

PAYCHECK PROTECTION PROGRAM ROUND 2: FREQUENTLY ASKED QUESTIONS FOR NONPROFIT BORROWERS

Last updated January 15, 2021

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Overview

On December 27, the President signed into law the Consolidated Appropriations Act, 2021. The Act includes a roughly \$900 billion COVID-19 relief package, known as the “Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act” (“Economic Aid Act”). The Economic Aid Act makes available approximately \$284.5 billion in new Paycheck Protection Program (“PPP”) funding and reopens the PPP for initial and second-draw loans on terms that are generally favorable to nonprofits. The SBA has begun accepting PPP loan applications through community financial institutions, and first and second-draw loans will open to all participating lenders on January 19. The application period for PPP Round 2 loans will end on March 31, 2021.

Key Paycheck Protection Program Round 2 Updates

- Certain borrowers may be eligible for a “second-draw” PPP loan of up to \$2 million. Eligible organizations must have fewer than 300 employees, have used or will soon use the entire amount of their first PPP loan, and have experienced a decline in gross receipts of at least 25% during any quarter of 2020, as compared to the same quarter of 2019.
- Potentially forgivable costs are now expanded to include operating expenses (e.g., payments for business software and cloud computing services); costs related to property damage, vandalism, or looting resulting from public disturbances that occurred in 2020; worker protection expenses and facility modifications necessary to comply with COVID-19 safety guidelines; and supplier costs for goods essential to entity operations.
- The loan forgiveness application process is now simplified for loans up to \$150,000. The law directs the SBA to release a new streamlined loan forgiveness application form for loans not exceeding \$150,000 by January 20, 2021.
- Any Economic Injury Disaster Loan (“EIDL”) advance received by a borrower is no longer deducted from the borrower’s PPP loan forgiveness amount.

Questions & Answers

What types of organizations are eligible for a first- or second-draw PPP loan?

In general, you are eligible for a first-draw PPP loan if you employ fewer than 500 employees (full-time and part-time) who live in the United States, AND you were in operation on February 15, 2020. 501(c)(3) and 501(c)(6) nonprofit organizations (such as professional associations and chambers of commerce) are among the entity types that may apply.

You are eligible for a second-draw PPP loan if you have or will have used your first-draw PPP loan by the time you receive the second-draw PPP loan, have no more than 300 employees, and experienced a decline in gross receipts of at least 25% in any quarter of 2020 compared to the same quarter in 2019. (Special rules apply for entities that did not operate in 2019.) “Gross receipts” include the total amount the organization received from all sources during its annual accounting period, without subtracting any costs or expenses. The amount of a forgiven PPP loan is excluded.

Be aware that the SBA might consider two or more nonprofits under common control to be “affiliated.” An affiliation of multiple organizations could exceed the 500- or 300-employee limit. This determination is complex and may require legal counsel.

The Economic Aid Act also authorized \$15 billion for grants to live performance, museum, and movie theater operators that were forced to close due to the pandemic. You can only receive a grant through this “Shuttered Venues Operator” program if you have not received a PPP loan on or after December 27, 2020. If you are eligible for a Shuttered Venues Operator program grant, you should consider applying for that grant rather than a PPP loan because the terms of the grant are more flexible and the award is potentially larger. Contact legal counsel to help you evaluate your options.

How large can my loan be?

Loans can be for up to 2.5 times your average monthly payroll costs during any of the following time periods: the 12 months before applying for the loan, calendar year 2019, or calendar year 2020. Choose the period that reflects the largest payroll costs if you want to maximize your loan amount. That amount is subject to a \$10 million cap for first-draw PPP loans and a \$2 million cap for second-draw PPP loans. Payroll costs are capped at \$100,000 per year for each employee (note: an employee’s cash compensation above \$100,000 is not counted as part of the nonprofit’s payroll costs when calculating the amount of the loan, but the full cost of that employee’s benefits is counted).

Payroll costs are calculated on a gross basis without regard to federal taxes imposed or withheld. In other words, payroll cost is not increased by the employer’s share of payroll tax or reduced by taxes imposed on an employee and required to be withheld by the employer.

Are the loans forgivable?

