capital, and complying with complex federal/state licensing and regulatory requirements. With expertise working with funds of all sizes, he has extensive experience working on specialty funds under \$500 million.



## **Sara Ainsworth, Associate**

As an associate in the Securities & Corporate Finance practice, clients rely on Sara Ainsworth to work with Polsinelli's team of attorneys to analyze each transaction matter to develop a strategic approach to representation based on the client's immediate and long-term business and operational goals. Working closely with seasoned Polsinelli attorneys in the Securities & Corporate Finance practice, Sara helps deliver a range of legal services during the life cycle of the client's business—from selecting the appropriate choice of entity through to exit strategy, and assisting with the nuts and bolts of fund formation and fund transactions.

# Intended Agenda

- PPP2 Rules
  - Eligibility
    - Affiliation Rules
    - Gross Revenue Calculation Rules
  - Loan amount
- PPP1 Changes
  - Expanded eligibility
  - Reapplying or applying for loan increases
- PPP1 and PPP2 Generally
  - Expanded uses of loan
  - Timing
  - Tax treatment
  - Applications

# Overview

## PPP1

- **Who can apply:**
  - Eligible small entities, that together with their affiliates (if applicable), have 500 or fewer employees—including nonprofits, veterans organizations, tribal concerns, self-employed individuals, sole proprietorships, and independent contractors.
  - Entities with more than 500 employees in certain industries that meet SBA's alternative size standard or SBA's size standards for those particular industries.
- Existing PPP1 borrowers that did not receive loan forgiveness by December 27, 2020 may:
  - reapply for a PPP1 Loan if they previously returned some or all of their PPP1 Loan funds, or
  - under certain circumstances, request to modify their PPP1 Loan amount if they previously did not accept the full amount for which they are eligible.
- You must still meet the PPP1 necessity standards.

## PPP2

- **Who can apply:**
  - A borrower that
    - previously received a PPP1 loan and will or has used the full amount for authorized uses;
    - has no more than 300 employees; and
    - can demonstrate at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.

# PPP2 Loans

- Key distinctions from PPP1 Loans include:
  - Eligibility requirements
  - The alternative size test and small business test are not available for determining eligibility of the PPP2 loan
  - Slight distinctions in affiliation rules
  - Maximum loan amount

# PPP2: Who is eligible?

- Business concerns, independent contractors, eligible self-employed individuals, sole proprietors, nonprofit organizations eligible for a PPP1 Loan, veterans organizations, Tribal business concerns, housing cooperatives, small agricultural cooperatives, eligible 501(c)(6) organization or destination marketing organizations, or eligible nonprofit news organizations that:
  - previously received a PPP1 loan and will or have used the full amount for authorized uses;
  - have no more than 300 employees; and
  - can demonstrate at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.

*You must aggregate with any affiliates when determining eligibility.*

# PPP2: Affiliation Rules

- The affiliation rules applied under the PPP1 program apply to PPP2 loans, except that the affiliation waiver for businesses with a NAICS code beginning with 72 applies to entities with a NAICS code beginning with 511110 (newspaper publishers) or 5151 (radio and television broadcasting), (or majority-owned or controlled by a business with those NAICS codes) if the entities employ 300 or fewer employees by location.

# PPP2: Calculation of Gross Receipts

- A borrower in operation during all four quarters of 2019 is deemed to have experienced the required revenue reduction if it experienced a reduction in annual receipts of 25% or greater in 2020 compared to 2019, provided the borrower submits copies of annual tax forms substantiating the revenue decline.
  - Such a borrower may also demonstrate the required revenue reduction by demonstrating a revenue reduction in at least one quarter of 2019 compared to 2020.
- If a borrower was not in operation for all four quarters of 2019, then the borrower should analyze its revenue reduction only for those full quarters it was in operation in 2019.

*Gross receipts of a borrower with affiliates is calculated by adding the gross receipts of the business with the gross receipts of each affiliate.*



# PPP2: How much money is available?

- Maximum of \$2 million.
- Based on average total monthly payroll costs multiplied by 2.5.
  - Entities with NAICS code 72 may receive loans of up to 3.5x average monthly payroll costs
- A single corporate group may not receive more than \$4 million of PPP2 in the aggregate.
- Fees are waived for both borrowers and lenders.

# PPP1 Loans

## What has changed?

- Expansion in categories of eligible borrowers and restrictions on certain entities
- Additional uses of loan proceeds permitted
- Option to choose 2019 or 2020 as base period for calculating maximum loan amount
- Choice of covered period
- Change in some loan forgiveness stipulations
- Ability to reapply or increase PPP1 loan amount

## What has remained the same?

- Certification of Economic Need still required
- Maximum loan amount
- No collateral or personal guarantee requirements
- Maximum loan forgiveness amount

# PPP1: Who is eligible?

- Businesses, nonprofit organizations, veterans' organizations, or Tribal businesses which employ less than 500 employees;
- Sole proprietorships, self-employed individuals, and independent contractors;
- Small businesses as determined by its NAICS code;
- Small businesses as determined by the alternative size test: Less than \$15 million net worth and \$5 million average net income for the past full two fiscal years;
- Publicly-traded news organizations which employ no more than 500 employees per location, provided the organizations certify the loan will be used to support locally-focused or emergency content;
- A housing cooperative, an eligible 501(c)(6) org, or an eligible destination marketing organization;

*You must aggregate with any affiliates when determining eligibility.*

*You must not have already received a PPP1 loan unless you qualify per the "Reapplying and Loan Increases" terms below.*

# PPP1: Newly eligible entities

- FCC license holders and newspapers with more than one physical location and section 511 public colleges and universities that have a public broadcasting station are eligible if the entity certifies that the loan will support locally focused or emergency information.
- 501(c)(6) organizations if:
  - The organization doesn't receive more than 15% of receipts from lobbying;
  - The lobbying activities don't comprise more than 15% of activities;
  - The cost of lobbying activities didn't exceed \$1 million during the most recent tax year that ended prior to February 15, 2020; and
  - Are not professional sports leagues or organizations with the purposes of promoting or participating in a political campaign or other political activities.
- Destination Marketing Organizations if:
  - The organization doesn't receive more than 15% of receipts from lobbying;
  - The lobbying activities don't comprise more than 15% of activities; and
  - That destination marketing organization is registered as a 501(c) organization, a quasi-government entity, or a political subdivision of a state or local government.