In general, the loan amounts will be forgiven so long as:

- the loan is used to cover payroll costs and other eligible expenses over the 8- to 24-week period after the loan is made; and
- for loans greater than \$50,000, employee and compensation levels are maintained.
- Note: An October 2020 [SBA Interim Final Rule](#) exempts PPP loans of \$50,000 or less from loan forgiveness reductions based on workforce and wage reductions. Borrowers with loans of \$50,000 or less should complete

the streamlined 1-page [PPP Loan Forgiveness Application Form 3508S](#) (unless and until the form is replaced by a new form for all loans up to \$150,000). It is possible that the SBA will extend the loan forgiveness reduction exemption to borrowers of loans between \$50,000 and \$150,000. As of this writing, the SBA has not issued guidance to that effect.

(Earlier in the program, to qualify for full forgiveness borrowers had to spend the funds over the 8-week period after the loan was made. The law was amended to give borrowers the option to spend the funds over a longer period. The Economic Aid Act clarifies that a borrower may choose a covered period between 8 weeks and 24 weeks and submit the forgiveness application before the end of the 24-week period if they use their PPP funds early.)

PPP borrowers are eligible for full loan forgiveness so long as they use at least **60%** of loan proceeds for payroll expenses, with no more than **40%** of loan proceeds going to eligible non-payroll expenses.

How much of my loan will be forgiven?

You will owe money when your loan is due if you use the loan for anything other than payroll costs, interest on a mortgage, rent payments, utility payments, operating expenses, costs to repair property damage, costs of supplies necessary to entity operations, and expenses for protecting workers during the covered loan period.

For loans greater than \$50,000, you will also owe money if you do not maintain your staff and payroll.

- Number of Staff: Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- Level of Payroll: If your total eligible payroll expenses (excluding compensation in excess of \$100,000 per employee per year) decreases by more than 25%, loan forgiveness will be reduced by the same amount.
- Limited Exception for Workforce Restoration: You will not be penalized for lay-offs and wage reductions that occurred between February 15, 2020 and April 26, 2020, provided that you restored employment levels and wages by December 31, 2020.

(As noted above, the reduction in loan forgiveness based on reductions in workforce or wages does not apply to loans of \$50,000 or less. It is possible that the SBA will extend this exemption to loans between \$50,000 and \$150,000.)

For borrowers of loans exceeding \$50,000, some reductions in workforce will not count against you for the purpose of loan forgiveness. Loan forgiveness will not be impacted if:

- you fire an employee for cause; an employee voluntarily resigns; or an employee voluntarily requests and receives a reduction in hours.
- you have laid off employees, and then:
 - made a good faith, written offer to rehire,
 - documented the employee's rejection of that offer,
 - informed the state unemployment insurance office within 30 days of the employee's rejection of the offer (employees who reject offers of reemployment may forfeit eligibility for continued unemployment compensation), and
 - documented your inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.

- you document in good faith that your nonprofit is unable to return to the same level of business activity it was operating at before February 15, 2020, due to compliance with operating restrictions related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Is my loan forgiveness reduced by the EIDL Advance I received?

No. The Economic Aid Act amends the CARES Act to remove the requirement that borrowers subtract the amount of any EIDL advance (*i.e.*, the \$1,000 to \$10,000 EIDL grant received from the SBA) from the PPP loan forgiveness to which the borrower is otherwise entitled. You are now eligible for full forgiveness of your PPP loan even if you also received an EIDL advance. This rule applies to both prior and new PPP loans. The SBA will issue rules to extend this benefit to borrowers whose loans have already been forgiven and whose EIDL advance was deducted from the forgiven amount.

What if my nonprofit uses government funding to cover some of its payroll costs? How should I treat the portion of my payroll already covered by other government grants?

We recommend the following steps.

So long as the nonprofit itself pays the staff member’s compensation (meaning that the government does not pay the staff member directly), the whole of that compensation should be included when calculating average monthly payroll costs in the first part of the PPP application.

When calculating the amount of loan forgiveness to claim, however, some of the nonprofit’s payroll costs may be excluded. If the nonprofit can defer using its other government grants to cover payroll during its covered loan period (which begins the date of loan origination and ends on the date selected by the borrower between 8 and 24 weeks after loan origination), it should do so. In that case, the nonprofit can claim all of its otherwise qualifying payroll costs (or that portion for which other government funding can be deferred) as part of its loan-forgiveness amount.

If the nonprofit cannot defer using its other government grants to cover payroll, then it should exclude the portion of its average monthly payroll costs that are covered by those other grants from the amount it claims for loan forgiveness.

The Federal [Office of Management and Budget](#) has issued guidance stating that “payroll costs paid with the PPP loans or any other Federal CARES Act programs must not be also charged to current Federal awards as it would result in the Federal government paying for the same expenditures twice.” Additional guidance to help nonprofits navigate the interplay of PPP loans and other government funding is available on the [Fiscal Management Associates website](#).

What if my nonprofit client is a religious organization? Can it qualify?

Yes. The government considers religious organizations to be eligible for loans under the Paycheck Protection Program.

What can I use these loans for?

You should use the proceeds from these loans on:

- payroll costs, including benefits;
- interest on mortgage obligations incurred before February 15, 2020;

- rent, under lease agreements in place before February 15, 2020;
- utilities (including electricity, water, gas, sewage, telephone, cell phone, Internet, and transportation costs), for which service began before February 15, 2020;
- operating expenses including 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;
- costs related to property damage and vandalism or looting resulting from public disturbances that occurred in 2020 and that were not covered by insurance or other compensation;
- worker protection expenses including any operating or capital expenditures to adapt business activities to comply with government-issued COVID-19 safety guidelines (e.g., air pressure ventilation or filtration systems, physical barriers to ensure social distancing, a drive-through window, an expansion of indoor or outdoor business space, onsite or offsite health screening, or the purchase of personal protective equipment); and
- cost of supplies that are essential to your operations at the time of purchase, made pursuant to a contract in effect prior to your covered loan period, or with respect to perishable goods, in effect before or at any time during the covered loan period.

When can I apply?

PPP Round 2 applications will be accepted through March 31, 2021, or until funds for the program are exhausted, whichever is sooner. If you are interested, apply as soon as you can.

Where can I apply?

Check the website of your existing bank or lending institution to determine if it is accepting PPP Round 2 applications. Many participating lenders are only accepting applications from existing customers. Lenders accept applications through their online portals. Earlier in the PPP process, some borrowers reported that national banks failed to process their applications. To increase the likelihood that your loan application will be processed, you may wish to apply with a smaller bank that is accepting applications from new customers such as [Northeast Bank](#) or [Old Dominion Bank](#), or a FinTech company such as [PayPal](#). (We do not endorse any particular lender and we do not receive any payment or commission for referrals made to any institution.) A full list of lenders is available at www.sba.gov.

How do I apply?

You will need to complete the Paycheck Protection Program Round 2 loan application and submit the application with the supporting documentation to an approved lender. The SBA has released model [first-draw](#) and [second-draw](#) PPP loan applications (which individual lenders may modify).

What supporting documentation will I need to include with my application?

Each lender's requirements may vary. You should be prepared to provide your lender with documents that verify the number of full-time equivalent employees and pay rates, as well as eligible mortgage, lease, and utility obligations. Consider compiling the following:

- 2019 and 2020 IRS quarterly payroll tax reports.
- Last 12 months of payroll reports beginning with your last payroll date, including:

- gross wages for each employee, including the officer(s) if paid;
- W-2 wages;
- paid time off for each employee;
- vacation pay for each employee;
- family medical leave pay for each employee;
- state and local taxes assessed on the employee's compensation for each employee;
- documentation showing the total of all health, dental, vision, life and disability insurance expenses paid by your nonprofit for your employees; and
- documentation of the sum of all retirement plan funding paid by your nonprofit (excluding contributions from the employees).

Do I need to look for other funds first, before applying to this program?

No. The SBA waived its usual requirement that a borrower first try to obtain some or all of the loan funds from other sources.

How can I request loan forgiveness?

You will need to submit an application for forgiveness directly to the lender that provided your PPP loan.

Borrowers of loans up to \$150,000 will submit a streamlined 1-page PPP loan forgiveness application. According to the Economic Aid Act, the form will only require you to describe the number of employees you were able to keep on payroll as a result of the loan, estimated total payroll costs, and the total amount of your PPP loan. You must also attest that you accurately completed the forgiveness application and complied with the PPP loan requirements. As of this writing, the new forgiveness application form for loans up to \$150,000 has not been published on the [SBA website](#). The law requires the SBA to publish the form by January 20, 2021. If you received a PPP loan in an amount up to \$150,000 and have not yet sought forgiveness, we recommend that you wait until the simplified forgiveness application form becomes available to request forgiveness.