# PPP1: Certification of Economic Need

- “[A]ll borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.””
- Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”
- This is the *New York Times* test or LA Lakers test or Shake

# PPP1: How much money is available?

## How much money is available?

- Maximum of \$10 million.
- Based on average total monthly payroll costs multiplied by 2.5.
- Businesses that are part of a single corporate group shall in no event receive more than an aggregated \$20 million of PPP1 loans.

## How to calculate the maximum loan amount

*For C-corporations, S-corporations or LLCs that file as corporations*

- 2019 or 2020 gross wages and tips paid to your employees whose principal place of residence is in the United States, which can be computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, subtracting any amounts paid to any individual employee in excess of \$100,000 and any amounts paid to any employee whose principal place of residence is outside the U.S;
- 2019 or 2020 employer health insurance contributions (portion of IRS Form 1120 line 24 or IRS Form 1120-S line 18 attributable to health insurance);
- 2019 or 2020 employer retirement contributions (IRS Form 1120 line 23 or IRS Form 1120-S line 17); and
- 2019 or 2020 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).

# PPP1: Loan Terms

## What is the time frame?

- Begins on loan disbursement date and ends on a date selected by the borrower between 8 and 24 weeks after the loan disbursement date (Covered Period).

## Is there a repayment schedule?

- 5 years from loan origination with 1% interest rate.
- Complete payment deferment relief for a period of not less than 6 months, but not to exceed 1 year.

## Is collateral or a personal guarantee required?

- No collateral or personal guarantee is required.

# PPP1: Loan Forgiveness Stipulations

## **What is the maximum amount eligible for loan forgiveness?**

- The sum of payroll costs, rent, utilities, payments on mortgage interest, and the expanded non-payroll costs during the Covered Period. Capped at 100% of the loan amount. Not more than 40% can be non-payroll costs.



# PPP1: Reapplying or Increasing Loan Amount

Existing PPP1 borrowers that did not receive loan forgiveness by December 27, 2020 may:

- reapply for a PPP1 Loan if they previously returned some or all of their PPP1 Loan funds, or
- under certain circumstances, request to modify their PPP1 Loan amount if they previously did not accept the full amount for which they are eligible.
  - If a borrower did not accept the full amount of a PPP loan for which it was approved, the borrower may request an increase in the amount of the PPP loan up to the amount previously approved.
  - If partnerships did not include partner compensation in their initial PPP loan amount, a lender can submit a request to increase the loan amount to include partner compensation.

# PPP1 and PPP2: Expanded Use of Proceeds

- Payments for software, cloud computing and other human resources and accounting needs.
- Costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance.
- Expenditures to a supplier pursuant to a contract, purchase order, or order for goods in effect prior to taking out the loan that are essential to the borrower's operations at the time at which the expenditure was made. Supplier costs of perishable goods can be made before or during the life of the loan.
- Personal protect equipment and adaptive investments to help a borrower comply with COVID-19-related federal, state or local health and safety guidelines during the period between March 1, 2020 and the end of the national emergency declaration.

# PPP1 and PPP2: Timing

- Portal opened January 13, 2021.
- Both PPP1 and PPP2 Loans are open through March 31, 2021.

# PPP1 and PPP2: Tax Treatment

- Forgiven PPP1 and PPP2 loans will not be included in taxable income.
- Deductions are allowed for expenses paid with proceeds of a forgiven PPP1 or PPP2 loan.
  - This same tax treatment also applies to EIDL grants and certain loans and loan repayment assistance.

# PPP1 and PPP2: Applications

## PPP1 Loans

- Application is available [here](#).
- You must apply through an eligible 7(a) lender.
- You should prepare: payroll documentation and application. The bank may require additional information. You must also provide (a) a list of all 20% or more equity owners and (b) an addenda of any entities under common control or management, or owned by the 20% or more equity owners.

## PPP2 Loans

- Application is available [here](#).
- You must apply through an eligible 7(a) lender.
- The documentation required to substantiate an applicant's payroll cost calculations is generally the same as documentation required for PPP1 loans.
- Also need to substantiate revenue reduction.

For loans of not more than \$150,000, the borrower may submit a certification attesting that the entity meets the revenue loss requirements on or before the date the entity submits their loan forgiveness application. Non-profits and veterans organizations may utilize gross receipts to calculate their revenue loss standard.





# Polsinelli COVID-19 Resources



## Contact

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For COVID-19 legal advice across a spectrum of issues impacting an array of industries and legal areas, our team is available and connected nationally and in the communities in which you operate.

Contact us with questions at:

[COVID19CrossDeptResponseTeam@Polsinelli.com](mailto:COVID19CrossDeptResponseTeam@Polsinelli.com)



## Blog + Resources

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Polsinelli's cross-disciplinary COVID-19 blog provides companies tools and information needed to effectively and lawfully protect their employees and business.

Visit our blog:

<https://www.covid19.polsinelli.com/>

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