Borrowers of loans exceeding \$150,000 will submit a more detailed loan forgiveness application. The SBA's current forms are a [7-page loan forgiveness application](#) that incorporates changes to PPP loan forgiveness requirements made by the Flexibility Act and a simplified [3-page "EZ" loan forgiveness application](#). The "EZ" loan forgiveness application may be submitted by borrowers who can satisfy any of the following requirements:

- the borrower applied for a PPP loan as a self-employed individual, independent contractor or sole proprietor who had no employees at the time of the PPP loan application.
- the borrower did not reduce salary or wages for any employee by more than 25% during the covered loan period as compared to the period between January 1, 2020 and March 31, 2020, and did not reduce the number or hours of employees between January 1, 2020 and the end of the covered loan period (ignoring reductions related to employees who refused offers of rehire and whose positions could not be filled with similarly qualified workers).
- the borrower did not reduce salary or wages for any employee by more than 25% during the covered loan period as compared to the period between January 1, 2020 and March 31, 2020, and was unable to return to the same level of business activity it was operating at before February 15, 2020, due to compliance with official requirements related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

These forms are subject to change as a result of regulations and guidance issued by the SBA to implement the Economic Aid Act. Check with your lender to confirm which form you should submit at the time you apply for forgiveness.

What are the general PPP loan terms:

- Interest rate will be 1%.
- No collateral will be required.
- No personal guarantees will be required.
- You do not need to apply first for credit elsewhere.

When do I have to pay the loan back?

You will not have to start making payments on the loan until after you submit your forgiveness application, and the SBA pays the forgiveness amount to the lender. You have 10 months from the end of your covered loan period to submit your forgiveness application. If you do not submit your application by such time, you will need to begin making payments on the loan to your PPP lender.

For PPP loans made before June 5, 2020, the loan amount not forgiven will be due within 2 years of when you received the money. If you receive your PPP loan on or after June 5, you will have 5 years to repay the loan. Pre-June 5th PPP loans can be extended up to 5 years if the lender and borrower mutually agree. If you want to pay earlier, there are no penalties for pre-payment.

Can I certify that current economic uncertainty makes the loan necessary to support my ongoing operations, as is required for a PPP loan, if my nonprofit has a large operating reserve?

This is a business decision that depends on the facts and circumstances of your nonprofit and should be supported by careful and documented deliberation of your board members. SBA guidance issued on April 24 states that, in making the above certification, organizations should take into account their current business activity and their ability to access other funds sufficient to support their ongoing business operations in a manner that is not significantly detrimental to their business.

Will the details of my nonprofit's PPP loan be made public?

On November 5, a federal judge [ordered](#) the SBA to provide the names, addresses, and precise loan amounts of all individuals and entities that obtained PPP and EIDL loans by November 19, 2020. Loan data through August 20, 2020 is available on the [SBA website](#).

What other relief may I be eligible for?

In addition to a first- or second-draw PPP loan, you may be eligible for other types of relief. Below is a non-exhaustive list of options to explore:

- **EIDL Advance**: The Economic Aid Act approved an additional \$20 billion for emergency EIDL advances (*i.e.*, grants) of up to \$10,000 through December 31, 2021. You may be eligible if you are located in a low-income community, have suffered greater than a 30% economic loss in 2020 as compared to 2019, and have no more than 300

employees. If you previously received an EIDL Advance less than \$10,000, you may be eligible for an additional advance up to the difference between \$10,000 and the amount previously received. The program is expected to reopen soon. Monitor the SBA website [EIDL portal](#).

- **Shuttered Venue Operator Grant Program:** The Economic Aid Act also approved grant funding to qualifying live venue operators and promoters, theatrical producers, live performing arts organizational operators, museum operators, motion picture theater operators, and talent representatives. Eligible venue operators must document a drop in gross receipts of at least 25% in any quarter of 2020, as compared to 2019. Grants are calculated as 45% of the venue operator's gross earned revenue in 2019, capped at \$10 million. Grants can be used for any PPP-eligible expenses. The program is only open to qualifying organizations that do not receive a PPP loan after December 27, 2020. Organizations that qualify for both will need to choose which program to apply for. As of this writing, the SBA has not yet released program guidance or the application form.
- **State and Local Relief:** Certain states and cities have enacted relief programs for small businesses and nonprofits. The [NJ COVID-19 Business Emergency Assistance Eligibility Wizard](#) is a helpful resource for companies and nonprofits in New Jersey. The New York City Department of Small Business Services offers [weekly webinars](#) on financial assistance for organizations financially impacted by COVID-19 that may be helpful for companies and nonprofits in the New York City area.
- **Private Sector Grants and Loans:** A number of websites aggregate private sector grant and loan opportunities. This [searchable list of private-sector grant and loan opportunities](#) developed by Start Small Think Big covers various geographical locations and industries.